

# Towards Better Accountability

Chapter 2 of my *Annual Report* has traditionally addressed issues of accountability in government. This year, the chapter focuses primarily on three new pieces of legislation that expand the mandate and work of the Office of the Auditor General (Office). The chapter also highlights an access-to-information issue that I believe should be brought to the attention of the Legislature. Finally, I outline recent efforts to improve results measurement in the health-care sector.

### The New Auditor General Act

Amendments to the *Audit Act* were last made in 1978. Principal among the changes in 1978 was an amendment that provided the Office with the authority to perform value-for-money audits of ministries and Crown agencies. It did not, however, extend this mandate to other bodies, such as hospitals, universities, colleges, school boards, and thousands of smaller, separately governed organizations that receive government grants. The Office has for many years used the term “value for money” to describe the Auditor’s responsibility to report on any cases where it was observed that money was expended without due regard to economy and efficiency, as well as any observations regarding the adequacy of procedures undertaken by ministries

and Crown agencies to measure the effectiveness of their programs.

With regard to organizations that received grants, the 1978 amendments allowed only for inspection audits, which restricted the Auditor to an examination of accounting records to determine whether grants were used for the intended purposes. While value-for-money-oriented observations could sometimes arise as a by-product of an inspection audit, the audits could not be value-for-money-focused. Based on the Office’s experience in performing inspection audits of major grant recipients in the school-board, university, community-college, and hospital (SUCH) sectors from 1984 to 1991, the Office came to the conclusion that the legislated scope of such audits was too narrow to effectively serve as a vehicle for meaningful reporting to the Legislature.

On reaching this conclusion in 1989, the Office embarked on what has turned out to be a 15-year quest to have our legislation amended to authorize the Auditor to perform discretionary value-for-money audits of organizations that receive government grants. The major factor contributing to the Office’s perseverance in seeking an expanded audit mandate was our firm belief that ongoing value-for-money audits of grant recipients and the reporting of the results of those audits to the Legislature would enhance the ability of legislators to hold grant-recipient organizations more

accountable for the prudent expenditure of public funds. It should be noted that more than 50% of total government expenditures are transferred to organizations in the broader public sector. The 2005/06 Expenditure Estimates of the government indicate that the SUCH sector alone will receive an estimated \$26 billion in operating and capital grants, representing almost one-third of the government's total estimated expenditure of \$81 billion for the 2005/06 fiscal year.

Our efforts finally came to fruition in fall 2003, when I was advised that the Minister of Finance was willing to table amendments to the *Audit Act*. We were given the opportunity to provide our specific suggestions at that time for consideration by the Minister. On December 9, 2003, amendments to the *Audit Act* through Bill 18, the *Audit Statute Law Amendment Act*, were introduced by the Minister of Finance for first reading in the Legislature. The amendments were passed by a unanimous vote of all three parties in the Legislative Assembly, and they became law when they received Royal Assent on November 30, 2004. The major changes enacted by this legislation include:

- The Auditor General's value-for-money audit mandate has been expanded to include the thousands of organizations in the broader public sector that receive government grants. (The expanded mandate does not apply to grants to municipalities but it does allow the Auditor to examine a municipality's accounting records to determine whether a municipality spent a grant for the purposes intended.) The effective date of the expanded value-for-money mandate was April 1, 2005, for a reviewable grant received by the recipient directly or indirectly, on or after November 30, 2004, when the amendments received Royal Assent.
- The Auditor General now has the power to conduct value-for-money audits of Crown-controlled corporations, such as the new Hydro companies.

- The title of the Provincial Auditor has been changed to Auditor General.
- The title of the *Audit Act* has been changed to the *Auditor General Act*.
- The term of appointment of the Auditor General has been set to a fixed, non-renewable term of 10 years, instead of a term ending at age 65.
- The provision regarding the expression of an audit opinion on the financial statements of the province has been harmonized with professional assurance standards to require that the Auditor General render an opinion on whether the statements are fairly presented in accordance with generally accepted accounting principles.

