



Office of the Auditor General of Ontario

The Government's
Proposed
Amendments to
the *Government
Advertising Act*,
2004



Special Report
May 2015



Office of the Auditor General of Ontario

To the Honourable Speaker
of the Legislative Assembly

I am pleased to transmit my Special Report on *The Government's Proposed Amendments to the Government Advertising Act, 2004*, in accordance with Subsection 9(3) of this Act, which says: "The Auditor General may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor General should not be deferred until the annual report."

A handwritten signature in black ink that reads "Bonnie Lysyk".

Bonnie Lysyk
Auditor General

May 2015

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Ce document est également disponible en français.

ISBN 978-1-4606-5782-9 (Print)
ISBN 978-1-4606-5783-6 (PDF)

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Special Report

The Government's Proposed Amendments to the *Government Advertising Act, 2004*

Why I Am Issuing This Special Report

Subsection 9(3) of the *Government Advertising Act, 2004* (GAA) allows me to make a special report to the Legislature on any matter that I believe should not be deferred until I report on my review of government advertising in my Annual Report.

I am issuing this special report to the Legislative Assembly to inform Members of concerns I have with the government's recently proposed amendments to the GAA, as I believe they may well impact the credibility of my Office. Under the current GAA, I have the authority and the responsibility to review most advertising proposed by the government to ensure that it is non-partisan and meets legislated standards. If the proposed amendments under Bill 91, the *Budget Measures Act*, Schedule 14, are passed by the Legislature without change, I may be put in the untenable and unacceptable position of having to approve an advertisement as being in compliance with the GAA because it conforms to the proposed, very narrow definition of what is partisan—even though, in my opinion, it is clearly a partisan advertisement. I would no longer be able to consider factors such as political context, the use of self-congratulatory messages, factual accuracy or an advertisement's criticisms of other political

parties in my review to help determine whether an ad is partisan.

If the government decides not to make substantive changes to the proposed amendments, I respectfully ask that it bring forth another amendment to relieve my Office of its advertising review responsibilities and to assign the task of reviewing ads for partisanship to a government ministry or agency.

Over 10 years ago, when introducing the GAA, the Minister responsible stated that “any advertisement deemed by the Provincial Auditor to promote partisan interest would never see the light of day.” Should the proposed amendments pass, taxpayer-funded partisan government advertisements could very well see the light of day.

Overview

On April 23, 2015, the government introduced Bill 91, the *Budget Measures Act, 2015*, which contains, among other things, proposed amendments to the GAA.

One of the proposed amendments contained in Schedule 14 of Bill 91 would widen the scope of advertising that the GAA would cover to include digital advertising. This is a welcome measure, and one that we have been calling for in our Annual Reports since 2011.

Another addition, which we support, includes cinema ads. Greater clarity has also been provided to specifically include public transit advertising, although these types of ads have, in fact, been reviewed by our Office since 2005.

However, I am concerned with the proposed amendments that would introduce a very narrow and limited definition of what constitutes partisan advertising. I am even more concerned that the amendments delete the substance of two critical subsections in the current GAA. Subsections 6(3) and 6(4) allow the Auditor General to consider additional factors beyond the Act's specific standards to assess whether a primary objective of an advertisement is to promote the partisan interests of the governing party. As a result, a government would have much more latitude to run ads that the amended GAA would define as non-partisan but that could be considered partisan by any reasonable measure.

Subsection 6(3) of the GAA currently reads: "An item is partisan if, in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party." Subsection 6(4) states: "The Auditor General shall consider such factors as may be prescribed, and may consider such additional factors as he or she considers appropriate, in deciding whether a primary objective of an item is to promote the partisan political interests of the governing party."

The proposed amendments aim to repeal these subsections of the GAA entirely and replace them with a much narrower definition of partisan advertising, one that would deem an item partisan only:

- "if it includes the name, voice or image of a member of the Executive Council or a member of the Assembly";
- "if it includes the name or logo of a recognized party in the Assembly"; or
- "if it includes, to a significant degree, a colour associated with the governing party."

Figure 1 compares the definition of "partisan" under the current GAA and under the proposed amendments.

I also note that, in the context of these amendments narrowing the definition of partisanship and removing the discretion of the Auditor General, the addition of digital advertising is likely no longer a meaningful expansion. Furthermore, the amendment on digital is subject to regulation, which means certain types of digital advertising could be excluded from review in the future.

Potential Consequences of Proposed Amendments

It is not difficult to imagine the kind of advertisement that could pass muster under the proposed amendments: a television commercial where an actor portraying an Ontario citizen proclaims, "This government cares about me and my family...new tax cuts, new pension plan, new policies to protect the environment. These things are important to me, and this government gets it...not like those other guys." While I am not implying that a government would run an advertisement so obviously partisan, it serves as an example of what would be allowable under the amended GAA. I believe that any objective observer would conclude that a primary objective of such an advertisement is to promote the partisan interests of the governing party rather than delivering information needed by the public.

In essence, if these proposed amendments are passed, my Office would be placed in the untenable and unacceptable position of approving advertisements because they conform to the narrow requirements of the amended GAA—even though they could clearly be partisan by any objective, reasonable standard. This would be of little value to the taxpayers bearing the costs of those ads. I believe that this would have a serious impact on the credibility and reputation of my Office, with citizens rightly asking how the Auditor General could have approved such ads as being non-partisan.

Figure 1: Section 6 of the *Government Advertising Act, 2004*, Current and ProposedSource of data: *Government Advertising Act, 2004*; Bill 91, *The Budget Measures Act, 2015*, Schedule 14

Current

Required standards

6. (1) The following are the standards that an item is required to meet:
1. It must be a reasonable means of achieving one or more of the following purposes:
 - i. To inform the public of current or proposed government policies, programs or services available to them.
 - ii. To inform the public of their rights and responsibilities under the law.
 - iii. To encourage or discourage specific social behaviour, in the public interest.
 - iv. To promote Ontario or any part of Ontario as a good place to live, work, invest, study or visit or to promote any economic activity or sector of Ontario's economy.
 2. It must include a statement that the item is paid for by the Government of Ontario.
 3. It must not include the name, voice or image of a member of the Executive Council or a member of the Assembly.
 4. It must not be partisan.
 5. It must not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the government.
 6. It must meet such additional standards as may be prescribed. 2004, c. 20, s. 6 (1).

Advertising outside Ontario

(2) Paragraph 3 of subsection (1) does not apply with respect to an item for which the primary target audience is located outside of Ontario. 2004, c. 20, s. 6 (2).

Partisan advertising

(3) An item is partisan if, in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party. 2004, c. 20, s. 6 (3).

Same

(4) The Auditor General shall consider such factors as may be prescribed, and may consider such additional factors as he or she considers appropriate, in deciding whether a primary objective of an item is to promote the partisan political interests of the governing party. 2004, c. 20, s. 6 (4).

Proposed

Required standards

6. (1) The following are the standards that an item is required to meet:
1. It must include a statement that the item is paid for by the Government of Ontario.
 2. It must not be partisan as determined under subsection (2).
 3. It must meet any additional standards that may be prescribed.

Partisan advertising


- (2) An item is partisan,
- (a) if 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) if it includes the name or logo of a recognized party, within the meaning of subsection 62(5) of the *Legislative Assembly Act*; or
 - (c) it includes to a significant degree, a colour associated with the governing party, subject to subsection (4).


Reference to title

(3) Clause (2)(a) does not prevent the use of a member's title.

Exception, colour

(4) Clause (2)(c) does not apply to the depiction of a thing that is commonly depicted in a colour associated with the government party.

 text that the proposed amendments delete from the current act

 text that the proposed amendments introduce

My Position on the Proposed Amendments

I was surprised to see the extensive changes to the GAA put forward by the government in Bill 91. My Office was not provided with any opportunity to review the draft legislation, nor were we consulted or invited to discuss the proposed changes. I was notified only on the day Bill 91 was tabled.

