

# Review of Government Advertising

## Advertising Review Activity, 2012/13

### INTRODUCTION

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

The Act remains the only such law in Canada, and continues to be cited in other jurisdictions as a model for such legislation. Opposition legislators in British Columbia and Nova Scotia, for example, introduced bills closely based on the Act in 2013, although neither passed.

It was significant, too, that the British Columbia version would have added Internet advertising to the Auditor General's review mandate. This would have closed a loophole that still exists in the Ontario Act, introduced at a time before the Internet as an advertising medium had taken off.

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

### RESULTS OF OUR REVIEWS

In the 2012/13 fiscal year, we reviewed 572 individual advertising items in 130 final submissions, with a total value of \$30.1 million. This compares to 565 individual ads in 121 submissions with a total value of \$34.8 million last year.

In all cases, we gave our decision within seven business days or less. Although the time required for a decision varies with the complexity of an ad and other work priorities, the average turnaround time during the past fiscal year was 3.1 days.

For the first time since the *2007 Annual Report*, we found no submissions in violation—that is, all of the ads submitted to us in final version for review met the standards of the Act and received approval. We did, however, find that three ministries had previously contravened the Act by running advertisements without first submitting them to our office for review, as follows:

- The Ministry of the Attorney General ran 17 ads about the David. W. Mundell Medal between 2006 and 2011, mostly in legal publications, without first submitting them for review. In addition, 15 of the ads contained the names of the then Attorneys General, in further contravention of the Act. Had these ads been submitted to us for review, we would have found them in violation of Section 6(1)3 of the Act.
- The Ministry of Health and Long-Term Care submitted in February three videos on flu

prevention intended for use in medical offices, and we approved them. However, the Ministry acknowledged when it submitted the videos that they had already begun running the previous fall. This was in contravention of Sections 2(2) and 2(3) of the Act.

- The Ministry of Natural Resources ran eight forest-fire safety ads—six on radio and two in print—without first submitting them. We believe these eight ads are the last of a series of contraventions identified last year after the Ministry claimed the ads regarded urgent matters (forest fires) and were therefore exempt from review under Section 2(5) of the Act. We determined at the time that some of these ads were about forest-fire *prevention* and so were not of an urgent nature as intended under the Act. Had these ads been submitted to us for review, we would have approved their content, with the proviso that they include a statement saying they had been paid for by the government of Ontario.

Subsequently, we developed a process with the Ministry that clarifies the nature of urgent matters under the Act and requires the Ministry to advise us on a monthly basis of any such ads it places.

In addition, we examined 10 pre-review submissions this past fiscal year comprising 22 ads at a preliminary stage of development. As pre-reviews are voluntary on our part and outside the statutory requirements of the Act, we are not required to issue a decision within the seven-business-day review period. Nonetheless, we make every effort to complete them within a reasonable time. The average turnaround time for these submissions was 9.1 business days. See “Other Matters” below for a further discussion of this year’s pre-reviews.

## OTHER MATTERS

### Pre-review Submissions

As noted above, we regularly process pre-review submissions. In the past calendar year, some of them

were quite complex in the current political context, and required more intensive examination by the Advertising Review Panel, an advisory group that occasionally helps assess proposed government ads.

One pre-review submission in April, for example, contained ads for a campaign that the Ministry of Finance proposed to run about the 2013 provincial budget. One of our concerns about the ads was that they may have fostered a positive image of the government party and a negative one of its critics. The Ministry subsequently revised the campaign and resubmitted it, and we approved it.

The following month, the Ministry of Finance submitted four proposed print ads for pre-review in connection with proposed amendments to the budget. We concluded that the ads would likely not meet the standards of the Act because they were partisan, particularly in the minority-government context in which they would have run.

On another occasion, the Ministry of Economic Development and Innovation submitted a television and a radio script for pre-review dealing with the government’s “economic blueprint” and “plan” to “tackle the deficit while protecting what’s important to people.” After extensive review by the Panel, we found these ads likely would not meet the standards of the Act because, among other things, they were partisan. Some months later, the Ministry submitted for pre-review a re-worked television script and a proposed “householder” (a booklet intended for bulk distribution across the province) for a campaign entitled “Making Choices to Balance Ontario’s Budget.” We again deemed that the proposed campaign would likely not meet the standards of the Act because it was partisan, and the Ministry ultimately chose not to proceed.

