

Review of Government Advertising

Advertising Review Activity, 2013/14

This year marks the 10th anniversary of the passage of the *Government Advertising Act, 2004 (Act)*, which requires my Office to review most government advertising to ensure it is not partisan.

The Act remains the only such law in Canada, although in late 2013 an MP in the House of Commons introduced a private member's bill modelled on the Act that would have required the federal Auditor General to review and approve federal government advertising. The bill did not go beyond first reading. In Ontario, the New Democratic Party introduced a bill to expand our Office's review function to include advertising paid for by entities in the Broader Public Sector, such as universities and colleges, hospitals, and various government agencies. The bill passed second reading and was referred to committee for further study. However, it died when the House was dissolved on May 2, 2014, for the June 12, 2014, election. It is interesting to note that both proposed bills would have included the Internet as a reviewable medium; the Act in Ontario, as it stands now, does not.

This chapter satisfies the legislative requirement in the Act and the *Auditor General Act* to report annually to the Legislative Assembly on the work we have done over the past fiscal year.

Results of Our Reviews

In the 2013/14 fiscal year, we reviewed 625 individual advertising items in 145 submissions, with a total value of nearly \$30 million. This is comparable to the 2012/13 fiscal year.

A breakdown of submissions and expenditures by government ministry is provided in **Figure 1**.

Figure 2 shows the top 10 ad campaigns by expenditure. These 10 campaigns account for more than 82% of the total expenditure on ads that our Office reviewed.

In all cases, we gave our decision within the required seven business days. Although the time required for a decision varies with the complexity of the ad submission and other work priorities, the average turnaround time during the past fiscal year was 3.6 business days. In addition, we examined 12 pre-review submissions comprising 35 ads at a preliminary stage of development. As pre-reviews are outside the statutory requirements of the Act, there is no limit on the deliberation time we may take. Nonetheless, we make every effort to complete them in a reasonable amount of time. The average turnaround time last fiscal year was about eight business days.

Violations and Contraventions of the Act

Of all the advertising submissions we received in the 2013/14 fiscal year, we rejected one: The Ministry of Economic Development, Trade and Employment submitted an English and French version of a

Figure 1: Expenditures for Reviewable Advertisements and Printed Matter under the Government Advertising Act, 2004, April 1, 2013 – March 31, 2014*

Source of data: Ontario government ministries/Advertising Review Board

Ministry	# of		Agency Fees (\$)	Production Costs ¹ (\$)	Media Costs (\$)				Total (\$)
	Submissions	Items			TV	Print	Out-of-Home ²	Radio	
Aboriginal Affairs	4	6	–	5,053	–	752	–	750	6,555
Agriculture, Food and Rural Affairs	9	63	261,793	1,193,346	3,199,441	10,295	381,352	880,511	5,926,738
Attorney General	6	10	–	99	–	7,627	–	–	7,726
Citizenship and Immigration	3	32	–	5,399	–	201,438	–	–	206,837
Community Safety and Correctional Services	8	33	–	28,450	49,065	124,818	603	–	202,936
Consumer Services	2	3	87,348	429,333	460,305	799	–	–	977,785
Economic Development, Trade and Employment	11	50	498,703	222,730	–	2,972,225	1,172,371	–	4,866,029
Energy	1	2	–	1,715	–	42,752	–	–	44,467
Finance	4	107	326,891	333,179	1,884,220	819,238	338,367	286,353	3,988,248
Government Services/ServiceOntario	9	14	–	490	–	9,318	–	–	9,808
Health and Long-Term Care	16	144	208,066	484,284	3,734,873	1,555,307	1,345,592	–	7,328,122
Infrastructure	1	2	207,034	318,498	1,329,950	–	–	–	1,855,482
Labour	2	51	–	47,287	48,795	53,435	–	–	149,517
Municipal Affairs and Housing	1	2	–	861	–	9,884	–	–	10,745
Natural Resources	23	34	–	1,052	–	134,050	10,000	22,643	167,745
Tourism, Culture and Sport	41	63	19,649	16,408	44,758	119,358	24,576	23,587	248,336
Training, Colleges and Universities	2	5	380,950	682,156	2,141,415	–	–	(1,355) ^a	3,203,166
Transportation	2	4	9,000	23,109	545,940	25,567	–	–	603,616
Total	145	625	1,999,434	3,793,449	13,438,762	6,086,863	3,272,861	1,212,489	29,803,858

* The Auditor General Act requires our Office to report annually on expenditures for advertising and printed matter reviewable under the GAA. In order to verify completeness and accuracy, we reviewed selected payments and supporting documentation. We also examined compliance relating to the sections of the Act dealing with submission requirements and use of ads during the Auditor General's review.