I maintain that the GAA is effective in its current form. That said, I welcome amendments that would make the Act even more effective and transparent. But I believe that the proposed amendments that remove my discretion to independently determine whether an advertisement is partisan, and replaces it with a definition drafted by the government, deals a fatal blow to the effectiveness of the current GAA. **Figure 2** presents my analysis of the effects of each proposed change to the current GAA.

In my *2014 Annual Report*, we requested that the government consider providing us with the authority to review digital advertising, given that more and more advertising is taking this form. Growth in this area was not foreseen when the GAA was drafted in 2004. In fact, since 2007, the government has spent more than \$64 million on digital advertising.

I wrote to the government in October 2014 to suggest that making digital advertising reviewable under the GAA could be accomplished through a simple amendment to section 2(1) as follows:

This section applies with respect to any advertisement that a government office proposes to pay to have published in a newspaper or magazine, displayed digitally or on a billboard, or broadcast on television or any similar medium.

My Office would support this amendment.

History of Government Advertising Review

In the two decades preceding the proclamation of the GAA, a number of Ontario government advertisements were criticized for being partisan ads funded by taxpayer dollars.

For instance, criticism was expressed in the mid-1990s about government ads that delivered glowing accounts of the government's successes while featuring prominent images of government leaders presenting strong partisan views on contentious issues. The government of the day was accused of using public funds on partisan messages—sometimes rebutting advocacy groups and unions critical of the government's policies or actions, and in other cases praising its own initiatives with self-congratulatory language. Critics argued that using public funds in this way—as opposed to using them to provide the public with useful information about government services—was inappropriate. The GAA has received significant attention as ground-breaking legislation that ensures that taxpayer dollars are not used for partisan advertising in Ontario.

Auditor General's Office Given a Role in Government Advertising Legislation

Following the 2003 Ontario general election, the new Liberal government advised the then-Auditor General that it was going to introduce legislation to have his Office review and approve government advertising. The government actively consulted with his Office during the drafting of the proposed legislation. On December 11, 2003, the government introduced Bill 25, entitled *An Act Respecting Government Advertising*, which aimed to prohibit the use of public funds for advertising of a partisan nature. The Bill was passed into law on December 9, 2004, as the *Government Advertising Act, 2004*, and the Office began fully exercising its review responsibilities in December 2005.

Figure 2: Auditor General's Commentary on the Effects of the Proposed Amendments to the *Government Advertising Act, 2004* (GAA) under Bill 91

Source of data: Bill 91, *The Budget Measures Act, 2015*

Topic	Current Language in GAA	Proposed Amendment	Auditor General's Commentary
Standards for Advertising Review	<p>Ads are required to meet six legislated standards:</p> <ul style="list-style-type: none"> • Be a reasonable means of achieving one of the following purposes: <ul style="list-style-type: none"> • Inform about current or proposed government policies, programs or services; • Inform about rights and responsibilities in the public interest; • Change social behaviour; • Promote Ontario as a good place to live, work, invest, study or visit. • State that the item is paid for by the Government of Ontario. • Not include the name, voice or image of Executive Council or Assembly members. • Be non-partisan. • Primary objective of ad is not to foster a positive impression of the governing party or a negative impression of a person or entity critical of the government. • Meet any other prescribed standards (s. 6(1)). 	<p>The required standard of meeting a stipulated purpose for an ad has been eliminated. Instead, <u>non-binding examples</u> of reasons why government may choose to advertise have been added to the beginning of the GAA (s. 1.1(2)).</p> <p>The standard to disallow ads that have a primary objective to foster a positive impression of the governing party or a negative impression of a person or entity critical of the government is removed entirely from the GAA.</p>	<p>A government no longer has to ensure that their advertisements meet a legislated purpose.</p> <p>An ad's primary objective may now be to foster a positive impression of a governing party or a negative impression of a person or entity that is critical of the government.</p> <p>We disagree with this amendment.</p>
Preliminary Review	<p>After an item is given to the Auditor General for review, the Auditor General determines whether it meets the standards under the GAA (s. 5(1)).</p>	<p>Copies of an advertisement must be submitted for both a preliminary and final review (s. 3(2) and s. 4.1).</p>	<p>In practice, we currently provide an optional pre-review process, primarily for television ads and household mailings, in order that money and time are not spent producing an ad that may not meet the legislative standards.</p> <p>We do not see value in legislating a preliminary review process for the hundreds of ads that are submitted each year.</p> <p>This proposed mandatory two-stage administrative process complicates the review of advertising, without adding any perceived value.</p> <p>We disagree with this amendment.</p>

Topic	Current Language in GAA	Proposed Amendment	Auditor General's Commentary
Review Required	The Auditor General <u>shall</u> review items submitted for review (s. 5(1)).	The Auditor General <u>must</u> review every item received (s. 5(1)).	The Auditor General currently reviews each item received for approval. Changing <u>shall</u> to <u>must</u> creates a perception that this was not being done.
Discretion in Review	The Auditor General reviews ads to determine whether they meet standards "in his or her opinion." (s. 5(1))	"[H]is or her opinion" of whether ads meet legislated standards is removed from the Auditor General's review of ads.	We disagree with this amendment. The discretion of the Auditor General's opinion on whether ads meet the standards is removed.
Definition of "Partisan"	An item is partisan if "in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party." (s. 6(3)) The Auditor General shall consider such factors as may be prescribed, and may consider such additional factors as he or she considers appropriate in deciding whether a primary objective of an item is to promote the partisan political interests of the governing party (s. 6 (4)).	A narrow definition of "partisan advertising" is added and limited to whether an item includes: <ul style="list-style-type: none"> • the name, voice or image of an Executive Council or Assembly member, unless primary target is outside Ontario; • the name or logo of a recognized party; or • to a significant degree, a colour associated with the governing party (s. 6(2)). 	New definition of "partisan" in the GAA removes any discretionary authority that the Auditor General and her panel of experts exercise in approving or rejecting advertising. We disagree with this amendment.
Reference to Member's Title	No standard exists relating to the use of member's title in advertising.	Member's title permitted to be used in government advertising (s. 6(3)).	This change limits our authority to determine the appropriateness of the use of an executive title in an advertisement, such as "Premier." We disagree with this amendment.
Advertising During an Election Period	No standard exists related to advertising during an election period.	Advertising during an election period is not permitted, unless the ad: <ul style="list-style-type: none"> • relates to a revenue-generating activity; • is time-sensitive; or • meets any other criteria that may be prescribed (s. 8(3) and (4)). 	Whether or not an advertisement could run during an election period has already been a factor considered within the discretion of the Auditor General. This change removes the Auditor General's discretion and empowers the government to run any ad it chooses during an election period. Under the listed exceptions, "time-sensitive" and "revenue-generating" are not defined. As well, more exceptions by regulation may be created by the government of the day, leaving this open-ended. We disagree with this amendment.