The Act makes no provision for pre-reviews; we do these only to give government offices an indication of whether a proposed campaign would meet the standards of the Act before they commit large sums of money to it. However, we are concerned that, at times, pre-reviews are being used to test the limits of the Act.

## Online Advertising

Online advertising has become an integral part of most marketing campaigns. Many of the government's large advertising campaigns include an online component and some campaigns even run entirely online. The Act does not cover online advertising. In the past, we have seen government online campaigns that would have been in violation of the Act if they had been submitted to our Office for review. In the 2012/13 fiscal year, the government spent more on Internet advertising than it did for advertising in print. As the government's online advertising increases, we believe its exemption has become a significant loophole in the legislation that should be addressed if the intent of the Act is to be met for all government advertising. Our expenditure reporting at the end of this chapter does not include any Internet costs. We believe the time has come for the government to amend the Act to include Internet advertising.

## Overview of the Advertising Review Function

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

The Act outlines standards that advertisements must meet and states that “an item is partisan if, in the opinion of the Auditor General, a primary objective of the item is to promote the partisan political interests of the governing party.”

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

*Advertising Review Guidelines* at [www.auditor.on.ca/adreview](http://www.auditor.on.ca/adreview).

## WHAT FALLS UNDER THE ACT

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

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

As well, the following are not subject to the Act:

- online advertising; and
- brochures, newsletters, consultation documents, reports and other similar materials or publications (unless used as a paid insert in a magazine or newspaper, or distributed by bulk unaddressed mail).

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

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

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

Approval of an advertisement is valid for one year, although my Office can rescind an approval if we determine that new circumstances leave the impression that the ad has become partisan.

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

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

## STANDARDS FOR PROPOSED ADVERTISEMENTS

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

- The item must be a reasonable means of achieving one or more of the following objectives:
  - to inform the public of current or proposed government policies, programs or services;
  - to inform the public of its rights and responsibilities under the law;

- to encourage or discourage specific social behaviour in the public interest; and/or
- to promote Ontario, or any part of the province, as a good place to live, work, invest, study or visit, or to promote any economic activity or sector of Ontario's economy.
- The item must include a statement that it is paid for by the government of Ontario.
- The item must not include the name, voice or image of a member of the Executive Council or a member of the Legislative Assembly (unless the primary target audience is located outside Ontario, in which case the item is exempt from this requirement).
- The item must not have a primary objective of fostering a positive impression of the governing party, or a negative impression of a person or entity critical of the government.
- The item must not be partisan; that is, in the opinion of the Auditor General, it cannot have as a primary objective the promotion of the partisan interests of the governing party.

## OTHER FACTORS

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

- Each item should:
  - contain subject matter relevant to government responsibilities (that is, the government should have direct and substantial responsibilities for the specific matters dealt with in the item);
  - present information objectively, in tone and content, with facts expressed clearly and

- accurately, using unbiased and objective language;
- provide a balanced explanation of both the benefits and disadvantages when dealing with policy proposals where no decision has been made;
  - emphasize facts and/or explanations, rather than the political merits of proposals; and
  - enable the audience to distinguish between fact on the one hand and comment, opinion or analysis on the other.
- Items should not:
    - use colours, logos and/or slogans commonly associated with the governing party;
    - directly or indirectly attack, ridicule, criticize or rebut the views, policies or actions of those critical of the government;
    - intentionally promote, or be perceived as promoting, political-party interests (to this end, consideration is also given to the timing of the message, the audience it is aimed at and the overall environment in which the message will be communicated);
    - deliver self-congratulatory or image-building messages;
    - present pre-existing policies, services or activities as if they were new; or
    - use a uniform resource locator (URL) to direct readers, viewers or listeners to a web page with content that may not meet the standards of the Act (see “Websites” in the following section).