Now that our scope of audit has been extended to organizations in the broader public sector that receive government grants, the Office will be commencing several value-for-money audits of such bodies in fall 2005. Accordingly, my *2006 Annual Report* to the Legislature will include the results of the first broader public-sector value-for-money audits.

One concern I have in utilizing this extension of our audit scope is the ongoing challenge we face in attracting and retaining professional staff in the competitive Toronto job market. The primary reason for this is our inability to offer competitive salaries to prospective and current audit staff. Particularly in the last couple of years, the market value of qualified auditors has increased significantly, yet we are constrained by the requirement in the *Auditor General Act* that our salary ranges be comparable to those for similar positions in the government. Unfortunately, there are no comparable government salary ranges for professional accountants and auditors that would reflect current market conditions. As a result, we continue to face high turnover and challenges in recruiting and retaining top-notch professional staff. As further discussed in Chapter 6 of this report, we returned over \$1 million of our approved budget this year due to being continually understaffed.

## Review of Government Advertising

As noted in Chapter 2 of my *2004 Annual Report*, the distinction between government and partisan advertising can sometimes be unclear. To deal with this issue, the government introduced Bill 25, known as the *Government Advertising Act*, on December 11, 2003. It was passed by the Legislative Assembly on December 9, 2004. All the sections of the *Government Advertising Act, 2004* (Act) are to come into force on a day to be named by proclamation of the Lieutenant Governor. It is anticipated that the Act will be proclaimed in fall 2005.

The Act makes the Auditor General responsible for reviewing specific types of advertising and public communications by government offices within a prescribed number of days before they can be published, broadcast, displayed, or distributed. The standards that advertising and printed items must meet include the following:

- The purpose of the item must be to inform the public of policies or available programs or services; inform the public of its rights and responsibilities under the law; encourage or discourage specific social behaviour in the public interest; promote Ontario or part of Ontario as a good place to live, work, invest, study, or visit; and/or promote an activity or sector of Ontario's economy.
- The item must not include the name, voice, or image of a member of the Executive Council or a member of the Assembly. This standard does not apply with respect to an item that has a primary target audience located outside Ontario.
- Most of all, the item must not be partisan—that is, it must not primarily aim to promote the partisan political interests of the governing party.

The Act exempts advertising and printed material on an urgent matter affecting public health

or safety, public notices required by law, government of Ontario tenders, and job advertisements.

The Office of the Auditor General will have a prescribed number of days to notify the government office of the results of our review of proposed government advertisements. In cases where the Auditor General has deemed that an item does not meet the standards, the issuing government office can submit a revised version of the item to the Auditor General for a further review. Any item that does not, in the opinion of the Auditor General, meet the standards required by the Act cannot be used, and the Auditor General's decision is final.

The Auditor General can exercise discretion in setting up a review mechanism, which may include the appointment of an Advertising Commissioner. However, instead of appointing an Advertising Commissioner at this point in time, I chose to hold an open competition for advisers to assist and advise on the implementation of the Act and in the ongoing review of items submitted for review under the Act. The competition resulted in the engagement of two experts in the field:

- Rafe Engle is a Toronto lawyer who specializes in advertising, marketing, communications, and entertainment law. He is also the outside legal counsel for Advertising Standards Canada. Before studying law, Mr. Engle acquired a comprehensive background in media and communications while working in the advertising industry.
- Jonathan Rose is Associate Professor of Political Studies at Queen's University, where he is a leading Canadian academic on political advertising and Canadian politics. He has authored a book on government advertising in Canada and a number of articles and chapters on the way in which political parties and governments use advertising.

The Auditor General will report annually to the Speaker of the Legislative Assembly on any contraventions of the Act and on expenditures—both for

government advertising generally and for the specific advertising items reviewable under the Act.

As my Office begins preparing to administer its new responsibility of reviewing proposed government advertising and printed matter, I would like to express my appreciation to the staff at Advertising Standards Canada, who have provided assistance and advice to my Office.