Topic	Current Language in GAA	Proposed Amendment	Auditor General's Commentary
Regulatory Power of Lieutenant-Governor-in-Council	<p>Regulations may be used to prescribe:</p> <ul style="list-style-type: none"> a designated entity as a government office and specify who is the head of the government office for the purposes of the GAA; <u>additional</u> classes of messages the government proposes to convey; <u>additional</u> standards for an ad to meet for approval; <u>additional</u> factors used to determine whether the primary objective of an ad is to promote partisan political interests; and the number of days in which a review must be completed by the Auditor General (s.12.) 	<p>In addition to the existing regulatory power, regulations may also be used to prescribe:</p> <ul style="list-style-type: none"> digitally displayed ads in any form as prescribed (s. 2(1)(c)); <u>new</u> standards that ads must meet for approval (s. 6(1)); and the number of days to give notice of results of preliminary review (s. 7(1)) and final review (s. 7(2)), and changing the number of days allowed for review of different types of ads (s.12(2)). 	<p>These amendments allow a government to make changes in the procedures used by the Auditor General and remove the discretion of the Auditor General with respect to the review of advertising.</p> <p>Government will be able to mandate the Auditor General's response time, which may restrict the appropriate review of an item. (Current agreed-upon review time is seven business days.)</p> <p>By allowing the government to make these changes using regulation rather than statute, there will be less transparency and scrutiny by the Legislature because such changes are not tabled for debate.</p> <p>Regulations under the current GAA enable only the creation of additional standards and not removal of existing legislated standards.</p> <p>We disagree with this amendment.</p>
Types of Advertisements	<p>The Auditor General reviews ads to be published in newspapers, magazines, displayed on billboards, or broadcast on radio or television (s.2(1)).</p>	<p>Addition of ads that are digitally displayed (s. 2(1)(c)).</p> <p>Addition of public transit ads (s. 2(1)(b)).</p> <p>Addition of cinema advertising (s. 2(1)(d)).</p>	<p>We support this proposed amendment, but defer to our recommended wording (see My Position on the Proposed Amendments).</p> <p>Public transit ads are already encompassed in the existing definition of "billboard." Our Office has been reviewing these types of advertisements since 2005.</p> <p>We are neutral on this amendment.</p> <p>We support this amendment.</p>

Government Advertising Review Since 2005

The government of Ontario is a major public-sector advertiser in Canada. Since December 2005, it has been submitting advertising on a wide variety of subjects for newspapers, magazines, television and radio to the Auditor General's Office for review. In the past 10 years, my Office has reviewed more than 7,200 advertising items, in various languages, with a combined cost exceeding \$410 million, as shown in **Figure 3**. The government's annual spending on advertising over the last 10 years has ranged from more than \$68 million in 2006/07 (or in the year ending March 31, 2007) to just under \$30 million in 2013/14.

Advertising items submitted to my Office are reviewed by some or all members of an Advertising Review Panel that comprises staff members and external experts. Most of the panel's members have been reviewing government advertising since my Office first assumed responsibility for ad review. Typically, the two main areas of focus for our review are i) assessing whether the ad meets the standards established by the GAA, and ii) assessing whether it contains partisan messaging.

Figure 3: Ads Submitted and Total Value by Fiscal Year, 2005/06–2014/15

Prepared by the Office of the Auditor General of Ontario

	# of Ads Submitted	Total Value (\$)
2005/06 ^a	295	23,739,121
2006/07	1,047	68,736,366
2007/08	914	53,210,458
2008/09	889	52,503,801
2009/10	600	40,188,878
2010/11	1,082	50,067,674
2011/12	565	34,766,150
2012/13	572	30,051,425
2013/14	625	29,803,858
2014/15	648	30,213,393 ^b
Total	7,237	411,641,951

a. Act was in full effect during the 2005/06 fiscal year only from December 2005 to March 2006.

b. Value for 2014/15 is preliminary and has not yet been verified.

Key Features of the GAA

Which Ads are Subject to the GAA

The GAA currently applies to ads by government offices—specifically, government ministries, Cabinet Office, and the Office of the Premier—and it requires these offices to submit proposed advertising items that are subject to the GAA to my Office for review and approval before they can run. Specifically, the GAA applies to advertisements that government offices propose to pay to have published in a newspaper or magazine, displayed on a billboard, or broadcast on radio or television; and to printed matter (commonly referred to as “householders”) that government offices propose to pay to have distributed to households in Ontario either by bulk unaddressed mail or by another method of bulk delivery.

By agreement with the government, our review also covers the “first click” of any URL that appears in ads that are submitted for review—that is, each “first click” web page must conform to the same standards as the ad that refers to that web page. And in cases where a ministry partners with an organization to run an advertisement, we have developed criteria to determine if the advertisement is subject to review under the Act. These criteria were developed in consultation with government officials.

Current Standards

Currently, the GAA includes standards to which each government advertisement must conform. Specifically, each ad must satisfy one or more of these standards:

- it must inform the public of current or proposed government policies, programs or services;
- it must inform the public of its rights and responsibilities under the law;
- it must encourage or discourage specific social behaviour in the public interest; and/or

- it must promote Ontario, or a part of the province, as a good place to live, work, invest, study or visit; or promote an economic activity or sector of the province's economy.

Each advertisement must also include a statement that it is paid for by the government of Ontario.

The standards also stipulate prohibitions. Specifically, advertisements:

- must not include the name, voice or image of a member of Cabinet or a member of the Legislative Assembly (except if the ad is primarily targeted at an audience outside Ontario);
- must not have, as a primary objective, fostering a positive impression of the governing party, or a negative impression of a person or entity critical of the government; and
- must not be partisan.

These standards require that government advertisements serve a legitimate purpose, in providing useful information to the public and not inappropriately praising the governing party or criticizing those who oppose the government. We have found these standards to be useful tools in our review process and an effective means of promoting transparency and accountability in government advertising.

Over the past decade, my Office has worked collegially with government staff at various levels to discuss and resolve any issues that have arisen.

Auditor General's Discretion to Determine Partisan Messaging

In the period leading up to the GAA coming into effect, the government informed us that the main intent of the GAA would be to prevent partisan advertising and to bring credibility and integrity to the ad-review process by assigning it to an independent Office known for its high standards and for having the trust of the public.

A key provision in the GAA for preventing partisan advertising is the discretion granted to the Auditor General to determine what constitutes partisan messaging. The GAA states that an item is partisan

if, "in the opinion of the Auditor General, a primary objective of an item is to promote the partisan political interests of the governing party." The GAA further allows the Auditor General to consider any additional factors that she deems appropriate when deciding whether partisan political interests factor into an ad's primary objectives.

With that provision in mind, when we first assumed responsibility for reviewing government advertising, our Office established a set of criteria designed to identify the characteristics of partisan messaging, based on research and input from experts in the communications field such as Advertising Standards Canada. We apply these criteria to help us determine whether a primary objective of an ad under review is to foster a positive impression of the governing party. For example, we ask questions such as: Is the message fair, balanced and objectively presented? Are the factual and numerical data accurate and supportable? Is the tone overly self-congratulatory? Is the timing of the ad likely to net significant political gains for the government? Does the ad make inappropriate or overuse of a colour commonly associated with the governing political party?

We have made a determined effort to communicate these criteria to government offices through our *Government Advertising Act Guidelines* and have provided advice, when asked, on the acceptability of proposed advertisements. These Guidelines can be found at auditor.on.ca/adreview.

I believe my Office has exercised its discretion in a thoughtful and measured way. All in all, since the GAA came into force, fewer than 1% of all ads submitted were not approved because we determined they failed to meet one or more standards in the Act.

Pre-review Process

Although not part of the GAA in its current form, a pre-review process was instituted by my Office in 2005 on a strictly voluntary basis. A pre-review

is available to government ministries that wish to have our Office examine a provisional version of an advertisement before they invest more time and money preparing an ad that we may find does not meet the standards of the Act. This is most often used for television ads and householder printed material that the government is planning to produce. Over the past 10 years, the government has made 246 pre-review submissions to our Office.

Pre-review entails a ministry providing a script or storyboard to our Office, with a description of the proposed campaign, including rationale, draft media buy plans, expected expenditure, and other such details. If our Office determines that the material submitted would likely meet the standards of the Act, we let the ministry know. If we have areas of concern that lead us to conclude that the advertisement may not meet one or more of the standards in the Act, we advise them in writing. On average, over the last five years, our feedback has been provided in about eight business days.

