

Review of Government Advertising

Significant Changes to *Government Advertising Act, 2004* Lead to More Publicly Funded Partisan Advertising

Ontario enacted the *Government Advertising Act, 2004* (Act) more than a decade ago to ensure that no public money would pay for advertising that gives the government a partisan advantage. The Act required the Auditor General to review most government advertising and, in cases where we deemed it not partisan, to issue a formal approval before the item could be used. The Act also set out standards to guide this work, and gave the Auditor General discretionary authority to determine what is partisan.

The Act remained unchanged until last year, when the government enacted significant amendments that weakened the Act and opened the door to publicly funded partisan and self-congratulatory government advertising on television and radio, in print and online.

It is noteworthy that Ontario weakened its Act, the first such legislation in the world, just as other Canadian jurisdictions are seeking to tighten limits on partisan government advertising.

In May 2016, for example, the federal government introduced interim regulations, which took effect immediately, requiring its departments to submit proposed advertisements valued at more

than \$500,000 for review by Advertising Standards Canada, a national not-for-profit organization that administers the Canadian Code of Advertising Standards.

The new regulations require federal-government advertising to be objective, factual, and explanatory, and to refrain from using the name, voice or image of a minister, MP or senator. The federal government also asked the Auditor General of Canada to conduct an audit of this review process to evaluate its effectiveness, and plans eventually to draft legislation enshrining the new regulations.

Also in May 2016, a British Columbia opposition party introduced a bill in the legislature modelled on the previous Ontario *Government Advertising Act*.

The amendments last year to the Ontario Act did away with the Auditor General's discretionary authority under the original Act, providing instead a specific and narrow definition of what is partisan. This definition is the only measure we can use in our reviews.

We believe that as a result of the amendments, Ontarians have in the last year paid millions of dollars for advertising designed primarily to present the government in a positive light rather than to inform. (We provide examples further in this section.)

An approval from the Auditor General is still required under the amended Act before an advertisement can run. However, this approval has become a foregone conclusion because the amended Act stipulates that an advertisement is partisan **only if**:

- “it includes the name, voice or image of a member of the Executive Council or a member of the Assembly, unless the item’s primary target audience is located outside of Ontario;
- “it includes the name or logo of a recognized [political] party ...;
- “it directly identifies and criticizes a recognized party or a member of the Assembly; or
- “it includes, to a significant degree, a colour associated with the governing party ...”

The government also repealed standards in the original Act that stipulated each item submitted to our Office had to be a reasonable means of:

- informing people about government programs, policies and services;
- informing people about their rights and responsibilities;
- changing social behaviour in the public interest; or
- promoting Ontario as a good place in which to live, work, invest, study or visit.

We found the old standards useful and effective in our review process to promote transparency and accountability in government advertising. These standards also helped ensure that items provided useful information and did not unduly promote the governing party or criticize its opponents.

We urged the government last year to reconsider the amendments, and we issued a Special Report (www.auditor.on.ca/en/content/specialreports/specialreports/GAA_en.pdf) outlining our detailed concerns. We noted that the proposed amendments could lead to government advertising that would meet the requirements of the Act, but still be considered partisan by any reasonable measure. This type of advertising, we wrote, would be of little value to the taxpayers who paid for it.

We also advised that the amendments could damage the credibility of the Auditor General as an independent Legislative Officer working at arm’s length from the government because the amended Act would require our Office to “rubber stamp” all government advertising as non-partisan.

The government nonetheless enacted the amendments, which took effect on June 16, 2015. Since then, our Office has had to approve advertising in the areas of pensions, the environment, infrastructure, health and education that we believe had as their primary purpose to promote the government’s partisan political interests or give the government credit for its accomplishments, rather than to inform citizens. We present examples below.

Pension Ads Overlapped with Ontario Liberal Party Ads

Less than a month after the new Act took effect, we had to approve as compliant with the Act a radio and digital advertising campaign from the Ministry of Finance on the Ontario Retirement Pension Plan (ORPP), a signature government policy introduced in the 2015 Budget. A few weeks later, while these advertisements were still running, the Ontario Liberal Party launched a television advertisement in which the Premier spoke about ensuring that Ontarians have a decent pension on which to retire.

