

Review of Government Advertising

Government Advertising Spend at Record Low

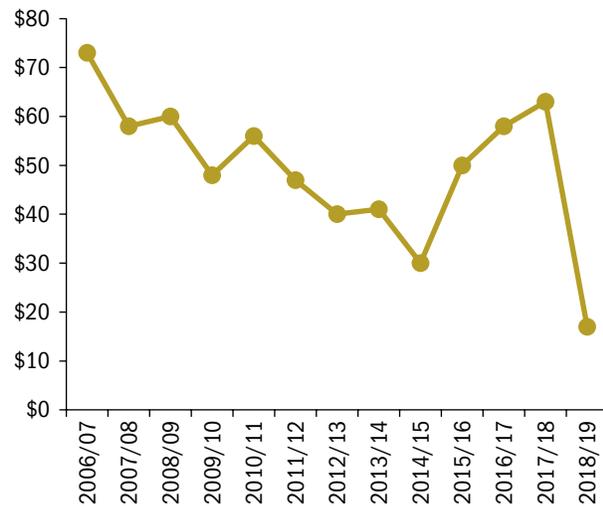
In the fiscal year ended March 31, 2019, the government spent the lowest amount on advertising since our Office began reviewing and approving government advertising in 2005. In the past year, our Office reviewed 614 advertisements in 77 submissions. The government spent \$12.55 million producing and running these items. It also spent \$3.84 million running digital advertising on social media and using search services that are exempt from our review. In total, the government spent \$16.39 million on advertising for the 2018/19 fiscal year. See the **Appendix** for a breakdown of reviewable advertising costs by each government ministry.

This total is in sharp contrast to the previous fiscal year, when we reviewed 2,595 advertisements in 292 submissions, totalling \$55.0 million. Another \$7.60 million was spent on excluded digital advertising for an overall total of \$62.60 million in the fiscal year ending March 31, 2018. See **Figure 1** for expenditure comparisons over the last 13 years since the original *Government Advertising Act* (Act) was proclaimed. It is worth noting that just over 30% of the expenditure in the 2016/17 and 2017/18 fiscal years were for advertisements we believe had as their primary objective to foster a positive impression of the governing party.

Last fiscal year (2018/19), for the first time since certain 2015 amendments to the Act came

Figure 1: Advertising Expenditures Since Proclamation of the Original *Government Advertising Act*, 2004, 2006/07–2018/19* (\$ million)

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



* Yearly expenditures include all digital advertising costs, including social media.

into effect, our Office would have passed every advertisement submitted by the government under the criteria we used to assess partisanship under the old Act.

The original *Government Advertising Act*, 2004 (Act) which took effect in late 2005, required the government to submit advertisements to the Auditor General for review to ensure, among other things, that they were not partisan. Only advertisements that passed this review could run.

The original Act gave the Auditor General discretionary authority to determine what is partisan.

Under this system, although our Office took issue with a very small proportion of ads (less than 1%), we approved the overwhelming majority of the thousands of advertisements submitted to us. When significant amendments to the Act were introduced in 2015, we cautioned that these would weaken the Act and open the door to publicly funded partisan and self-congratulatory government advertisements on television and radio, in print and online.

The amendments imposed a specific and narrow definition of “partisan” as the only measure we can use in our reviews. Essentially, as long as the government avoids using the name or image of an elected official or the logo of a political party in an advertisement, the Auditor General cannot find it partisan under the Act. Our approval is still required under the amended Act before an advertisement can run. However, this approval is almost always automatic. The only other condition that must be met is the requirement for the ad to say it was paid for by the government of Ontario.