Concerns About Proposed Amendments

As mentioned in the **Overview**, the most substantive amendments—which would change Section 6 of the GAA—propose the elimination of the existing standards for government advertising and the elimination of the Auditor General’s discretionary authority to consider additional factors to determine if an ad is partisan. Also among the proposed amendments is a narrow and limited definition of what is partisan, which leaves no room for the Auditor General to exercise discretion. As previously noted, a comparison of Section 6 of the GAA as it currently reads and as it would read if the amendments are implemented, is presented in **Figure 1**. As well, **Figure 2** highlights in summary the differences between the GAA and the proposed amendments, along with my commentary.

These proposed amendments would fundamentally and significantly alter my Office’s role in reviewing advertising. At present, we assess advertising using well-defined criteria, including whether the ad has as one of its primary objectives to foster a positive impression of the governing party or whether it promotes the partisan political interests of the governing party. Under the proposed changes, our role would be reduced to that of a rubber stamp, in that as long as an ad did not feature the name, voice or image of an elected official, and as long as it did not contain the name or logo of a recognized political party, or to a significant degree a colour associated with the governing party, it would be considered non-partisan. The amended GAA would require me to approve an ad as non-partisan if it is in compliance with the GAA, regardless of whether I concluded that the message was likely to be viewed by others as being partisan.

Another proposed amendment deals with what types of advertisements are allowed during general election campaigns. These include ads involving a revenue-generating activity, messages that are time-sensitive and other types of ads that could be added by government through regulations. Under the current GAA, whether or not an advertisement could run during an election period has been a factor considered within the discretion of the Auditor General. We note that over the last three general elections in Ontario (in 2007, 2011 and 2014), did our Office approve advertising campaigns while fully aware that they would run during the election period. These ad campaigns dealt with, for example, Ontario Savings Bonds, Foodland Ontario and international advertising designed to attract investment to the province.

On the other hand, during the 2007 general election campaign, our Office was concerned with a proposed pre-review radio ad dealing with HPV vaccinations that would run during the election campaign period. Our Office concluded that the initiative was strongly linked to the then-Premier, and we were concerned that this ad could give the governing party an unfair advantage if it aired

during the writ period. We told the ministry submitting the ad that we had no concerns with the ad as long as it ran after election day.

However, the proposed amendments remove the Auditor General's discretion and would permit a government to run whatever ads it wishes during an election period, because the government could allow different types of ads by passing a regulation.

The proposed amendments require both a "preliminary" and a "final" review process. We do not see the value in making the preliminary review process mandatory, as it would be an unnecessary administrative exercise for the majority of advertisements. As I indicated in the **Pre-review Process** section of this report, we already offer a pre-review service to ministries so that time and money are not further invested to prepare an ad that would likely not meet the standards of the Act. We are concerned that mandatory preliminary reviews could result in my Office approving the same advertisement twice.

Concluding Remarks

The government is within its rights to propose legislative changes, and if the proposed amendments go through, my Office would have to comply with the amended GAA. However, as an independent Officer of the Legislative Assembly, I believe it is my responsibility to protect the credibility of the Office of the Auditor General of Ontario and its work.

If the proposed amendments go forward as planned, it is my view that there would be no place for the Office of the Auditor General to exercise its independent discretion in determining what constitutes a partisan ad. This would place my Office in the untenable and unacceptable position of having to approve ads because they conform to the narrow requirements of the amended GAA—but which may be clearly partisan by any objective, reasonable standard—which would be of little value to the taxpayers bearing the costs of those ads.

This could have a serious impact on the credibility and reputation of my Office, with citizens rightly asking how the Auditor General could have approved controversial advertisements as being non-partisan.

Appendix 1—Government Advertising Act, 2004 Before the Proposed Amendments

Interpretation

1. (1) In this Act, “government office” means a ministry, Cabinet Office, the Office of the Premier or such other entity as may be designated by regulation; (“bureau gouvernemental”)

“item” means a reviewable advertisement, reviewable printed matter or a reviewable message, as the case may be; (“document”)

“prescribed” means prescribed by a regulation made under this Act. (“prescrit”) 2004, c. 20, s. 1 (1).

Head of an office

(2) For the purposes of this Act, the deputy minister of a ministry is the head of the ministry, the Secretary of the Cabinet is the head of Cabinet Office and the head of the Office of the Premier, and the regulations may specify the person who is the head of such other government offices as are designated by regulation. 2004, c. 20, s. 1 (2).

Requirements re advertisements

Application

2. (1) This section applies with respect to any advertisement that a government office proposes to pay to have published in a newspaper or magazine, displayed on a billboard or broadcast on radio or on television. 2004, c. 20, s. 2 (1).

Submission for review

(2) The head of the government office shall give a copy of the advertisement to the Office of the Auditor General for review. 2004, c. 20, s. 2 (2).

Prohibition on use pending review

(3) The government office shall not publish, display or broadcast the advertisement before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 2 (3).

Prohibition

(4) The government office shall not publish, display or broadcast the advertisement if the head of the office receives notice that, in the Auditor General’s opinion, the advertisement does not meet the standards required by this Act. 2004, c. 20, s. 2 (4).

Non-application

(5) This section does not apply with respect to a notice to the public that is required by law, an advertisement about an urgent matter affecting public health or safety, a job advertisement or an advertisement about the provision of goods or services to a government office. 2004, c. 20, s. 2 (5).

Requirements re printed matter

Application

3. (1) This section applies with respect to printed matter that a government office proposes to pay to have distributed to households in Ontario either by bulk mail or by another method of bulk delivery. 2004, c. 20, s. 3 (1).

Submission for review

(2) The head of the government office shall give a copy of the printed matter to the Office of the Auditor General for review. 2004, c. 20, s. 3 (2).

Prohibition on use pending review

(3) The government office shall not distribute the printed matter before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 3 (3).

Prohibition

(4) The government office shall not distribute the printed matter if the head of the office receives notice that, in the Auditor General’s opinion, it does not meet the standards required by this Act. 2004, c. 20, s. 3 (4).

Non-application

(5) This section does not apply with respect to a notice to the public that is required by law or printed matter about an urgent matter affecting public health or safety or about the provision of goods or services to a government office. 2004, c. 20, s. 3 (5).

Interpretation

(6) For the purposes of this section, printed matter is distributed by bulk mail or another method of bulk delivery if, when it is distributed, it is not individually addressed to the intended recipient. 2004, c. 20, s. 3 (6).

Requirements re additional classes of messages
Application

4. (1) This section applies with respect to such additional classes of messages as may be prescribed that a government office proposes to convey to the public in such circumstances as may be prescribed. 2004, c. 20, s. 4 (1).

Submission for review

(2) The head of the government office shall give a copy of the message to the Office of the Auditor General for review. 2004, c. 20, s. 4 (2).

Prohibition on use pending review

(3) The government office shall not convey the message before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 4 (3).

Prohibition

(4) The government office shall not convey the message if the head of the office receives notice that, in the Auditor General's opinion, the message does not meet the standards required by this Act. 2004, c. 20, s. 4 (4).

Non-application

(5) This section does not apply with respect to a message that is a notice to the public that is required by law, that concerns an urgent matter affecting public health or safety, that is a job advertisement or that concerns the provision of goods or services to a government office. 2004, c. 20, s. 4 (5).

Review by the Auditor General

5. (1) When an item is given to the Office of the Auditor General for review, the Auditor General shall review it to determine whether, in his or her opinion, it meets the standards required by this Act. 2004, c. 20, s. 5 (1).