Under the original Act, we could have addressed the overlap between the publicly funded advertisements and the political-party commercials by requiring the government to pull its commercial so as to avoid spending tax dollars to reinforce the partisan messaging of the Ontario Liberal Party spot. We would also have had the authority to disallow the Ministry of Finance item in the first place because it claimed the ORPP was “here” when, in fact, it was only scheduled to begin operating in 2017.

In August 2015, the government submitted three TV spots on the ORPP that, as with the previous submission, we had to approve under the amended legislation. However, we noted our significant concerns about their content and timing.

We found that the ads could leave the impression that the ORPP will in fact close the retirement savings gap rather than just “help shrink” it, which could be misleading. We also noted that the ads could be seen as partisan because they aired during a federal election campaign that included verbal

disagreements between the Liberal Premier and the Conservative Prime Minister over the ORPP.

The government spent more than \$5.7 million to advertise the ORPP in the 2015/16 fiscal year. However, it scrapped its plans to create the ORPP in June 2016 after reaching an agreement with the federal government on changes to the Canada Pension Plan (CPP). In total, it spent up to \$8.1 million to advertise the ORPP over the past two fiscal years.

In July 2016, the government submitted a radio ad, and later digital ads, promoting benefits of the proposed CPP enhancements. We expressed concerns that the subject matter of the ads was beyond the Ontario government's jurisdiction, that the proposed changes to the CPP were still subject to federal parliamentary approval and, if passed, would not take effect until 2019. We noted that the ads were self-congratulatory and aimed at ensuring that the provincial government got credit for CPP changes to come, rather than providing the public with any useful information. We would have rejected these ads under the previous Act. However, the amended Act required us to approve them as being in compliance with the legislation.

Environmental Advertising Self-Congratulatory, Misleading

The government spent nearly \$3 million in 2015/16 (and projected to spend another \$2.85 million more in 2016/17) on a series of ad campaigns on the environment that could be seen as self-congratulatory and, in some cases, misleading.

One commercial, submitted in November 2015, depicted animals that an announcer addressed as “fellow Ontarians.” We had to approve the commercial as being in compliance with the standards of the amended Act. However, we also advised the government that this ad suggested the animals represent the electorate and they are “responding enthusiastically” (as described in the script) to the actions taken/to be taken by the government regarding the environment.

We also observed that a digital campaign, submitted in March 2016 promoting the government's contemplated cap-and-trade program, was misleading in that it conveyed the sense that a cap-and-trade program was already in place when in fact the program was tentatively to be launched in 2017. Although we had to approve the advertisements, we also advised that they left the overall impression that industry will be financing the program, even though the Ontario consumer will bear most of the cost through increased home heating, electricity and fuel costs.

In May 2016, we had to approve as compliant with the legislation two television campaigns on climate change that featured a well-known Canadian environmentalist and young children. We advised the government that the campaigns provided viewers with no useful information, and we noted that one of the spots appeared designed to create apprehension about the effects of climate change so viewers will be more likely to support Ontario's Climate Change Action Plan. We also noted that both campaigns fostered a positive impression of the government party.

Government Appears to Seek Credit in 2016 Ads

We had to approve as compliant with the legislation three campaigns that straddled the 2015/16 and 2016/17 fiscal years, and for which complete information about costs was not yet available. All three appeared designed primarily to give the government credit for its accomplishments, and we describe them below:

- **A campaign to promote “Ontario's nearly \$160 billion investment in infrastructure.”** In having to approve this campaign as compliant with the legislation, we advised the government that none of the proposed advertisements mentioned the fact that this spending will be spread over the next 12 years—a period in which there could be at least three provincial elections that could alter

this spending plan, as well as any number of other unanticipated economic developments. We also observed that the government's own submission for the advertisements noted that polling indicates less than 50% of Ontarians have any familiarity with the government's investment in public infrastructure. This led us to believe that the overall thrust of these advertisements was self-congratulatory and aimed at ensuring that the government gets credit for its potential future spending plans.

- **A campaign to tell Ontarians that the government is increasing health-care funding by \$1 billion in the current fiscal year.** In its submission for these print and radio ads, we noted that the government cited “survey results showing that many Ontarians believe that severe cuts are happening within the health-care system.” In reviewing and having to approve these ads as compliant with the legislation, we noted that the campaign appeared to be self-congratulatory and aimed at ensuring that the government gets credit for its planned health-care spending. We also advised the government that these advertisements would not have passed under the previous Act because we would have determined that a primary objective of these advertisements is to foster a positive impression of the governing party, rather than provide the public with useful information.
- **A campaign to promote the fact that Ontario schools provide “a world-class education” and that “more Ontario students are reaching their potential than ever before.”** In having to review and approve the submission as compliant with the legislation, we advised the government that these vague scripts would not have passed under the previous Act because they appeared aimed at fostering a positive impression of the government and did not provide the public with any useful information.