The deadline for the release of a pre-election report is to be established by regulation. We are working with the Ministry of Finance to ensure that the prescribed deadline will provide my Office with sufficient lead time to complete the required review of the report before the date of the next provincial general election.

## Legislation on Fiscal Transparency and Accountability

The *Fiscal Transparency and Accountability Act, 2004* (Act), which repealed and replaced the *Balanced Budget Act, 1999*, received Royal Assent on December 16, 2004. The Act requires the Executive Council to plan for a balanced budget each fiscal year unless it determines that it would be consistent with prudent fiscal policy to have a deficit in a given fiscal year as a result of extraordinary circumstances.

The Act also includes a requirement that the Minister of Finance publicly release:

- a multi-year fiscal plan in each year's Budget papers;
- a mid-year review of the fiscal plan;
- periodic updated information about Ontario's revenues and expenses for the current year;
- Ontario's economic accounts each quarter; and
- a long-range assessment of Ontario's fiscal environment within two years after each provincial election.

The Act also requires that, prior to an election, the Ministry of Finance publicly release a pre-election report about Ontario's finances. The Auditor General is required to review this pre-election report to determine whether it is reasonable and to release a statement describing the results of the review.

## RELATED PROPOSED LEGISLATION

The government has also taken steps under its democratic renewal initiatives to fix the dates for future general elections. In this regard, the government introduced Bill 214 for first reading on June 9, 2005. If passed, Bill 214 would, among other things, amend the *Election Act* so that provincial general elections would occur at four-year intervals on the first Thursday in October, starting October 4, 2007, unless the dissolution of the Legislature requires an earlier general election.

## Limitations on Access to Information Imposed by New Health Information Protection Legislation

Section 10 of the *Auditor General Act* states that the Auditor General is entitled to free access to all information and records belonging to or in use by a ministry, government agency, or grant recipient that the Auditor believes necessary to perform his or her duties under the Act. Clause 12(2)(a) of the *Auditor General Act* states that the Auditor General shall report whether, in carrying out the work of the Office, all the required information and explanations were received.

In this regard, I regret to inform the Legislature that during our value-for-money audit of the Ministry of Health and Long-Term Care's Health Laboratory Services (see Chapter 3, Section 3.08), we did

not have access to all the information we needed to fulfill our audit objective—namely, to assess whether the Ministry had adequate processes in place to ensure that medical laboratories were complying with applicable legislation and established policies and procedures. This limitation on the scope of our audit was imposed by the *Quality of Care Information Protection Act, 2004* (Act), which came into force November 1, 2004, and prohibits the disclosure of certain information. Specifically, except for certain purposes that do not include an audit by the Auditor General, the Act prohibits the disclosure of information collected by, or prepared for, a designated quality-of-care committee.

The issue arose on this particular audit because the Ministry contracts with the Ontario Medical Association (OMA) to assess the quality and accuracy of private-sector and hospital laboratory services, and in this capacity, the OMA is designated as a quality-of-care committee. My Office was therefore denied access to the work done by the OMA that was required for our audit and that we have always received in the past. While I recognize that the legislation is designed to encourage health professionals to share information more freely in a secure environment, I have concerns with respect to how it may limit our ability to do our work.

My concerns about this issue were first raised with the Ministry shortly after the legislation was introduced for first reading in the Legislature in December 2003. My Office explained the problems we anticipated and proposed a solution, both in a January 15, 2004 letter to the Ministry and, again, in a presentation to the Standing Committee on General Government on January 28, 2004. In addition, we met with ministry staff and corresponded with the Ministry, including the Minister, several times in an effort to seek a remedy to the conflict, all to no avail. More recently, we also met with the main stakeholder groups (representatives of the Ministry, the Ontario Medical Association, and the Ontario Hospital Association) to discuss our con-

cerns with respect to our lack of access to information needed to fulfill our legislative mandate.