Decision

(2) The decision of the Auditor General is final. 2004, c. 20, s. 5 (2).

Required standards

6. (1) The following are the standards that an item is required to meet:

1. It must be a reasonable means of achieving one or more of the following purposes:
 - i. To inform the public of current or proposed government policies, programs or services available to them.
 - ii. To inform the public of their rights and responsibilities under the law.
 - iii. To encourage or discourage specific social behaviour, in the public interest.
 - iv. To promote Ontario or any part of Ontario as a good place to live, work, invest, study or visit or to promote any economic activity or sector of Ontario's economy.
2. It must include a statement that the item is paid for by the Government of Ontario.
3. It must not include the name, voice or image of a member of the Executive Council or a member of the Assembly.
4. It must not be partisan.
5. It must not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the government.
6. It must meet such additional standards as may be prescribed. 2004, c. 20, s. 6 (1).

Advertising outside Ontario

(2) Paragraph 3 of subsection (1) does not apply with respect to an item for which the primary target audience is located outside of Ontario. 2004, c. 20, s. 6 (2).

Partisan advertising

(3) An item is partisan if, in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party. 2004, c. 20, s. 6 (3).

Same

(4) The Auditor General shall consider such factors as may be prescribed, and may consider such additional factors as he or she considers appropriate, in deciding whether a primary objective of an item is to promote the partisan political interests of the governing party. 2004, c. 20, s. 6 (4).

Notice of results of review

7. (1) The Office of the Auditor General shall notify the head of the government office of the results of the review within the prescribed number of days after receiving an item for review. 2004, c. 20, s. 7 (1).

Deemed notice

(2) If the notice is not given within that period, the head shall be deemed to have received notice that the item meets the standards required by this Act. 2004, c. 20, s. 7 (2).

Submission of revised version

8. (1) If the head of a government office is notified that an item does not meet the standards required by this Act and if the government office proposes to use a revised version of it, the head shall give the revised version to the Office of the Auditor General for a further review. 2004, c. 20, s. 8 (1).

Prohibition on use pending review

(2) The government office shall not use the revised version before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 8 (2).

Prohibition

(3) The government office shall not use the revised version if the head of the office receives notice that, in the Auditor General's opinion, the revised version does not meet the standards required by this Act. 2004, c. 20, s. 8 (3).

Review of revised version

(4) Sections 5 and 6 apply with respect to the review. 2004, c. 20, s. 8 (4).

Notice of results of review, revised version

(5) The Office of the Auditor General shall notify the head of the results of the further review within the prescribed number of days after receiving the revised version. 2004, c. 20, s. 8 (5).

Deemed notice

(6) If the notice is not given within that period, the head shall be deemed to have received notice that the revised version meets the standards required by this Act. 2004, c. 20, s. 8 (6).

Reports to the Assembly Annual report

9. (1) Each year, the Auditor General shall report to the Speaker of the Assembly about such matters as the Auditor General considers appropriate relating to his or her powers and duties under this Act. 2004, c. 20, s. 9 (1).

Same

(2) In the annual report, the Auditor General shall notify the Speaker about any contraventions of section 2, 3, 4 or 8. 2004, c. 20, s. 9 (2).

Special report

(3) The Auditor General may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor General should not be deferred until the annual report. 2004, c. 20, s. 9 (3).

Tabling of reports

(4) The Speaker shall lay each annual report or special report of the Auditor General before the Assembly forthwith if it is in session or, if not, not later than the 10th day of the next session. 2004, c. 20, s. 9 (4).

Access to records

10. The Auditor General may examine the records of a government office at any time for the purpose of determining whether section 2, 3, 4 or 8 has been contravened, and the Auditor General or his or her designate shall be given access to such records as he or she considers necessary for that purpose. 2004, c. 20, s. 10.

Immunity

11. (1) No action or other proceeding shall be brought against a person who publishes, displays or broadcasts a reviewable advertisement on the sole ground that, under this Act, a government office was not permitted to use it to communicate with the public. 2004, c. 20, s. 11 (1).

Same

(2) No action or other proceeding shall be brought against a person who distributes reviewable printed matter on the sole ground that, under this Act, a government office was not permitted to distribute it. 2004, c. 20, s. 11 (2).

Same

(3) No action or other proceeding shall be brought against a person who conveys to the public on behalf of a government office a reviewable message on the sole ground that, under this Act, a government office was not permitted to convey it to the public. 2004, c. 20, s. 11 (3).

Regulations

12. The Lieutenant Governor in Council may make regulations,

- (a) designating an entity or class of entities as a government office and specifying who is the head of the government office for the purposes of this Act;
- (b) prescribing additional classes of messages and circumstances for the purposes of subsection 4 (1);
- (c) prescribing additional standards for the purposes of paragraph 6 of subsection 6 (1);
- (d) prescribing additional factors for the purposes of subsection 6 (4);
- (e) prescribing a number of days for the purposes of subsection 7 (1) and for the purposes of subsection 8 (5). 2004, c. 20, s. 12.

13. OMITTED (AMENDS OR REPEALS OTHER ACTS). 2004, c. 20, s. 13.

14. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2004, c. 20, s. 14.

15. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2004, c. 20, s. 15.

Appendix 2—Deletions and Additions to the *Government Advertising Act, 2004* Under the Proposed Amendments

Prepared by the Office of the Auditor General of Ontario

Additions are in **bold**.

Interpretation

1. (1) In this Act,
 “government office” means a ministry, Cabinet Office, the Office of the Premier or such other entity as may be designated by regulation; (“bureau gouvernemental”)
 “item” means a reviewable advertisement, reviewable printed matter or a reviewable message, as the case may be; (“document”)
 “item” means an advertisement, printed matter or message to which section 2, 3 or 4, as the case may be, applies; (“document”)
 “prescribed” means prescribed by a regulation made under this Act. (“prescrit”) 2004, c. 20, s. 1 (1).
 “prescribed” means prescribed by the regulations. (“prescrit”)
 “regulations” means regulations made under this Act; (“règlements”)
 “standards” means the standards established under section 6. (“normes”)

Head of an office

(2) For the purposes of this Act, the deputy minister of a ministry is the head of the ministry, the Secretary of the Cabinet is the head of Cabinet Office and the head of the Office of the Premier, and the regulations may specify the person who is the head of such other government offices as are designated by regulation. 2004, c. 20, s. 1 (2).

Advertisements, printed matter, messages

1.1 (1) Nothing in this Act, other than subsection 8 (3), prevents or limits the ability of a government office to publish, display or broadcast an advertisement, distribute printed matter to Ontario households, or convey a message to the public, if the advertisement, printed matter or message meets the standards or is not subject to review under this Act.

Examples

(2) Examples of reasons for which a government office may choose to communicate to the public in a manner described in subsection (1) 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.

Requirements re advertisements

Application

2. (1) This section applies with respect to any advertisement that a government office proposes to

pay to have published in a newspaper or magazine, displayed on a billboard or broadcast on radio or on television. 2004, c. 20, s. 2 (1).

2. (1) This section applies with respect to any advertisement that a government office proposes to pay to have,

- (a) published in a newspaper or magazine;
- (b) displayed on a billboard or as a public transit advertisement;
- (c) displayed digitally in a prescribed form or manner; or
- (d) broadcast on radio or television, or in a cinema.

Submission for review

(2) The head of the government office shall give a copy of the advertisement to the Office of the Auditor General for review. 2004, c. 20, s. 2 (2).

Submission for preliminary review

(2) The head of the government office shall give a copy of the advertisement to the Office of the Auditor General for preliminary review.

Prohibition on use pending review

(3) The government office shall not publish, display or broadcast the advertisement before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 2 (3).