Advertising Activity during 2018/2019

The amendments made in 2015 to the *Government Advertising Act, 2004* stipulate that the government can no longer advertise as of the day when an election writ is issued. As well, changes made in 2016 to election financing rules placed further limits by prohibiting government advertising for the 60 days before the writ is issued. In the period leading up to the June 7, 2018, election, the government observed these new statutory requirements. However, these prohibitions do not apply to advertising that the government determines relates to a revenue-generating activity, is time-sensitive, or meets any other criteria that it may prescribe. Our Office reviewed and approved 33 submissions, consisting of 112 ads, which ran in the blackout period (March 10, 2018, to May 9, 2018) and/or the writ period (May 10, 2018, to June 7, 2018). Examples of submissions included international advertisements aimed at attracting investment to Ontario

and notices about relocation of ServiceOntario offices. In contrast, during the same period the year before (March 10, 2017 to June 7, 2017), our Office reviewed 66 submissions, consisting of 407 ads.

Figure 2 shows the volume of advertising submitted over the past five fiscal years.

The period between election day and when a new government is officially sworn-in is one of preparing for the transition to a new government. In this case, very few submissions were made to our office between election day and swearing-in on June 29, 2018. As well, on June 18, 2018, the government-elect announced its expenditure management strategy which would freeze discretionary spending for ministries, including non-essential communications, such as advertising. In the following period, up to the end of the fiscal year, the government made only 53 advertising submissions to our Office.

The top five advertising campaign expenditures are listed in **Figure 3**. These campaigns accounted for almost 70% of the total reviewable expenditure on advertisements that our Office reviewed in the past fiscal year.

Digital Advertising on the Rise

Our authority to review digital advertising came into effect with other changes made to the Act in June 2015. This type of advertising includes video, text, images, or any combination of these that a government office proposes to pay to have

Figure 2: Volume and Value of Government Advertising Submitted for Auditor General Review

Source of data: Office of the Auditor General of Ontario

Fiscal Year	# of Submissions	# of Ads
2018/19	77	614
2017/18	292	2,595
2016/17	318	2,669
2015/16*	229	1,384
2014/15	182	653

* Digital advertising (except social and search services) was added as a reviewable medium under the *Government Advertising Act* in June 2015.

Figure 3: Top Five Campaigns for the 2018/19 Fiscal Year

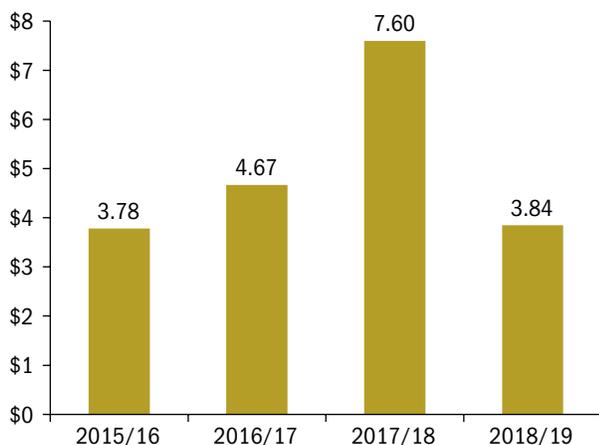
Source of data: Ontario government ministries

Topic	Ministry	Expenditure (\$ million)
Ontario Cannabis Legalization	Attorney General	3.31
Prescription Painkillers	Health and Long-Term Care	1.68
Where Amazing Lives/Where the World is Going*	Economic Development, Job Creation and Trade	1.53
Foodland Ontario	Agriculture, Food and Rural Affairs	1.32
Flu Campaign	Health and Long-Term Care	0.82
Total		8.66

* This campaign was aimed at attracting international investment to Ontario. Due to its revenue-generating nature, it was able to run during the blackout periods for government advertising prior to the June 2018 election.