## OTHER REVIEW PROTOCOLS

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

## Websites

Although websites are not specifically reviewable under the Act, we believe that a website, Quick Response Code or similar linkage used in an advertisement is an extension of the ad. Following discussions with the government, we came to an agreement soon after the legislation was passed that the first page, or “click,” of a website cited in a reviewable item would be included in our review. We consider only the content of the first click, unless that first click is a gateway page, in which case we review the next page. We examine this page for any content that may not meet the standards of the Act. For example, the page must not include a minister’s name or photo, any self-congratulatory messages or any content that attacks the policies or opinions of others.

## Third-party Advertising

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

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

## Social Media

Social media was in its infancy when the Act came into effect. However, its use has grown exponentially in recent years. Increasingly, our Office receives ads for approval with icons pointing to the government’s presence on social-media sites. Although the Act is silent on this, we reached

an agreement with the government that we will perform an initial scan of any social-media channel cited in an ad to ensure that there are no partisan references. However, we recognize that content on these networks changes frequently and can at times be beyond the control of the government office.

## External Advisers

The Auditor General can, under the *Auditor General Act*, appoint an Advertising Commissioner to help fulfill the requirements of the *Government Advertising Act, 2004*. However, we have chosen instead to engage four external advisers to assist us as needed in the review of selected submissions. The following advisers provided services to my Office during the 2012/13 fiscal year:

- Rafe Engle (J.D., L.L.M.) is a Toronto lawyer specializing in advertising, marketing, communications and entertainment law for a diverse group of clients in the for-profit and not-for-profit sectors. He also acts as the outside legal counsel for Advertising Standards Canada, and as Chair of its Advertising Standards Council. Before studying law, Mr. Engle acquired a comprehensive background in media, advertising and communications while working in the advertising industry.
- Jonathan Rose is Associate Professor of Political Studies at Queen's University. He is a leading Canadian academic with interests in political advertising and Canadian politics. Professor Rose has written a book on government advertising in Canada and a number of articles on the way in which political parties and governments use advertising.

- Joel Ruimy is a communications consultant with three decades of experience as a journalist, editor and producer covering Ontario and national politics in print and television.
- John Sciarra is the former director of operations in my Office. He was instrumental in implementing our advertising review function and overseeing it until his retirement in 2010. These advisers provided valuable assistance in our review of government advertising this past year.

## Expenditures on Advertisements and Printed Matter

The *Auditor General Act* requires me to report annually to the Legislative Assembly on expenditures for advertisements and printed matter reviewable under the Act.

Figure 1 contains expenditure details of advertising campaigns reported to us by each ministry. In order to test the completeness and accuracy of the reported advertising expenditures, my Office reviewed selected payments to suppliers of advertising and creative services and their supporting documentation at selected ministries. We also performed certain compliance procedures with respect to the requirements of sections 2, 3, 4 and 8 of the Act. These deal with submission requirements and prohibition on the use of items pending the Auditor General's review. We found no matters of concern in our review work this year.

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**Figure 1: Expenditures for Reviewable Advertisements and Printed Matter under the Government Advertising Act, 2004, April 1, 2012–March 31, 2013**

Source of data: Ontario government offices

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)				
			Agency Fees	Production	Talent	Bulk Mail	Other
<b>Aboriginal Affairs</b>							
Aboriginal Business Directory <sup>1</sup>	2	2	–	–	–	–	–
Aboriginal Community Capital Grants Program <sup>3</sup>	1	1	–	4,031	–	–	–
Public Notice – Algonquin Land Claim	2	18	–	–	–	–	–
<b>Agriculture and Food</b>							
Foodland Ontario	2	39	–	–	177,100	–	–
<b>Attorney General</b>							
Courthouse Service Changes	1	4	–	–	–	–	–
Mundell Medal Awards	1	2	–	–	–	–	–
<b>Citizenship and Immigration</b>							
Global Experience Ontario	2	2	–	–	–	–	–
Order of Ontario	1	23	–	3,225	–	–	3,183
Remembrance Day Ceremony	1	12	–	–	–	–	601
<b>Community and Social Services</b>							
ODSP Office Relocation	1	1	–	–	–	–	–
<b>Community Safety and Correctional Services</b>							
Arrive Alive	1	1	–	–	–	–	–
Internet Safety	1	1	–	18,000	–	–	–
Internet Safety <sup>2</sup>	–	–	–	–	–	–	–
Public Notice – Death Investigations	4	40	–	3,800	–	–	5,250
RIDE	1	8	–	–	35,494	–	284
<b>Economic Development, Trade and Employment</b>							
Your Next Big Idea	6	26	318,743	188,597	–	–	51,030
Your Next Big Idea <sup>1</sup>	7	44	–	–	–	–	–
Your Next Big Idea <sup>2</sup>	–	–	65,285	38,629	–	–	2,686
<b>Education</b>							
Full-day Kindergarten	2	13	18,414	38,229	30,952	–	–
<b>Finance</b>							
2012 Ontario Savings Bonds	3	36	230,675	281,211	56,787	–	11,970
Healthy Homes Renovation Tax Credit	5	71	195,870	284,342	98,150	–	16,570
Ontario Trillium Benefit	2	27	51,620	63,467	2,981	–	5,480
<b>Government Services</b>							
ServiceOntario Office Changes	8	27	–	–	–	–	378
ServiceOntario Office Changes <sup>2</sup>	–	–	–	–	–	–	60