Prohibition

(4) The government office shall not publish, display or broadcast the advertisement if the head of the office receives notice that, in the Auditor General's opinion, the advertisement does not meet the standards required by this Act. 2004, c. 20, s. 2 (4).

Non-application

(5) This section does not apply with respect to a notice to the public that is required by law, an advertisement about an urgent matter affecting public health or safety, a job advertisement or an advertisement about the provision of goods or services to a government office. 2004, c. 20, s. 2 (5).

Requirements re printed matter

Application

3. (1) This section applies with respect to printed matter that a government office proposes to pay to have distributed to households in Ontario either by bulk mail or by another method of bulk delivery. 2004, c. 20, s. 3 (1).

Submission for review

(2) The head of the government office shall give a copy of the printed matter to the Office of the Auditor General for review. 2004, c. 20, s. 3 (2).

Submission for preliminary review

(2) The head of the government office shall give a copy of the printed matter to the Office of the Auditor General for preliminary review.

Prohibition on use pending review

(3) The government office shall not distribute the printed matter before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 3 (3).

Prohibition

(4) The government office shall not distribute the printed matter if the head of the office receives notice that, in the Auditor General's opinion, it does not meet the standards required by this Act. 2004, c. 20, s. 3 (4).

Non-application

(5) This section does not apply with respect to a notice to the public that is required by law or printed matter about an urgent matter affecting public health or safety or about the provision of goods or services to a government office. 2004, c. 20, s. 3 (5).

Interpretation

(6) For the purposes of this section, printed matter is distributed by bulk mail or another method of bulk delivery if, when it is distributed, it is not individually addressed to the intended recipient. 2004, c. 20, s. 3 (6).

Requirements re additional classes of messages Application

4. (1) This section applies with respect to such additional classes of messages as may be prescribed that a government office proposes to convey to the public in such circumstances as may be prescribed. 2004, c. 20, s. 4 (1).

Submission for review

(2) The head of the government office shall give a copy of the message to the Office of the Auditor General for review. 2004, c. 20, s. 4 (2).

Submission for preliminary review

(2) The head of the government office shall give a copy of the message to the Office of the Auditor General for preliminary review.

Prohibition on use pending review

(3) The government office shall not convey the message before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 4 (3).

Prohibition

(4) The government office shall not convey the message if the head of the office receives notice that, in the Auditor General's opinion, the message does not meet the standards required by this Act. 2004, c. 20, s. 4 (4).

Non-application

(5) This section does not apply with respect to a message that is a notice to the public that is required by law, that concerns an urgent matter affecting public health or safety, that is a job advertisement or that concerns the provision of goods or services to a government office. 2004, c. 20, s. 4 (5).

Requirement for final review

4.1 (1) The head of the government office shall give a copy of any item that the government office proposes to publish, display, broadcast, distribute or convey to the Office of the Auditor General for final review if,

- (a) after the Auditor General's preliminary review of the item, the Office of the Auditor General,

- i. gives notice to the head of the office that the item meets the standards, subject to subsection (2),
- ii. gives notice to the head of the office that there was insufficient information to determine whether the item meets the standards, or
- iii. does not give notice to the head of the office within the time specified by subsection 7 (1); or

- (b) the item is exempted from preliminary review by the regulations.

Exception

(2) Subclause (1) (a) (i) does not apply if the notice indicates that a final review of the item under subsection (1) is not required.

When revised version does not require preliminary review

(3) If a government office proposes to use a revised version of an item that has been reviewed by the Auditor General, the head of the office may, in the following circumstances, give the revised version to the Office of the Auditor General for review under subsection (1):

1. The head of the office received notice that the item did not meet the standards.
2. Subsection (2) applied to the item.

Review by the Auditor General

5. (1) When an item is given to the Office of the Auditor General for review, the Auditor General shall review it to determine whether, in his or her opinion, it meets the standards required by this Act. 2004, c. 20, s. 5 (1).

Review by Auditor General

5. (1) The Auditor General shall review every item given to the Office of the Auditor General under this Act to determine whether it meets the standards.

Decision

(2) The decision of the Auditor General is final. 2004, c. 20, s. 5 (2).

Required standards

6. (1) The following are the standards that an item is required to meet:
1. It must be a reasonable means of achieving one or more of the following purposes:
 - i. To inform the public of current or proposed government policies, programs or services available to them.
 - ii. To inform the public of their rights and responsibilities under the law.
 - iii. To encourage or discourage specific social behaviour, in the public interest.
 - iv. To promote Ontario or any part of Ontario as a good place to live, work, invest, study or visit or to promote any economic activity or sector of Ontario's economy.
 2. It must include a statement that the item is paid for by the Government of Ontario.
 3. It must not include the name, voice or image of a member of the Executive Council or a member of the Assembly.
 4. It must not be partisan.
 5. It must not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity who is critical of the government.
 6. It must meet such additional standards as may be prescribed. 2004, c. 20, s. 6 (1).

Advertising outside Ontario

(2) Paragraph 3 of subsection (1) does not apply with respect to an item for which the primary target audience is located outside of Ontario. 2004, c. 20, s. 6 (2).

Partisan advertising

(3) An item is partisan if, in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party. 2004, c. 20, s. 6 (3).

Same

(4) The Auditor General shall consider such factors as may be prescribed, and may consider such

additional factors as he or she considers appropriate, in deciding whether a primary objective of an item is to promote the partisan political interests of the governing party. 2004, c. 20, s. 6 (4).

Required standards

6. (1) The following are the standards that an item is required to meet:
1. It must include a statement that the item is paid for by the Government of Ontario.
 2. It must not be partisan, as determined under sub-section (2).
 3. It must meet any additional standards that may be prescribed.

Partisan advertising

- (2) 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*; or
 - (c) it includes, to a significant degree, a colour associated with the governing party, subject to subsection (4).

Reference to title

(3) Clause (2) (a) does not prevent the use of a member's title.

Exception, colour

(4) Clause (2) (c) does not apply to the depiction of a thing that is commonly depicted in a colour associated with the governing party.

Notice of results of review

7. (1) The Office of the Auditor General shall notify the head of the government office of the results of the review within the prescribed number of days after receiving an item for review. 2004, c. 20, s. 7 (1).

Notice

7. (1) The Office of the Auditor General shall notify the head of the government office of the results of a preliminary review under section 2, 3 or 4 within the prescribed number of days after receiving the item for preliminary review.

Same

(2) The Office of the Auditor General shall notify the head of the government office of the results of a final review under subsection 4.1 (1) within the prescribed number of days after receiving the item for review under that subsection.

Deemed notice

~~(2) If the notice is not given within that period, the head shall be deemed to have received notice that the item meets the standards required by this Act. 2004, c. 20, s. 7 (2).~~

Deemed notice

(3) If notice is not given within the period specified under subsection (2), the head of the government office is deemed to have received notice that the item meets the standards.

Submission of revised version

~~8. (1) If the head of a government office is notified that an item does not meet the standards required by this Act and if the government office proposes to use a revised version of it, the head shall give the revised version to the Office of the Auditor General for a further review. 2004, c. 20, s. 8 (1).~~

Prohibitions

On use pending review

8. (1) A government office shall not publish, display, broadcast, distribute or convey an item before the head of the office,

- (a) receives notice, or is deemed to have received notice, of the results of a review of the item under subsection 4.1 (1); or
- (b) in the case of an item to which subsection 4.1 (2) applies, receives notice from the Office of the Auditor General that the

item meets the standards and that a final review is not required, subject to subsection 4.1 (3).