Figure 4: Government Spending on Digital Advertising Exempt from Auditor General Review (\$ million)*

Source of data: Advertising Review Board



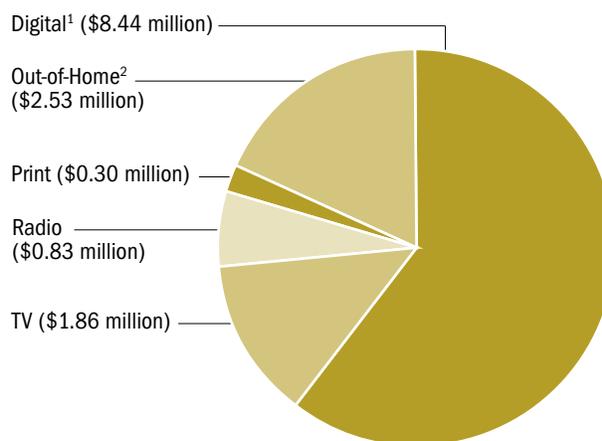
* Types of excluded digital advertising include those that appear on a social media website such as Facebook or Twitter, or are displayed on a website as a result of the government using a search-marketing service.

displayed on a website. However, at the same time, a regulation came into force that limited which digital advertising we could review. Regulation 143/15 says that our Office can review digital ads displayed on a website “*other than* a social media website such as Facebook or Twitter” (emphasis added). As well, ads displayed as a result of the government using “a search-marketing service, such as Google AdWords,” would not be subject to review.

In the 2018/19 fiscal year, the government spent \$3.8 million on digital ads that were excluded from our review. This includes \$2.9 million on social

Figure 5: Advertising Expenditure by Medium, 2018/19

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



Note: Agency fees and production costs of \$2.43 million are not included in this chart.

1. Includes costs of all digital advertising and search marketing services (including those types that are exempt from our review).
2. Includes billboards, transit posters, digital screens, etc.

media websites and \$940,000 on search services. See **Figure 4** for a comparison over the last four fiscal years. While this expenditure is about half of what it was last year, when combined with the cost of other digital ads submitted to our Office, it represents just over half of the government’s total media buy last fiscal year, as shown in **Figure 5**.

As the use and importance of digital advertising becomes more important, it also becomes more important for our Office to be able to review all of the digital ads the government is paying for, without exception.

One Violation under Amended Act

Only one advertising submission was found in violation of the revised Act in the past year. Preliminary versions of eight Ministry of the Attorney General multilingual television ads violated Section 6(1)1 of the Act by failing to include a statement saying the ads were paid for by the government of Ontario. The items, part of a larger campaign called “Ontario Cannabis Legalization,” were about laws around cannabis usage. The Ministry resubmitted amended versions that included the required statement, and we found them in compliance with the Act.

Campaigns We Took Issue With in 2019/20 Fiscal Year

We had concerns with three campaigns submitted to our Office in the current fiscal year. Under the previous version of the Act, these campaigns would not have passed our review. However, we had to find them in compliance with the revised legislation. When we issued our compliance opinions, we noted our reservations to the responsible ministry.

- **A campaign about the government’s Environment Plan.** The Ministry of Environment, Conservation and Parks ran an estimated \$4-million campaign named “One Little Nickel.” This campaign, which included radio, digital and TV ads in 22 languages, was about Ontario’s environmental plan. A campaign description, submitted with the advertisements, said that, “Ontarians need to understand that the Ontario government has a plan that will protect the environment, but not at the cost of making life unaffordable in Ontario.” The “nickel” references related to paying a nickel more per litre of fuel, along with higher costs for heating and food because, as the voice-over in the TV ad tells viewers, the “Federal Government is charging you a carbon tax.”

We took the view that a primary objective of this campaign was to foster a negative

impression of the federal government and its carbon pricing policy. We also believed that it aimed to foster a positive impression of the provincial governing party by saying that Ontario has a “better” plan for the environment.