1. Reported in 2013, but more costs in 2014.

2. Reported in 2012, but more costs in 2013.

3. Costs based on estimates.



TV	Media Costs (\$)			Ad Value† (\$)	Campaign Total (\$)
	Radio	Print	Out-of-Home*		
–	–	3,858	–	–	3,858
–	–	–	–	–	4,031
–	21,019	24,510	–	–	45,529
1,265,098	1,579,352	–	26,162	–	3,047,712
–	–	1,962	–	–	1,962
–	–	3,310	–	–	3,310
–	–	1,250	–	1,413	2,663
–	–	132,358	–	–	138,766
–	–	15,378	–	–	15,979
–	–	931	–	–	931
–	–	1,530	–	–	1,530
52,030	–	–	–	–	70,030
13,550	–	–	–	–	13,550
–	–	209,491	–	–	218,541
87,093	–	–	–	–	122,871
–	–	1,904,995	118,997	4,750	2,587,112
–	–	646,026	456,184	665	1,102,875
–	–	1,835,360	-189,998	7,285	1,759,247
1,324,258	–	–	–	–	1,411,853
1,060,540	196,053	799,181	69,630	–	2,706,047
2,437,652	–	1,716,041	60,270	–	4,808,895
–	547,378	839,847	–	–	1,510,773
–	–	25,537	–	–	25,915
–	–	1,138	–	–	1,198

\* Out-of-Home advertising includes billboards and transit posters.

† Ad Value denotes the value of an ad space provided at no cost, often where the government has provided funding for a related event.

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)					
			Agency Fees	Production	Talent	Bulk Mail	Other	
<b>Health and Long-Term Care</b>								
Health Care Options	2	4	3,875	50,537	61,052	–	5,177	
Healthy Changes	1	2	129,200	449,014	22,476	–	2,092	
Seasonal Influenza	3	24	86,615	323,025	77,507	–	2,697	
Seasonal Influenza <sup>1,5</sup>	1	3	–	2,060	–	–	–	
Smoke-Free Ontario	1	8	–	32,936	–	–	–	
Stroke Warning Signs <sup>2</sup>	–	–	–	–	–	–	–	
<b>Labour</b>								
Health and Safety at Work	1	1	–	1,000	–	–	–	
<b>Municipal Affairs and Housing</b>								
Growing the Greenbelt	1	5	–	–	–	–	–	
Policy Statement Review	1	2	–	–	–	–	–	
<b>Natural Resources</b>								
50 Million Trees Program <sup>1</sup>	3	8	–	–	–	–	–	
Advisory Committee Seeks New Members	1	1	–	–	–	–	–	
FireSmart Wildfire Prevention <sup>2</sup>	–	–	–	480	–	–	35	
Fish Art Contest	1	1	–	275	–	–	–	
Fisheries Management Plan <sup>1</sup>	2	4	–	–	–	–	89	
Land Management	1	1	–	–	–	–	–	
Ontario Parks	6	7	–	–	–	–	–	
Ontario Parks <sup>1</sup>	1	2	–	–	–	–	–	
Ontario Parks <sup>2</sup>	–	–	–	–	–	–	–	
Outdoors Card	1	1	–	175	–	–	–	
Service Changes to District Office	2	2	–	–	–	–	–	
Waste Disposal Site Closure	1	1	–	–	–	–	–	
Water Management Plan	2	3	–	–	–	–	89	
Wildfire Prevention <sup>4</sup>	–	8	–	–	–	–	–	
Wildlife Habitat Restoration <sup>1</sup>	1	2	–	–	–	–	50	
<b>Northern Development and Mines</b>								
New Mining Act Regulations	1	2	–	–	–	–	–	
<b>Tourism, Culture and Sport</b>								
Fort William Historical Park	18	34	–	13,795	–	6,388	–	
Fort William Historical Park <sup>1</sup>	2	4	–	–	–	–	–	
Fort William Historical Park <sup>2</sup>	–	–	–	–	–	–	–	
Huronian Historical Parks	16	22	–	2,720	–	–	–	
Huronian Historical Parks <sup>1</sup>	1	1	–	600	–	–	–	
<b>Training, Colleges and Universities</b>								
30% Off Ontario Tuition	2	16	296,712	441,082	171,015	–	–	
Student Permit Regulations	1	1	–	–	–	–	–	