1. Includes talent, bulk mail and translation costs.

2. Includes billboards, transit posters, etc.

a. Negative total due to media credits being applied.

Note: The ministries of Children and Youth Services, Community and Social Services, Education, Environment and Northern Development and Mines did not incur any GAA reviewable advertising costs.

Figure 2: Top Ten Advertising Campaign Expenditures for 2013/14* (\$ million)

Source: Ontario government ministries/Advertising Review Board

Ministry	Campaign Title	Expenditure
Agriculture and Food and Rural Affairs	Foodland Ontario	5.92
Economic Development, Trade and Employment	Your Next Big Idea (International Advertising)	4.81
Health and Long-Term Care	Integrated Cancer Screening	2.72
Finance	2013 Ontario Savings Bonds	2.46
Training, Colleges and Universities	Youth Jobs Strategy	2.21
Infrastructure	Infrastructure Projects	1.86
Finance	Healthy Homes Renovation Tax Credit	1.26
Health and Long-Term Care	Physiotherapy, Exercise, Falls and Prevention	1.17
Health and Long-Term Care	Seasonal Influenza	1.09
Training, Colleges and Universities	30% Off Tuition	0.99
Total		24.49

* The campaign expenditures do not include any digital advertising costs.

30-second television ad about manufacturing in Ontario. We were concerned that this ad would have left viewers with the impression that Ontario's manufacturing sector was booming as a result of government programs and activities in this area. We therefore found the ad in violation of Section 6(1)5 of the Act, which states that "[i]t must not be a primary objective of the item to foster a positive impression of the governing party..." The ministry did not resubmit a modified version for our review.

The Ministry of Tourism, Culture and Sport paid to publish a full-page ad for Fort William Historical Park in a tourism magazine without first submitting it for, and receiving, our approval, as required by Sections 2(2) and 2(3) of the Act. Had this ad been submitted to us for review, we would have approved it with the addition of a statement that the ad was paid for by the Government of Ontario (as required by Section 6(1)2).

Other Matters

Timing and Volume of Ads During By-election Period

On January 15, 2014, writs were issued for by-elections to fill vacancies in the ridings of Thornhill and Niagara. The vote would be held on Febru-

ary 13, 2014. The government already had our approval for five TV advertisements to be aired during this period, including four ads about tuition rebates and one on cancer screening. We became concerned, however, on receiving two additional TV ad submissions for approval. Individually, these ads met the standards of the Act. However, taken together in the context of the two forthcoming by-elections, the sheer volume of the ads could have given the governing party a political advantage. We therefore chose to make our approval for the two campaigns conditional on their starting to run the day after the by-elections. These campaigns included a TV spot about various infrastructure projects across the province and a TV and print campaign about an available tax credit for accessibility improvements to seniors' homes. The government aired these ads after the by-elections.

Closing a Loophole in the Act

Online or digital advertising has become a key part of most marketing campaigns. Digital advertising makes use of Internet technologies to deliver advertisements. It can include advertisements delivered through social media websites, online advertising on search engines, display ads on websites or mobile, use of video, etc.

The *Government Advertising Act, 2004* does not cover any type of digital advertising. In the past, we have seen government online campaigns that would have been in violation of the Act if they had been submitted to our Office for review. In July 2014, for example, the government spent more than \$500,000 promoting its 2014 Budget in a digital-only campaign that featured a series of online display ads on the websites of some Ontario newspapers, 15-second videos on the websites of TV news organizations and ads on Facebook and Twitter. It is questionable whether those ads would have met the standards of the Act had they been submitted to us for review. The costs of this campaign and others like it are not included in our expenditure information.

In the 2013/14 fiscal year, the government spent \$12.48 million on digital advertising, or about \$6.4 million more than it did on advertising in print. As **Figure 3** shows, spending on digital advertising has edged up in the last few years at the same time as spending on traditional media trended down. As digital advertising continues to grow in importance as an advertising medium, the dollar-value of this type of advertising will only increase. We believe that this remains a significant loophole that runs counter to the spirit of the Act. We have written to the government and suggested that it address this through an amendment to the Act that would include digital advertising.

Figure 4 illustrates the government's advertising expenditures by medium.

Review Function

The Auditor General is responsible under the Act for reviewing specified types of government ads to ensure they meet legislated standards. Above all, such ads must not contain anything that is, or could be interpreted as being, primarily partisan in nature.

