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## CHAPTER TWO

# Towards Better Accountability

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In all previous years, I have used Chapter Two of my report to address specific issues of governance and accountability in government. This year there are two issues that I believe warrant discussion to improve accountability to the Legislature for the prudent use of public funds:

- continued concerns regarding public accountability for the Ontario Innovation Trust; and
- legislative proposals for better public accountability.

### *ONTARIO INNOVATION TRUST*

As mentioned in our 1999 Annual Report, during the 1998/99 fiscal year, the province established the Ontario Innovation Trust and provided it with \$250 million for the purpose of increasing the capability of Ontario universities, colleges, hospitals and other non-profit organizations to carry out scientific research and technology development.

In the *2000 Ontario Budget*, the Minister of Finance announced a tripling of funding to the Trust with an additional endowment of \$500 million for research infrastructure, including cancer research facilities.

Cabinet approved the \$250 million and the \$500 million endowments in March 1999 and March 2000 respectively. In both cases, the endowments were announced in the budgets pertaining to the subsequent fiscal periods. Because the initial \$250-million payment to the Trust was in accordance with the accounting rules established by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants, we accepted it being classified as a transfer payment in the accounts of the province for the 1998/99 fiscal year. Specifically, the following circumstances were all in place before the end of that fiscal year:

- approval by Cabinet to provide the Trust with a one-time contribution of \$250 million; and
- the establishment of an independent Trust (not controlled by the government) with an irrevocable trust agreement in place.

In addition, as required, payment to the Trust was made shortly after it was established.

Regarding the additional \$500 million endowment to the Trust announced in the May 2000 Budget, we concluded that the transaction had the same characteristics as the previous year's endowment and accordingly, we accepted recognition of the \$500 million as a fiscal 2000 transfer payment.

Notwithstanding the fact that the accounting treatment of the endowments to the Trust technically adhered to government accounting rules, I have some concerns about the

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consequences of this treatment. For instance, it allowed the government to report that \$500 million was spent on “innovation” in the year ended March 31, 2000, when, according to the *2000 Ontario Budget*, only \$161 million of the initial \$250 million contribution had been approved for matching funding by the Trust, of which only \$2.5 million was disbursed for eligible projects in the year ended March 31, 2000. In fact, the government used the Trust to significantly exaggerate its spending on “innovation” in that year.

We understand that at least one other jurisdiction is currently researching if a trust, such as the Ontario Innovation Trust, can be regarded as operating at arm’s length from the government when the government, as the sole funder, effectively controls it. We will follow up on any developments that may result from that research.

The Trust Agreement calls for the Ontario Innovation Trust to be administered by a seven-member board. The board is composed of three individuals appointed by the Lieutenant Governor in Council, and the remaining four appointed by: the Council of Ontario Universities (2), the Ontario Hospital Association (1) and the Association of Colleges of Applied Arts and Technology of Ontario (1).

An independent corporation was appointed Trustee and provides services in accordance with the terms of the Trust Agreement. Neither the Trustee nor the employees or agents of the Trustee are considered to be an agent, employee or partner of the Trust’s sponsor (the Minister of Energy, Science and Technology) or the board. The Trust Agreement provides for an annual audit by an independent third party retained by the Trust’s board.

In my *1999 Annual Report*, I raised concerns about the Trust with respect to public accountability. In view of the fact that the government has now flowed a total of \$750 million in multi-year program funding to an arm’s length entity, I continue to have concerns regarding public accountability. Specifically, I am concerned about:

- the inability of the government and the Legislature to obtain assurance that the Trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- the lack of ministerial accountability for the Trust’s activities; and
- the fact that as the province’s Legislative Auditor, I am not permitted to conduct value for money audits of the Trust or inspection audits of the beneficiaries of the Trust’s grants.

I also have concerns about the loss of interest income for the taxpayer because for the fiscal year ended March 31, 2000, the Trust earned \$11.2 million in interest revenue. That is, the Trust earned interest that could have been available to the taxpayer. Moreover, \$500 million was preflowed to the Trust well before the Trust actually required the funds.