My Office proposed a solution under which we would continue to have access to information that was available to us prior to the coming into force of the Act, except for specific references to personal information, and the deliberations and minutes of a quality-of-care committee. This would respect the principle of creating a confidential environment for the exchange of ideas while still allowing my staff to access the information submitted to a quality-of-care committee, as well as the committee's decisions and recommendations. In my view, such access is necessary, for example, to allow my staff to review quality-of-care information provided for decision-making and to determine whether key recommendations made by such committees have been acted upon. This approach would be consistent with our access to Cabinet documents, where my staff do not have access to cabinet deliberations but do have full access to documents submitted to Cabinet and the final Cabinet minutes of decisions.

I have also emphasized how the confidentiality of any information provided to my Office is ensured by several legislated protections, including confidentiality restrictions in Sections 21 and 27 of the *Auditor General Act*. The *Auditor General Act* also states that our working papers cannot be laid before the Legislative Assembly or any of its committees, and my Office is not subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. As a further safeguard, in the course of preparing our audit reports, we provide the draft report to senior management of the audited entity to allow them the opportunity to review and comment on the contents and to raise any concerns they may have. In short, many safeguards are in place to ensure the confidentiality of the information we collect over the course of all our audits.

In summary, I firmly believe that the *Quality of Care Information Protection Act, 2004* directly conflicts with the access-to-information-and-records

provision in the *Auditor General Act*. However, the *Quality of Care Information Protection Act, 2004* provides for a legislative remedy in the event of a conflict between it and any other act. Accordingly, a workable solution would be to pass a new regulation under the *Quality of Care Information Protection Act, 2004* stipulating that under certain circumstances, the *Auditor General Act* prevails over the *Quality of Care Information Protection Act, 2004* and its regulations as follows:

With the exception of references to personal information, the deliberations and the minutes of a quality-of-care committee, the *Auditor General Act* prevails over this Act and its regulations with respect to any quality-of-care information that is collected by or prepared for a quality-of-care committee, or is disclosed by a quality-of-care committee.

Because of my obligation to report all issues surrounding access to information and because of the potential negative impact that this restriction may have on our expanded mandate to perform future value-for-money audits of health-care facilities in the broader public sector, I concluded that it was necessary to bring this matter to the attention of the Legislature for its consideration.

## Ontario's Health System Performance Report

In September 2000, Canada's Prime Minister and Premiers made a commitment to produce and publicly issue regular reports on the performance of their health systems, with each province and territory agreeing to report results on a number of comparable indicators on the health status of its population, its health outcomes, and the quality of its health services. As part of this process, each jurisdiction was to determine an appropriate

level of third-party verification of the indicators and thereby provide assurance to the public on the reliability of the reported results. In that regard, my Office accepted a request from the Minister of Health and Long-Term Care to audit the health indicators included in Ontario's first report on the performance of its health system, which was released in September 2002.

In February 2003, the *2003 First Ministers' Accord on Health Care Renewal* indicated that each jurisdiction would continue to provide comprehensive and regular public reporting on the health programs and services it delivers, as well as on health system performance, health outcomes, and its population's health status, and it directed health ministers across the country to supplement the work previously undertaken. In this regard, on July 11, 2004, I again accepted a special assignment under section 17 of the then-*Audit Act* to perform specified procedures on the health indicators reported in connection with *Ontario's Health System Performance Report*. The reported indicators included, among others, life expectancy, patient wait times for radiation therapy for breast cancer and prostate cancer, patient satisfaction with various types of health services, levels of physical activity, and daily smoking rates of youths aged 12 to 19. The results of our work were reported to the Minister of Health and Long-Term Care and are included in *Ontario's Health System Performance Report* dated November 2004.

*Ontario's Health System Performance Report* is an important accountability initiative for Ontario, and I am encouraged by the work undertaken by the Ministry in preparing this report. I am also encouraged that the Ministry is improving its procedures for ensuring the accuracy of its data, because reliable and relevant data are essential for improved decision-making and accountability.