Prohibition on use pending review

~~(2) The government office shall not use the revised version before the head of the office receives notice, or is deemed to have received notice, of the results of the review. 2004, c. 20, s. 8 (2).~~

On use if standards not met

(2) A government office shall not publish, display, broadcast, distribute or convey an item if the head of the office receives notice from the Office of the Auditor General that the item does not meet the standards.

Prohibition

~~(3) The government office shall not use the revised version if the head of the office receives notice that, in the Auditor General's opinion, the revised version does not meet the standards required by this Act. 2004, c. 20, s. 8 (3).~~

On use during election period

(3) Despite notice or deemed notice that an item meets the standards, a government office shall not publish, display, broadcast, distribute or convey the item during the period beginning with the issue of a writ under the *Election Act* for a general election and ending on polling day, unless permitted under subsection (4).

Review of revised version

~~(4) Sections 5 and 6 apply with respect to the review. 2004, c. 20, s. 8 (4).~~

Exceptions

(4) Subsection (3) does not apply if the item,

- (a) relates to a revenue-generating activity,
- (b) is time sensitive, or
- (c) meets any other criteria that may be prescribed.

Notice of results of review, revised version

~~(5) The Office of the Auditor General shall notify the head of the results of the further review within~~

the prescribed number of days after receiving the revised version. 2004, c. 20, s. 8 (5).

Pre-existing publication, etc.

(5) Subsection (3) requires a government office to cease any ongoing or continued publication, display, broadcasting, distribution or conveying of an item that began before the beginning of the period referred to in that subsection, unless, in the opinion of the head of the office, it is not practicable to do so.

Deemed notice

~~(6) If the notice is not given within that period, the head shall be deemed to have received notice that the revised version meets the standards required by this Act. 2004, c. 20, s. 8 (6).~~

Reports to the Assembly

Annual report

9. (1) Each year, the Auditor General shall report to the Speaker of the Assembly about such matters as the Auditor General considers appropriate relating to his or her powers and duties under this Act. 2004, c. 20, s. 9 (1).

Same

~~(2) In the annual report, the Auditor General shall notify the Speaker about any contraventions of section 2, 3, 4 or 8. 2004, c. 20, s. 9 (2).~~

(2) In the annual report, the Auditor General shall notify the Speaker about any contraventions of section 2, 3, 4, 4.1 or 8. 2004, c. 20, s. 9 (2).

Special report

(3) The Auditor General may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor General should not be deferred until the annual report. 2004, c. 20, s. 9 (3).

Tabling of reports

(4) The Speaker shall lay each annual report or special report of the Auditor General before the Assembly forthwith if it is in session or, if not, not later than the 10th day of the next session. 2004, c. 20, s. 9 (4).

Access to records

~~10. The Auditor General may examine the records of a government office at any time for the purpose of determining whether section 2, 3, 4 or 8 has been contravened, and the Auditor General or his or her designate shall be given access to such records as he or she considers necessary for that purpose. 2004, c. 20, s. 10.~~

10. The Auditor General may examine the records of a government office at any time for the purpose of determining whether section 2, 3, 4, 4.1 or 8 has been contravened, and the Auditor General or his or her designate shall be given access to such records as he or she considers necessary for that purpose. 2004, c. 20, s. 10.

Immunity

11. (1) No action or other proceeding shall be brought against a person who publishes, displays or broadcasts a reviewable advertisement on the sole ground that, under this Act, a government office was not permitted to use it to communicate with the public. 2004, c. 20, s. 11 (1).

Same

(2) No action or other proceeding shall be brought against a person who distributes reviewable printed matter on the sole ground that, under this Act, a government office was not permitted to distribute it. 2004, c. 20, s. 11 (2).

Same

(3) No action or other proceeding shall be brought against a person who conveys to the public on behalf of a government office a reviewable message on the sole ground that, under this Act, a government office was not permitted to convey it to the public. 2004, c. 20, s. 11 (3).

Regulations

12. (1) The Lieutenant Governor in Council may make regulations,

- (a) designating an entity or class of entities as a government office and specifying who is the head of the government office for the purposes of this Act;

- (a.1) setting out forms or manners of digital display for the purposes of clause 2 (1) (c);
- (a.2) governing the manner in which an advertisement prescribed under clause (a.1) may be given to the Office of the Auditor General for review under this Act, including providing that variations of such an advertisement may be specified or described rather than submitted individually;
- (a.3) exempting items from preliminary review under section 2, 3 or 4;
- (b) prescribing additional classes of messages and circumstances for the purposes of subsection 4 (1);
- ~~(c) prescribing additional standards for the purposes of paragraph 6 of subsection 6 (1);~~
- (c) prescribing additional standards for the purposes of paragraph 3 of subsection 6 (1);**
- ~~(d) prescribing additional factors for the purposes of subsection 6 (4);~~
- (d) prescribing number of days for the purposes of subsection 7 (1) and for the purposes of subsection 7 (2);
- ~~(e) prescribing a number of days for the purposes of subsection 7 (1) and for the purposes of subsection 8 (5). 2004, c. 20, s. 12.~~
- (e) defining or clarifying the meaning of terms used in clause 8 (4) (a) or (b);
- (f) setting out criteria for the purposes of clause 8 (4) (c).

Same

(2) A regulation made under clause (1) (d) may prescribe different numbers of days for advertisements, printed matter and messages, and for different classes of each of them.

13. OMITTED (AMENDS OR REPEALS OTHER ACTS). 2004, c. 20, s. 13.

14. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2004, c. 20, s. 14.

15. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2004, c. 20, s. 15.

Appendix 3—*Government Advertising Act, 2004* After the Proposed Amendments

Prepared by the Office of the Auditor General of Ontario

Interpretation

1. (1) In this Act,
 “government office” means a ministry, Cabinet Office, the Office of the Premier or such other entity as may be designated by regulation; (“bureau gouvernemental”)
 “item” means an advertisement, printed matter or message to which section 2, 3 or 4, as the case may be, applies; (“document”)
 “prescribed” means prescribed by the regulations. (“prescript”)
 “regulations” means regulations made under this Act; (“règlements”)
 “standards” means the standards established under section 6. (“normes”)

Head of an office

(2) For the purposes of this Act, the deputy minister of a ministry is the head of the ministry, the Secretary of the Cabinet is the head of Cabinet Office and the head of the Office of the Premier, and the regulations may specify the person who is the head of such other government offices as are designated by regulation. 2004, c. 20, s. 1 (2).

Advertisements, printed matter, messages

1.1 (1) Nothing in this Act, other than subsection 8 (3), prevents or limits the ability of a government office to publish, display or broadcast an advertisement, distribute printed matter to Ontario households, or convey a message to the public, if the advertisement, printed matter or message meets the standards or is not subject to review under this Act.

Examples

- (2) Examples of reasons for which a government office may choose to communicate to the public in a manner described in subsection (1) 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.

Requirements re advertisements

Application

2. (1) This section applies with respect to any advertisement that a government office proposes to pay to have,
- (a) published in a newspaper or magazine;
- (b) displayed on a billboard or as a public transit advertisement;
- (c) displayed digitally in a prescribed form or manner; or
- (d) broadcast on radio or television, or in a cinema.

Submission for preliminary review

(2) The head of the government office shall give a copy of the advertisement to the Office of the Auditor General for preliminary review.

Non-application

(3) This section does not apply with respect to a notice to the public that is required by law, an advertisement about an urgent matter affecting public health or safety, a job advertisement or an advertisement about the provision of goods or services to a government office. 2004, c. 20, s. 2 (5).

Requirements re printed matter

Application

3. (1) This section applies with respect to printed matter that a government office proposes to pay to have distributed to households in Ontario either by bulk mail or by another method of bulk delivery. 2004, c. 20, s. 3 (1).

Submission for preliminary review

(2) The head of the government office shall give a copy of the printed matter to the Office of the Auditor General for preliminary review.