- **A campaign about Ontario’s debt and how the government will address it.** The Ministry of Finance submitted a campaign, called “Financial Literacy Public Education Campaign,” which consisted of digital ads and videos. At an estimated cost of \$1.4 million, the stated objective of the campaign was to educate Ontarians on Ontario’s finances and debt, and how it affects them, as well as to build understanding around the government’s plan to protect critical public services. Our Office concluded that the campaign’s primary objective was to portray the government in a positive light. The use of music in the digital video—downbeat and concerning when referencing the debt, and upbeat when referencing how the government is “protecting what matters most”—is an example of this portrayal. As well, the ads offered no detail about how the government will address the debt, and sent viewers to a website for more information. We found the website provided only a few examples of early actions taken, and then predictions of results with no details about how they will be achieved.
- **A campaign about Ontario’s public education system.** The Ministry of Education submitted English and French radio advertisements as part of a campaign called “Education for Tomorrow.” These ads, which portray government changes to education as “improving” children’s educational journey to “better prepare” them to “succeed every step of the way,” would not have passed our review under the former version of the Act. We found these qualitative value judgments to be unsubstantiated and that led us to conclude that a primary objective of the ads

was to foster a positive impression of the governing party. We note that in a subsequent submission that included multi-ethnic radio ads, the Ministry made changes that addressed our comments, and we approved those ads without qualification.

Other Issues of Interest

Private Members' Bills Call for Reinstatement of Original GAA

In April 2019 a private members' bill was introduced called *End the Public Funding of Partisan Advertising Act, 2019* (Bill 101). This bill would have restored the Act to its pre-2015 version, including the discretionary authority of the Auditor General to determine partisanship. This bill was identical to one introduced in a preceding session of Parliament by another opposition member in March 2018. The earlier bill died on the Order Paper when the Legislature was dissolved. The current version, Bill 101, is currently referred to the Standing Committee on Finance and Economic Affairs for debate.

Overview of Our Compliance Function

What Falls under the Act

The Act applies to advertisements that government offices—specifically, government ministries, Cabinet Office and the Office of the Premier—propose to pay to have published in a newspaper or magazine, displayed on a billboard, displayed digitally in a prescribed form or manner, or broadcast on radio or television, or in a cinema. It also applies to printed matter that a government office proposes to pay to have distributed to households in Ontario by 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 our Office for review and approval under the amended Act before they can run.

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

The Act requires government offices to submit reviewable items to our Office. They cannot publish, display, broadcast, or distribute the submitted item until the head of that office (usually the deputy minister) receives notice, or is deemed to have received notice, that the advertisement has been found in compliance with legislation.

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

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

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

The advertising done by government agencies is also exempt from the Act and thus our review. However, agencies' ads could be captured by the Act under a 2005 agreement with the government that gives us the authority to review third-party advertising if all three of the following criteria apply:

- a government office provided the third party with funds intended to pay part or all of the

cost of publishing, displaying, broadcasting or distributing the item;

- the government office approved the content of the item; and
- the government granted the third party permission to use the Ontario logo or another official provincial visual identifier in the item.

Revised Criteria for Proposed Advertisements

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

1. It must include a statement that it is paid for by the government of Ontario.
2. It must not be partisan. The revised Act says an item is "partisan" only 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);
 - includes the name or logo of a recognized party;
 - directly identifies and criticizes a recognized party or a member of the Assembly; and/or
 - includes, to a significant degree, a colour associated with the governing party.

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

Other Review Protocols

Since assuming responsibility for the review of government advertising in 2005, our Office has worked with the government to clarify procedures to cover areas where the Act is silent. In April 2019, our Office posted updated Government Advertising Review Guidelines. These Guidelines are intended

to help government staff comply with the Act. They detail the submission, review and approval process, and reflect legal requirements, practices and conventions. The Guidelines can be found at www.auditor.on.ca/en/content/adreview/adreview.html.

What follows is a brief description of the significant areas that have required such clarification over the years.

Websites Used in Advertisements

Although government websites were not specifically reviewable in the original Act, we took the position that a website or similar linkage used in an advertisement is an extension of the advertisement. Following discussions, our Office came to an agreement with the government 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 continue to consider the content only of the first click, unless it is a gateway page or lacks meaningful content, in which case we review the next page. We examine the page for any content that does not meet the standards of the amended Act. For example, the page must not include a minister's name or photo, or the name or logo of a recognized party.