Other Issues

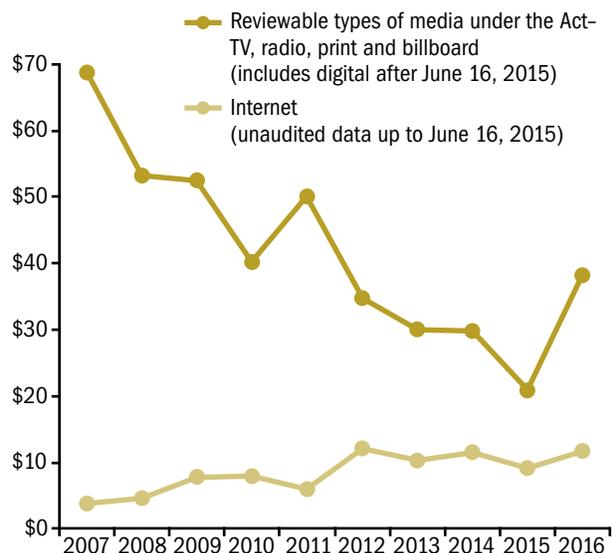
Digital Advertising Loopholes

Since 2011, we have asked the government to include all digital advertising in our review mandate. A new regulation under the amended Act does give us the authority to review “an advertisement consisting of video, text, images or any combination of these that a government proposes to pay to have displayed on a website.”

However, this regulation 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 our review. Our Office continues to have no authority to ensure this spending is for non-partisan purposes. (See **Figure 1** for total government spending on digital advertising). Since the amended Act added digital ads to our review mandate, the number of ads we examine yearly has nearly doubled, but we have to provide a “rubber

Figure 1: Advertising Expenditures, 2007–2016
(\$ million)

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



stamp” approval because we are approving the ads for compliance with legislation and cannot withhold approval based on partisanship.

As such, because we are merely “shuffling paper” now, the addition of digital media to our review authority is not meaningful in light of the legislated limits on our ability to determine what constitutes a partisan advertisement.

Government-Friendly Advertising by Crown Corporations

Provincial Crown corporations and agencies also spend millions to advertise, but unlike government ministries, these organizations are not subject to our review under the Act. We believe this has the potential to allow the government to benefit from favourable advertising by these exempt organizations.

In September 2015, the provincially owned Ontario Power Generation (OPG) announced it was launching a new “public awareness campaign called Powering the Future, which highlights the company’s transformation to Ontario’s clean power generator.”

The television, print and digital campaign, which ran in fall 2015 and spring 2016 at a cost of more than \$3 million, portrayed the province’s move away from coal-fired electricity production in glowing terms. The last coal-fired plant in Ontario was closed in 2014 and the environment was benefiting as a result, the campaign said.

However, a complaint was made to Advertising Standards Canada that the TV commercial was misleading because it said that 99% of the power produced in Ontario is free of greenhouse gas emissions; in fact, Ontario still depends on gas-powered plants to generate some power. Although the ad campaign has stopped airing on TV, OPG has changed the spot available on-line to clarify that it is OPG-generated power that is 99% free of emissions.

The suggestion that a government might benefit from advertising paid for by a Crown corporation warrants further discussion because such advertising can constitute publicly funded partisan advertising.

Election Advertising

The Legislature’s Standing Committee on General Government held hearings over the spring and summer into Bill 201, the *Election Finances Statute Law Amendment Act*, a proposed law to impose new restrictions and rules on political advertising by political parties and third parties during pre-election and election periods.

Bill 201 was proposing to limit the amount that a political party and a third party could spend in the six months preceding an election. Political parties could spend \$1 million and third parties \$600,000. Third parties would also be limited to spending \$100,000 during the election period itself. However, it was unclear whether government advertising fell under the definition of political advertising and thus would be bound by the limits imposed on third parties.

I appeared before the Committee on August 11, 2016, and raised the possibility that Bill 201 did not restrict the government from spending millions of public dollars on advertising that would allow the government to have a partisan advantage.