As a result of these deficiencies, we believe there is a significant impairment of accountability to the Legislature for the expenditure of public funds.

I am of the view that any transfer payment funding should include provisions for full public accountability, including performance reporting and a better audit regime. This would permit the Legislature to evaluate what was accomplished with the funding provided and to have the ability to recommend what, if any, corrective actions need to be taken.

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# LEGISLATIVE PROPOSALS TO IMPROVE PUBLIC ACCOUNTABILITY

## STATUS OF RECOMMENDATIONS FOR AMENDMENTS TO THE *AUDIT ACT*

On August 17, 2000, I wrote the following letter to the Honourable Ernie Eves, Minister of Finance:

Dear Mr. Eves:

Subject: Status of Recommendations for Amendments to the *Audit Act*

Since 1990 the Standing Committees on Public Accounts have been voicing their desire to give the Provincial Auditor the legislated access to the information necessary to carry out full scope value for money audits of certain organizations receiving government grants.

In October 1992, in the publication, *A Blueprint for Learning in Ontario*, Mr. Mike Harris then as leader of the Ontario Progressive Conservative Caucus stated: "as recommended by the Standing Committee on Public Accounts, the Provincial Auditor should be allowed to perform value-for-money audits of ALL government agencies and recipients of government funds."

As you will recall, the Standing Committee on Public Accounts considered and held public hearings on the subject of amendments to the *Audit Act* in 1996, which resulted in the Committee unanimously adopting the following motion:

*That the proposed amendments be provided to the Minister of Finance and that the Committee requests a response and action plan from the Minister of Finance by the Committee's first meeting following the Summer recess [September 26, 1996].*

In a letter to the then Committee Chair dated September 26, 1996, you responded in part as follows:

*The draft bill to amend the Audit Act as developed by the Provincial Auditor, in consultation with the Office of the Legislative Counsel, represents a significant step towards the fundamental reform of the public sector accountability system and I agree with the principles upon which it is based.*

*I concur with the proposed amendments dealing with the administrative changes to modernize the Act and to have the Auditor express an opinion as to whether the province's financial statements are presented fairly in accordance with the accounting principles which the Canadian Institute of Chartered Accountants has recommended for governments. This requirement is consistent with the direction taken by the government in response to the recommendations of the Ontario Financial Review Commission.*

*With respect to the amendments affecting the auditing of transfer payment recipients, it should be noted that a number of initiatives are underway, including the Who Does What discussions, which may result in a significant restructuring of the nature and magnitude of the province's transfer payment arrangements. It may be more*

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*appropriate to assess needed changes to the auditing of transfer payments following this restructuring.*

I then met with you on October 2, 1996 to discuss this subject and the timeframe for introducing a bill to amend the *Audit Act*, given the possible restructuring in the transfer payment area because of the "Who Does What" (WDW) discussions. In this regard, you indicated to me that it was your preference to await the outcome of the WDW restructuring exercise before considering possible amendments to the *Audit Act*. The WDW restructuring has been underway for over three years and I believe amendments to the *Audit Act* should not be postponed any longer.

As you know, provincial monies flowing to grant recipient organizations continue to represent the single most significant fiscal demand on the province's Treasury with about 50 percent of total government expenditures flowing to grant recipient organizations.

Under the current *Audit Act*, the Provincial Auditor may carry out only financial and compliance audits of grant recipients to determine whether the recipients were using the grants for the intended purposes. The primary objective of the proposed amendments was and still is to provide the Provincial Auditor with the discretionary authority to perform value for money audits of organizations, such as community colleges, universities, hospitals, municipalities and school boards, which receive grants from the Province of Ontario or from an agency of the Crown. In this way, the other 50 percent of government expenditures will also be subject to value for money audits by the Legislative Assembly's auditor, the Provincial Auditor, thereby strengthening public accountability.