1. Reported in 2013, but more costs in 2014.

2. Reported in 2012, but more costs in 2013.

4. Contravention—not reviewed, but reported by Ministry.

5. Contravention—ad published before being reviewed, then submitted and approved.

	Media Costs (\$)			Ad Value† (\$)	Campaign Total (\$)
	TV	Radio	Print		
1,273,365	–	–	–	–	1,394,006
548,243	–	–	–	–	1,151,025
960,826	–	–	166,835	–	1,617,505
–	–	–	–	–	2,060
–	–	–	411,415	–	444,351
849,000	–	–	–	–	849,000
–	–	–	–	4,100	5,100
–	–	10,526	–	–	10,526
–	–	13,661	–	–	13,661
–	–	–	–	22,894	22,894
–	–	1,210	–	–	1,210
–	–	8,443	–	–	8,958
–	–	–	–	12,516	12,791
–	–	–	–	–	89
–	–	505	–	–	505
–	–	30,842	–	–	30,842
–	–	–	–	–	0
–	–	1,528	–	–	1,528
–	–	–	–	16,682	16,857
–	–	1,695	–	–	1,695
–	–	334	–	–	334
–	–	5,966	–	–	6,055
–	22,708	1,699	–	–	24,407
–	–	–	–	–	50
–	–	12,120	–	–	12,120
–	37,923	43,253	150	–	101,509
–	–	4,895	41,872	–	46,767
–	–	1,115	–	–	1,115
44,171	30,011	36,897	–	–	113,799
–	–	–	–	–	600
2,406,903	599,197	–	–	–	3,914,909
–	–	23,620	–	–	23,620

\* Out-of-Home advertising includes billboards and transit posters.

† Ad Value denotes the value of an ad space provided at no cost, often where the government has provided funding for a related event.

Ministry/Campaign Title	# of Submissions	# of Items	Third-party Costs (\$)				
			Agency Fees	Production	Talent	Bulk Mail	Other
<b>Transportation</b>							
Pedestrian Safety <sup>1</sup>	1	2	–	–	–	–	–
Veteran Graphic Licence Plates	1	2	8,000	1,140	6,729	–	317
<b>Total</b>	<b>130</b>	<b>572</b>	<b>1,405,009</b>	<b>2,242,370</b>	<b>740,243</b>	<b>6,388</b>	<b>108,038</b>

1. Reported in 2013, but more costs in 2014.

Media Costs (\$)				Ad Value <sup>†</sup> (\$)	Campaign Total (\$)
TV	Radio	Print	Out-of-Home*		
—	—	—	—	5,000	5,000
584,425	—	10,748	—	—	611,359
<b>12,907,154</b>	<b>3,033,641</b>	<b>8,371,760</b>	<b>1,161,517</b>	<b>75,305</b>	<b>30,051,425</b>

\* Out-of-Home advertising includes billboards and transit posters.

† Ad Value denotes the value of an ad space provided at no cost, often where the government has provided funding for a related event.