I recommended that to address this, the government should reinstate the discretionary powers of the Auditor General in the Act to ensure that government advertising, especially prior to and during an election campaign, does not give the governing party a partisan advantage.

When the Legislature prorogued on September 8, 2016, Bill 201 died on the Order Paper. A new election finance reform bill, Bill 2, was introduced on September 13. It included a change from the previous version regarding government advertising: It proposed that 60 days before a scheduled election period, government advertising would be limited to only those ads communicating essential information (e.g., public health warnings). The same rule would apply during the campaign period.

I submitted a written presentation to the legislative committee hearings for Bill 2 in November 2016, reiterating my view that unless my discretionary powers in the former Act were reinstated, the

Figure 2: Expenditures for Reviewable Advertisements under the Government Advertising Act, 2004, April 1, 2015–March 31, 2016*

Source of data: Ontario government ministries/Advertising Review Board

Ministry	# of Submissions	# of Items	Agency Fees (\$)	Production Costs (\$)	Media Costs (\$)				Total (\$)
					TV	Radio	Print	Out-of-Home ¹	
Aboriginal Affairs	1	1	—	—	—	—	650	—	650
Agriculture, Food and Rural Affairs	9	128	164,866	592,312	1,004,161	751,516	28,920	123,264	2,815,281
Attorney General	1	2	97	3,239	—	—	—	—	3,336
Children and Youth Services	1	4	—	15	—	—	—	—	21,470
Citizenship, Immigration and International Trade	16	159	308,626	646,543	2,635,486	—	298,346	1,802,262	6,286,345
Community Safety and Correctional Services	6	11	—	36,694	22,542	—	33,194	—	92,430
Economic Development, Employment and Infrastructure	11	41	66,320	31,903	—	86,194	392,055	150,168	946,746
Education	14	97	429,138	634,563	1,138,910	462,790	1,905,579	—	5,072,163
Environment and Climate Change	7	80	402,304	580,296	1,205,245	—	—	321,760	2,939,358
Finance	15	162	754,624	947,530	3,447,272	1,338,512	641,392	—	8,076,789
Government and Consumer Services	20	45	6,222	22,014	783,867	—	14,751	—	903,330
Health and Long-Term Care	29	251	144,208	1,177,143	2,381,780	1,418,953	918,344	1,765,784	9,828,353
Labour	5	46	111,255	12,930	—	807,627	195,708	—	1,127,520
Municipal Affairs and Housing	0	0	—	—	—	—	13,900	—	13,900 ²
Natural Resources and Forestry	33	132	—	10,644	—	28,355	229,923	2,960	432,232
Tourism, Culture and Sport	46	94	679	92,799	18,216	77,463	545,884	226,034	1,175,740
Training, Colleges and Universities	0	0	—	—	(2,580) ³	198	(5,301) ³	—	(7,683) ³
Transportation	15	131	210,240	635,330	48,079	689,475	1,099,283	1,111,368	3,925,311
Total	229	1,384	2,598,579	5,423,955	12,682,978	5,661,083	6,312,628	5,503,600	43,653,271

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

1. Includes billboards, transit posters, digital screens, cinema ads, etc.

2. Ads approved in 2014/15 and paid for in 2015/16.

3. Negative total due to media credits being applied.

Note: The ministries of Community and Social Services, Energy, Northern Development and Mines, and Research and Innovation did not incur any reviewable advertising costs under the Act.

governing party, through its use of government advertising, would continue to have a partisan advantage.

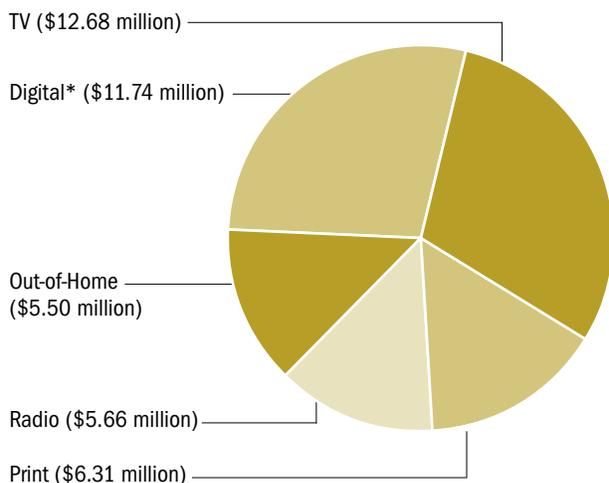
Government Advertising Spending on the Rise