Non-application

(3) This section does not apply with respect to a notice to the public that is required by law or printed matter about an urgent matter affecting public health or safety or about the provision of goods or services to a government office. 2004, c. 20, s. 3 (5).

Interpretation

(4) For the purposes of this section, printed matter is distributed by bulk mail or another method of bulk delivery if, when it is distributed, it is not individually addressed to the intended recipient. 2004, c. 20, s. 3 (6).

Requirements re additional classes of messages

Application

4. (1) This section applies with respect to such additional classes of messages as may be prescribed that a government office proposes to convey to the public in such circumstances as may be prescribed. 2004, c. 20, s. 4 (1).

Submission for preliminary review

(2) The head of the government office shall give a copy of the message to the Office of the Auditor General for review. 2004, c. 20, s. 4 (2).

Non-application

(3) This section does not apply with respect to a message that is a notice to the public that is required by law, that concerns an urgent matter affecting public health or safety, that is a job advertisement or that concerns the provision of goods or services to a government office. 2004, c. 20, s. 4 (5).

Requirement for final review

4.1 (1) The head of the government office shall give a copy of any item that the government office proposes to publish, display, broadcast, distribute or convey to the Office of the Auditor General for final review if,

- (a) after the Auditor General's preliminary review of the item, the Office of the Auditor General,
 - i. gives notice to the head of the office that the item meets the standards, subject to subsection (2),
 - ii. gives notice to the head of the office that there was insufficient information to determine whether the item meets the standards, or
 - iii. does not give notice to the head of the office within the time specified by subsection 7 (1); or
- (b) the item is exempted from preliminary review by the regulations.

Exception

(2) Subclause (1) (a) (i) does not apply if the notice indicates that a final review of the item under subsection (1) is not required.

When revised version does not require preliminary review

(3) If a government office proposes to use a revised version of an item that has been reviewed by the Auditor General, the head of the office may, in the following circumstances, give the revised version to the Office of the Auditor General for review under subsection (1):

1. The head of the office received notice that the item did not meet the standards.

2. Subsection (2) applied to the item.

Review by Auditor General

5. (1) The Auditor General shall review every item given to the Office of the Auditor General under this Act to determine whether it meets the standards.

Decision

(2) The decision of the Auditor General is final. 2004, c. 20, s. 5 (2).

Required Standards

6. (1) The following are the standards that an item is required to meet:
 1. It must include a statement that the item is paid for by the Government of Ontario.
 2. It must not be partisan, as determined under sub-section (2).
 3. It must meet any additional standards that may be prescribed.

Partisan advertising

- (2) 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; or
 - (c) it includes, to a significant degree, a colour associated with the governing party, subject to subsection (4).

Reference to title

(3) Clause (2) (a) does not prevent the use of a member's title.

Exception, colour

(4) Clause (2) (c) does not apply to the depiction of a thing that is commonly depicted in a colour associated with the governing party.

Notice

7. (1) The Office of the Auditor General shall notify the head of the government office of the

results of a preliminary review under section 2, 3 or 4 within the prescribed number of days after receiving the item for preliminary review.

Same

(2) The Office of the Auditor General shall notify the head of the government office of the results of a final review under subsection 4.1 (1) within the prescribed number of days after receiving the item for review under that subsection.

Deemed notice

(3) If notice is not given within the period specified under subsection (2), the head of the government office is deemed to have received notice that the item meets the standards.

Prohibitions

On use pending review

8. (1) A government office shall not publish, display, broadcast, distribute or convey an item before the head of the office,

- (a) receives notice, or is deemed to have received notice, of the results of a review of the item under subsection 4.1 (1); or
- (b) in the case of an item to which subsection 4.1 (2) applies, receives notice from the Office of the Auditor General that the item meets the standards and that a final review is not required, subject to sub-section 4.1 (3).

On use if standards not met

(2) A government office shall not publish, display, broadcast, distribute or convey an item if the head of the office receives notice from the Office of the Auditor General that the item does not meet the standards.

On use during election period

(3) Despite notice or deemed notice that an item meets the standards, a government office shall not publish, display, broadcast, distribute or convey the item during the period beginning with the issue of a writ under the Election Act for a general election and ending on polling day, unless permitted under subsection (4).

Exceptions

- (4) Subsection (3) does not apply if the item,
- (a) relates to a revenue-generating activity,
 - (b) is time sensitive, or
 - (c) meets any other criteria that may be prescribed.

Pre-existing publication, etc.

(5) Subsection (3) requires a government office to cease any ongoing or continued publication, display, broadcasting, distribution or conveying of an item that began before the beginning of the period referred to in that subsection, unless, in the opinion of the head of the office, it is not practicable to do so.

Reports to the Assembly

Annual report

9. (1) Each year, the Auditor General shall report to the Speaker of the Assembly about such matters as the Auditor General considers appropriate relating to his or her powers and duties under this Act. 2004, c. 20, s. 9 (1).

Same

(2) In the annual report, the Auditor General shall notify the Speaker about any contraventions of section 2, 3, 4, 4.1 or 8. 2004, c. 20, s. 9 (2).

Special report

(3) The Auditor General may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor General should not be deferred until the annual report. 2004, c. 20, s. 9 (3).

Tabling of reports

(4) The Speaker shall lay each annual report or special report of the Auditor General before the Assembly forthwith if it is in session or, if not, not later than the 10th day of the next session. 2004, c. 20, s. 9 (4).

Access to records

10. The Auditor General may examine the records of a government office at any time for the purpose of determining whether section 2, 3, 4, 4.1 or 8 has been contravened, and the Auditor General

or his or her designate shall be given access to such records as he or she considers necessary for that purpose. 2004, c. 20, s. 10.

Immunity

11. (1) No action or other proceeding shall be brought against a person who publishes, displays or broadcasts a reviewable advertisement on the sole ground that, under this Act, a government office was not permitted to use it to communicate with the public. 2004, c. 20, s. 11 (1).

Same

(2) No action or other proceeding shall be brought against a person who distributes reviewable printed matter on the sole ground that, under this Act, a government office was not permitted to distribute it. 2004, c. 20, s. 11 (2).

Same

(3) No action or other proceeding shall be brought against a person who conveys to the public on behalf of a government office a reviewable message on the sole ground that, under this Act, a government office was not permitted to convey it to the public. 2004, c. 20, s. 11 (3).

Regulations

12. (1) The Lieutenant Governor in Council may make regulations,

- (a) designating an entity or class of entities as a government office and specifying who is the head of the government office for the purposes of this Act;
 - (a.1) setting out forms or manners of digital display for the purposes of clause 2 (1) (c);
 - (a.2) governing the manner in which an advertisement prescribed under clause (a.1) may be given to the Office of the Auditor General for review under this Act, including providing that variations of such an advertisement may be specified or described rather than submitted individually;
 - (a.3) exempting items from preliminary review under section 2, 3 or 4;

- (b) prescribing additional classes of messages and circumstances for the purposes of subsection 4 (1);
- (c) prescribing additional standards for the purposes of paragraph 3 of subsection 6 (1);
- (d) prescribing number of days for the purposes of subsection 7 (1) for the purposes of subsection 7 (2);
- (e) defining or clarifying the meaning of terms used in clause 8 (4) (a) or (b);
- (f) setting out criteria for the purposes of clause 8 (4) (c).

Same

(2) A regulation made under clause (1) (d) may prescribe different numbers of days for advertisements, printed matter and messages, and for different classes of each of them.

13. OMITTED (AMENDS OR REPEALS OTHER ACTS). 2004, c. 20, s. 13.

14. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2004, c. 20, s. 14.

15. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2004, c. 20, s. 15.