The Act outlines standards that advertisements must meet and states that “an item is partisan if,

Figure 3: Advertising Expenditures, 2007–2014
(\$ million)

Source: Office of the Auditor General of Ontario/Advertising Review Board

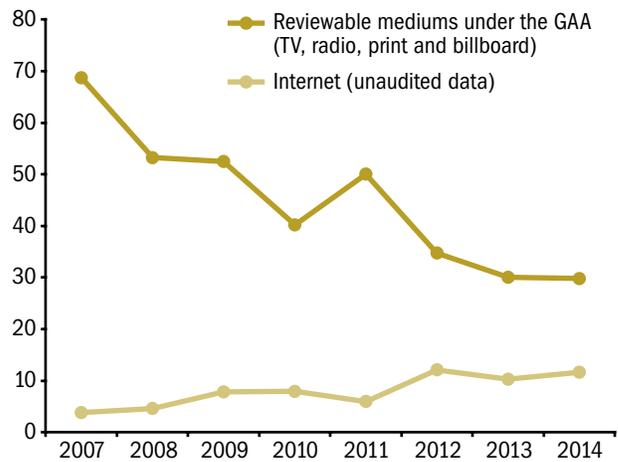
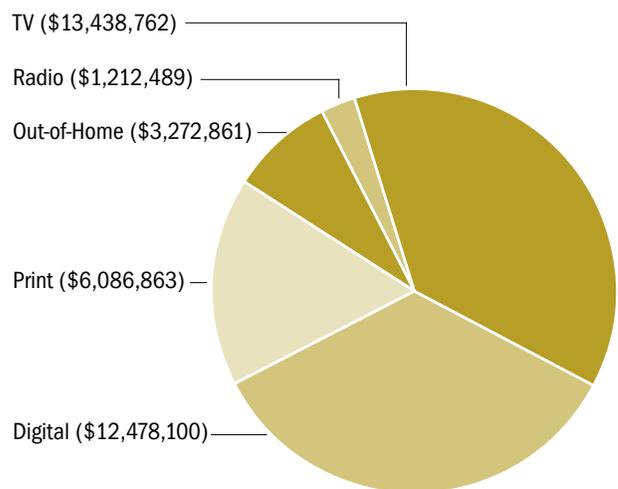


Figure 4: Advertising Expenditure by Medium, 2013/14

Source: Ontario government ministries/Advertising Review Board



in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party.”

The Act also gives the Auditor General discretionary authority to consider additional factors in determining whether a primary objective of an item is to promote the partisan interests of the governing party. The Act can be found at www.e-laws.gov.on.ca, and more details about the processes followed by our Office can be found in the *Government Advertising Review Guidelines* at www.auditor.on.ca/adreview.

What Falls Under The Act

The Act applies to ads that government offices—specifically, government ministries, Cabinet Office and the Office of the Premier—propose to pay to have published in a newspaper or magazine, displayed on a billboard, or broadcast on radio or television. It also applies to printed matter that a government office proposes to pay to have distributed to households in Ontario using unaddressed bulk mail or another method of bulk delivery. Advertisements meeting any of these definitions are known as “reviewable” items and must be submitted to my Office for review and approval before they can run.

The Act excludes from review job ads and notices to the public required by law. Also excluded are ads on the provision of goods and services to a government office, and those regarding urgent matters affecting public health or safety, where the normal seven-business-day process would impose undue delays in getting the message out.

The Act requires government offices to submit reviewable items to our Office. The government office cannot publish, display, broadcast, or distribute the submitted item until the head of that office, usually the deputy minister, receives notice, or is deemed to have received notice, that the advertisement has been approved.

If the Auditor General’s Office does not render a decision within seven business days, the government office is deemed to have received notice that the item meets the standards of the Act, and it may run the item.

If my Office notifies the government office that the item does not meet the standards, the item may not be used. However, the government office may submit a revised version of the rejected item for another review. As with the first submission, my Office has seven days to render a decision. Under the Act, all decisions of the Auditor General are final.

Approval of an advertisement is valid for one year, although my Office can rescind an approval

before then if we determine that new circumstances leave the impression that the ad has become partisan.

A pre-review is also available to government offices wishing us to examine an early version of an ad. This can be a script or storyboard, provided that it reasonably reflects the item as it is intended to appear when completed. Pre-reviews help limit the time and money spent to develop ads containing material that could be deemed objectionable under the Act. A pre-review is strictly voluntary on our part and is outside the statutory requirements of the Act.

If material submitted for pre-review appears to violate the Act, we provide a brief explanation to the government office. If it appears to meet the standards of the Act, we so advise the government office. However, before the advertisement can be used, the government office must submit it in finished form so we can review it to ensure that it still meets the standards of the Act.

Standards for Proposed Advertisements

In conducting its review, the Auditor General’s Office determines whether the proposed advertisement meets the standards of the Act, which are:

- The item must be a reasonable means of achieving one or more of the following objectives:
 - to inform the public of current or proposed government policies, programs or services;
 - to inform the public of its rights and responsibilities under the law;
 - to encourage or discourage specific social behaviour in the public interest; and/or
 - to promote Ontario, or any part of the province, as a good place to live, work, invest, study or visit, or to promote any economic activity or sector of Ontario’s economy.
- The item must include a statement that it is paid for by the government of Ontario.