In the fiscal year ending March 31, 2016, we reviewed 1,384 final advertising items in 229 submissions. This includes 26 preliminary review submissions comprising 111 advertisements which were at an early stage of development. The value of this government advertising was nearly \$43.65 million. Excluded from this total is the \$3.78 million spent on digital advertising that is exempt from our review (this includes ads placed on social media websites and ads displayed as a result of using a search marketing service) and \$2.49 million the government spent on digital advertising in the first three months of the fiscal year, prior to the changes in the Act. Including these amounts, the total value of government advertising for the fiscal year was \$49.9 million.

See **Figure 2** for a breakdown of costs by government ministry, and **Figure 3** for a breakdown of spending by medium.

Figure 3: Advertising Expenditure by Medium, 2015/16

Source of data: Ontario government ministries/Advertising Review Board



* Includes costs of all digital advertising (including \$6.27 million that is exempt from our review).

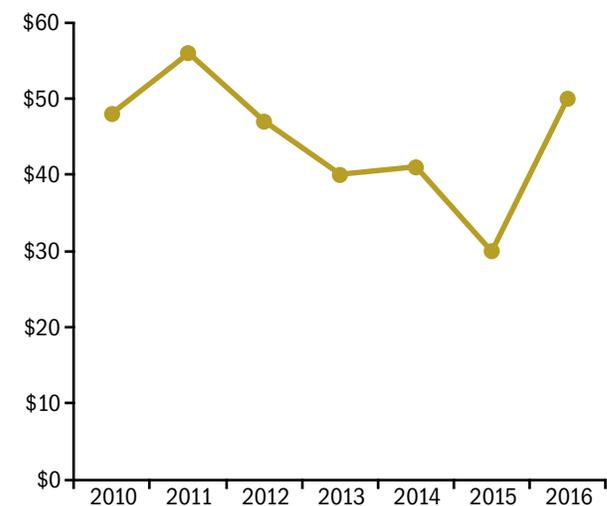
This compares to 653 individual items in 182 submissions with a value of \$20.85 million in the previous fiscal year. Although digital advertising was not reviewable by our Office, the government spent \$9.16 million on digital ads. In total, the government spent just over \$30 million on advertising in the fiscal year ending March 31, 2015. **Figure 4** shows a breakdown of government advertising costs since 2010. Since the changes to the Act came into effect last June, government spending on advertising has increased.

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.

The top 10 advertising campaigns in 2015/16 by expenditure are listed in **Figure 5**. These 10 campaigns accounted for almost 79% of the total reviewable expenditure on advertisements that our Office reviewed in the past fiscal year. It is worth noting that the ORPP and Climate Change ad campaigns would not have passed our review prior to the 2015 amendments to the Act.

Figure 4: Advertising Expenditures, 2010–2016 (\$ million)*

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



* These yearly expenditures include digital advertising.

Figure 5: Top 10 Advertising Campaign Expenditures for 2015/16¹

Source of data: Ontario government ministries/Advertising Review Board

Campaign ²	Ministry	Expenditure (\$ million)
ORPP	Finance	5.73
Sexual Violence and Harassment	Citizenship, Immigration and International Trade	5.61
Health and Physical (Sexual) Education	Education	4.95
Pan Am/Parapan Am Traffic Management	Transportation	3.66
Climate Change	Environment and Climate Change	2.94
Foodland Ontario	Agriculture, Food and Rural Affairs	2.79
Smoking Cessation	Health and Long-Term Care	2.61
Ontario Savings Bonds	Finance	2.28
Healthy Kids Community Challenge	Health and Long-Term Care	1.68
Immunization	Health and Long-Term Care	1.45
Total		33.70

1. Campaign expenditures include digital advertising costs incurred after June 16, 2015.

2. Elements of this may include TV, print, radio, out-of-home, and/or digital advertising.

The amended Act requires us to render a decision on compliance with the legislation within five business days. Although the time required for a decision varies because of other work priorities, the average turnaround time during the past fiscal year was 3.3 business days. The amended Act requires us to render a decision on compliance with the legislation on preliminary reviews in nine business days, but our average turnaround time last fiscal year was just over three business days.

Two Violations under the Amended Act

We found all advertising submitted to our Office in the 2015/16 fiscal year complied with the amended Act, with the exception of two preliminary review submissions.