Social Media Used in Advertisements

The government has significantly increased its presence on social-media platforms over the last decade. Our Office receives advertisements for approval that at times use icons leading the user to the government's presence on various social media, such as Facebook and Twitter.

Although the original Act was silent on the use of social media, we reached an agreement with the government in 2012 that we would perform an initial scan of any social-media page cited in an ad to ensure that the standards of the Act are being followed, in the same way we examine websites

referenced in ads. We recognize that content changes frequently and can be beyond the control of the government office, so our limited review focuses only on the content that the government office controls.

However, the government's social-media accounts and any content that its administrators post to it do not constitute reviewable advertising under the Act.

The Future of Our Office's Role in Government Advertising

Amendments to the Act in 2015 did away with our Office's discretionary authority to determine what constitutes partisan advertising. These amendments weakened the Act and paved the way for publicly paid partisan advertising by government. We will continue to identify those advertisements that would not have passed our review under the former version of the Act.

RECOMMENDATION 1

We recommend that the previous version of the *Government Advertising Act, 2004* as it appeared on June 3, 2015, be reinstated, while leaving in the amendment that added digital advertising as a reviewable medium.

TREASURY BOARD SECRETARIAT RESPONSE

The government continues to explore options for the review of government advertising.

The government reviews all advertising paid for by the province to ensure it is delivered in the most efficient and cost-effective manner, to maximize value for taxpayers.

Appendix: Expenditures for Reviewable Advertisements under the Government Advertising Act, 2004, April 1, 2018–March 31, 2019*

Source of data: Ontario government ministries

Ministry ¹	# of Submissions	# of Items	Agency Fees and Production Costs (\$)	Media Costs (\$)					Total (\$)
				TV	Radio	Print	Digital	Out-of-Home ²	
Agriculture, Food and Rural Affairs	2	41	92,826	724,118	507,159	—	—	—	1,324,103
Attorney General	9	106	416,800	1,055,604	—	2,259	190,428	1,652,420	3,317,511
Children, Community and Social Services	1	1	—	—	—	11,370	—	—	11,370
Economic Development, Job Creation and Trade	7	78	761,898	—	—	95,028	1,114,871	224,027	2,195,824
Finance	1	6	18,735	—	—	—	248,853	—	267,588
Government and Consumer Services	5	10	193	—	—	2,975	—	—	3,168
Health and Long-Term Care	24	204	564,403	—	137,620	18,334	2,606,503	661,042	3,987,902
Indigenous Affairs	2	2	167	—	—	528	—	—	695
Natural Resources and Forestry	4	54	—	80,153	20,817	37,312	—	—	138,282
Solicitor General	1	1	—	—	—	568	—	—	568
Tourism, Culture and Sport	19	78	494,209	—	49,097	128,405	429,597	—	1,101,308
Training, Colleges and Universities	2	33	80,800	—	119,130	—	—	—	199,930
Total	77	614	2,430,031	1,859,875	833,823	296,779	4,590,252	2,537,489	12,548,249³

* The Auditor General Act requires our Office to report annually on expenditures for advertising and printed matter reviewable under the Government Advertising Act, 2004. In order to verify completeness and accuracy, we may review selected payments and supporting documentation. We can also examine compliance relating to the sections of the Act dealing with submission requirements and use of ads during the Auditor General's review.

1. Ministry names as of June 29, 2018. The ministries of Education; Energy, Northern Development and Mines; Environment, Conservation and Parks; Francophone Affairs; Infrastructure; Labour; Municipal Affairs and Housing; Seniors and Accessibility; Transportation; and Treasury Board Secretariat did not incur any advertising costs under the Act.
2. Includes billboards, transit posters, digital screens, etc. Media costs associated with cinema advertising are included in TV column.
3. An additional \$3.84 million was spent on digital advertising and search services that were exempt from our review.