- The item must not include the name, voice or image of a member of the Executive Council or a member of the Legislative Assembly (unless the primary target audience is located outside Ontario, in which case the item is exempt from this requirement).
- The item must not have a primary objective of fostering a positive impression of the governing party, or a negative impression of a person or entity critical of the government.
- The item must not be partisan; that is, in the opinion of the Auditor General, it cannot have as a primary objective the promotion of the partisan interests of the governing party.
- enable the audience to distinguish between fact on the one hand and comment, opinion or analysis on the other.
- Items should not:
 - use colours, logos and/or slogans commonly associated with the governing party;
 - directly or indirectly attack, ridicule, criticize or rebut the views, policies or actions of those critical of the government;
 - intentionally promote, or be perceived as promoting, political-party interests (to this end, consideration is also given to the timing of the message, the audience it is aimed at and the overall environment in which the message will be communicated);
 - deliver self-congratulatory or image-building messages;
 - present pre-existing policies, services or activities as if they were new; or
 - use a uniform resource locator (URL) to direct readers, viewers or listeners to a webpage with content that may not meet the standards of the Act (see “Websites” in the following section).

Other Factors

In addition to the specific statutory standards above, the Act allows the Auditor General to consider additional factors to determine whether a primary objective of an item is to promote the partisan interests of the governing party. In general, these additional factors relate to the overall impression conveyed by the ad and how it is likely to be perceived. Consideration is given to whether it includes certain desirable attributes and avoids certain undesirable ones, as follows:

- Each item should:
 - contain subject matter relevant to government responsibilities (that is, the government should have direct and substantial responsibilities for the specific matters dealt with in the item);
 - present information objectively, in tone and content, with facts expressed clearly and accurately, using unbiased and objective language;
 - provide a balanced explanation of both the benefits and disadvantages when dealing with policy proposals where no decision has been made;
 - emphasize facts and/or explanations, rather than the political merits of proposals; and

Other Review Protocols

Since taking on responsibility for the review of government advertising, my Office has tried to clarify, in co-operation with the government, areas where the Act is silent. What follows is a brief description of the significant areas that have required clarification over the years.

Websites

Although websites are not specifically reviewable under the Act, we believe that a website, Quick Response Code or similar linkage used in an advertisement is an extension of the ad. Following discussions with the government, we came to an agreement soon after the legislation was passed that the first page, or “click,” of a website cited in a reviewable item would be included in our review.

We consider only the content of the first click, unless that first click is a gateway page or lacks meaningful content, in which case we review the next page. We examine this page for any content that may not meet the standards of the Act. For example, the page must not include a minister's name or photo, any self-congratulatory messages or any content that attacks the policies or opinions of others.

Third-party Advertising

Government funds provided to third parties are sometimes used for advertising. The government and my Office have agreed that third-party advertising must be submitted for review if it meets all three of the following criteria:

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

Social Media

Social media was in its infancy when the Act came into effect. However, its use has grown exponentially in recent years. Increasingly, our Office receives ads for approval with the use of various icons pointing to the government's presence on social-media sites. Although the Act is silent on this, we reached an agreement with the government that we will perform an initial scan of any social-media channel cited in an ad to ensure that there are no partisan references. However, we recognize that content on these networks changes frequently and can at times be beyond the control of the government office.

External Advisers

The Auditor General can, under the *Auditor General Act*, appoint an Advertising Commissioner to help fulfill the requirements of the *Government Advertising Act, 2004*. However, we have chosen instead to engage external advisers to assist in the review of selected submissions as needed. The following advisers provided services to my Office during the last fiscal year:

- Rafe Engle (J.D., L.L.M.) is a Toronto lawyer specializing in advertising, marketing, communications and entertainment law for a diverse group of clients in the for-profit and not-for-profit sectors. He also acts as the outside legal counsel for Advertising Standards Canada, and as Chair of its Advertising Standards Council. Before studying law, Mr. Engle acquired a comprehensive background in media, advertising and communications while working in the advertising industry.
- Jonathan Rose is Associate Professor of Political Studies at Queen's University. He is a leading Canadian academic with interests in political advertising and Canadian politics. Professor Rose has written a book on government advertising in Canada and a number of articles on the way in which political parties and governments use advertising.
- Joel Ruimy is a communications consultant with three decades of experience as a journalist, editor and producer covering Ontario and national politics in print and television.
- John Sciarra is the former director of operations in my Office. He was instrumental in implementing our advertising review function and overseeing it until his retirement in 2010.

These advisers provided valuable assistance in our review of government advertising this past year.