The first violation, from the Ministry of Economic Development, Employment and Infrastructure, involved a television script about the government's infrastructure-spending plans (discussed previously). We found it violated the Act because the advertisement directed viewers to a web page that contained the name and image of the Premier, in violation of Section 6(2)(a) of the revised Act.

The Ministry subsequently changed the web page and resubmitted the commercial, and we issued a compliance-with-legislation approval for the amended advertisement under the revised Act.

The second violation, by the Ministry of the Environment and Climate Change, involved a television script for the government's Climate Change campaign that failed to include a statement saying the ad was paid for by the Government of Ontario, as required in Section 6(1)1 of the revised Act.

Overview of Our New Compliance Function

What Falls under the Act

The Act applies to advertisements 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, displayed digitally in a prescribed form or manner, or broadcast on radio or television, or in a cinema. It also applies to printed matter that a government office proposes

to pay to have distributed to households in Ontario by bulk mail or another method of bulk delivery. Advertisements meeting any of these definitions are known as “reviewable” items and must be submitted to our Office for review and approval for compliance with the amended Act before they can run.

In addition, all proposed television and cinema commercials, along with bulk-distributed printed materials (householders) must be submitted before they are completed for preliminary review by our Office for compliance with legislation in each language the government intends to run them. After receiving a preliminary approval, these proposed advertisements must be resubmitted in their final form for approval. (Under the old Act, preliminary reviews were voluntary, and could be submitted in a single language. This was a more efficient and streamlined process.)

The Act requires government offices to submit reviewable items to our Office. They 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 for compliance with legislation.

If our Office does not render a compliance decision within the five business days set out in regulation, then the government office is deemed to have received notice that the item is in compliance with the Act, and may run it.

If our Office notifies the government office that the item is not in compliance with the Act, the item may not be used. However, the government office may submit a revised version of the rejected item for another review. Compliance approvals are valid for the life of the proposed media campaign.

The Act excludes from our review advertisements for specific government jobs (but not generic recruitment campaigns) and notices to the public required by law. Also exempt are advertisements on the provision of goods and services to a government office, and those regarding urgent matters affecting public health or safety.

Revised Criteria for Proposed Advertisements

In conducting its review, the Auditor General’s Office now only determines whether the proposed advertisement is in compliance with the amended Act. The following are the areas that the advertisement must be in compliance with:

1. It must include a statement that it is paid for by the government of Ontario.
2. It must not include 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.
3. It must not include the name or logo of a recognized party.
4. It must not directly identify and criticize a recognized party or a member of the Assembly.
5. It must not include, to a significant degree, a colour associated with the governing party.

We have no authority to consider any other factors, such as factual accuracy, to determine whether an item is partisan.

Other Review Protocols

Since assuming responsibility for the review of government advertising in 2005, our Office has worked with the government to clarify procedures to cover areas where the Act is silent. What follows is a brief description of the significant areas that have required such clarification over the years.

Websites

Although websites were not specifically reviewable in the original Act, we took the position that a website or similar linkage used in an advertisement is an extension of the advertisement. Following past discussions with the government, our Office came to an agreement soon after the legislation was first passed that the first page, or “click,” of a website cited in a reviewable item would be included in our review.

We consider the content only of the first click, unless it 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 amended Act. For example, the page must not include a minister's name or photo.

Social Media

The government significantly increased its presence on social-media sites over the years, and our Office often receives advertisements for approval that use icons pointing to various social-media sites.

Although the original Act was silent on social media, we reached an agreement with the government that we would perform an initial scan of any social-media channel cited in an advertisement to ensure that the standards of the Act are being followed. We do, however, recognize that content on these networks changes frequently and can at times be beyond the control of the government office, so our limited review focuses only on the content that the government controls.

Third-Party Advertising

Government funds provided to third parties are sometimes used for advertising. The government and our Office agreed in 2005 that third-party advertising must be submitted for review if it meets 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 granted the third party permission to use the Ontario logo or another official provincial visual identifier in the item.
- The government office approved the content of the item.

This agreement currently remains in place. In the last fiscal year, our Office received 19 ads for review from the Ministry of Natural Resources and Forestry on a campaign done in partnership with Forests Ontario (a non-profit organization supporting forest restoration and stewardship) regarding the 50-Million-Tree Program that would constitute third-party advertising.