As you requested I am the Special Advisor to the new Ontario Financial Review Commission and I am aware that the mandate of the Commission includes: examining and reporting to you on options for improving the financial management, decision-making and reporting practices of the government's key transfer partners and I look forward to the Commission's recommendations on these matters. I have discussed with the Commission the existence of the proposed amendments of the *Audit Act* and the commissioners and I have agreed that it would be outside the mandate of the Commission to comment or make recommendations on these amendments. This is a matter for my Office to resolve with you directly.

Because it has now been more than four years since the Standing Committee on Public Accounts' motion referred to above and three years since the WDW restructuring exercise began, I would like to provide an update on the subject of this letter in my upcoming Annual Report to the Legislative Assembly. For this reason, I would appreciate receiving any views or comments you may have on the subject if at all possible by September 8. Alternatively, should you wish to discuss this subject in more detail, I would be pleased to meet with you at your convenience.

Sincerely,

Erik Peters, FCA  
Provincial Auditor

When this Special Report was finalized for publication in mid-October 2000, no response to my letter of August 17, 2000 had been received from the Minister. However, the Deputy Minister of Finance advised us that the Ministry is examining a full range of accountability issues, of which the proposed changes to the *Audit Act* form a part.

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## THE PROPOSED PUBLIC SECTOR ACCOUNTABILITY ACT

In his *1997 Ontario Budget*, the Minister of Finance stated:

*To improve accountability in the public sector, the Government will introduce the Public Sector Accountability Act. This Act will require that public sector organizations:*

- *report their financial activities in accordance with the recommendations of the Canadian Institute of Chartered Accountants;*
- *adopt policies that ensure that the private sector has an open opportunity to compete to provide services to their organizations; and*
- *adopt and publicly report on organizational performance using private and public sector benchmarks.*

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On June 29, 1999, the Ministry of Finance provided the following update on the status of the proposed *Public Sector Accountability Act*:

*During the past two years the Ministry of Finance has conducted a number of consultations with several key stakeholders on initiatives the government could take to improve public sector accountability including the implementation of a legislated accountability framework. Several important issues and questions arose out of these consultations. These issues included the best means of supporting ongoing improvements in accountability and governance practices, incentives to encourage increased accountability and the logistics of implementing enhanced accountability. To pursue these questions, the Ministry of Finance co-sponsored a symposium with the Canadian Comprehensive Auditing Foundation that brought together a small group of leading thinkers in the area of public sector accountability including the Provincial Auditor. An initial review of the thoughtful discussion that took place at this symposium has provided the Ministry of Finance with a number of options which could support ongoing improvement in public sector accountability.*

*Further research into these and other options will be completed over the next year. The results of this review will help the government determine how best to proceed in supporting ongoing improvements in public sector accountability.*

In this latter regard, as Special Advisor to the Ontario Financial Review Commission, which was re-established by Order in Council 2430/99 dated December 23, 1999, I am aware that its mandate includes examining and reporting to the Minister of Finance on options for improving the financial management, decision-making and reporting practices of the government's key transfer partners.

I look forward to the Commission's report on the results of its work, which is expected in the fall of 2000.

### CONCLUSION

I continue to believe that the proposed *Audit Act* amendments are directly related to enhancing public sector accountability, particularly of recipients of provincial grants. In his September 26, 1996 letter to the Standing Committee on Public Accounts, the Minister of Finance indicated that the draft bill to amend the *Audit Act* represents a significant step towards the fundamental reform of the public sector accountability system and that he agrees with the principles upon which it is based.

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It has now been more than four years since the Public Accounts Committee unanimously endorsed our proposed amendments to the *Audit Act* without action on the part of the government. I believe that the proposed revisions to the *Audit Act* deserve more serious and timely consideration. Accordingly, I recommend that the Committee revisit this subject again in its upcoming sitting. The sole reason for proposing the amendments to the *Audit Act* is to enable my Office to better and more comprehensively serve the Legislature and thereby the taxpayers of Ontario.

With regard to the proposed Public Sector Accountability Act, as previously stated, I continue to be a strong advocate of any legislation that enhances accountability in the public sector. With this in mind, I look forward to the recommendations of the Ontario Financial Review Commission.