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## CHAPTER TWO

# Toward Better Accountability

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

- concerns regarding public accountability for the Ontario Innovation Trust;
- the need for guidelines for government advertising;
- the governance and accountability of Ontario's scheduled agencies; and
- legislative proposals for better public accountability.

### *ONTARIO INNOVATION TRUST*

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 important, high-quality, scientific research and technology development.

The Trust was publicly announced in the *1999 Ontario Budget*. The payment of the \$250 million to the Trust was properly classified as a transfer payment in the accounts of the province for the 1998/99 fiscal year.

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 view of the fact that the government has flowed \$250 million in multi-year program funding to an arm's length entity, we reviewed the accountability structure under which the Trust would be operating. As a result of our review, we have concerns related to the business case supporting the decision to create the Trust and to the ability of the government and the Legislature to obtain assurance that the Trust is spending public funds prudently for the purposes intended and to take corrective action if it does not.

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We raised these concerns in a letter to the Ministry of Finance and received the Ministry's response.

In our letter, we asked for information supporting the decision to create a trust as the method of service delivery rather than using the more traditional method of delivery through a Crown agency or ministry department, including the government's decision to take a minority position rather than a controlling one on the Trust's board.

In response, the Ministry advised that:

*The objective of the Ontario Innovation Trust is to provide funding for research infrastructure projects. It was decided that a Trust operating at arm's length from the government would be the most effective method of service delivery. The majority of the Board will be comprised of the key stakeholders. They are undoubtedly the most qualified professionals to make these funding decisions, based on research quality and related strategic considerations of ultimate importance to the economic development of the Province. As you are no doubt aware, the Government of Canada established an arms' length Foundation called the Canada Foundation for Innovation which has a similar objective to the Ontario Innovation Trust.*

The existence of these two like organizations, each funded separately by the governments of Canada and Ontario, is of some concern to us since they both have a similar objective and serve the same groups of beneficiaries in Ontario. This creates the need setting clear boundaries and good coordination of the activities of the Canada Foundation for Innovation and the Ontario Innovation Trust to assure taxpayers that duplications in funding and effort are avoided.

## **ACCOUNTABILITY ISSUES**

The Management Board of Cabinet Directive on Transfer Payment Accountability provides a framework for the prudent management of provincial transfer payment funds by requiring that all transfer payments are managed with the following key accountability elements in place: defining expectations; establishing agreements; monitoring and reporting; and taking corrective action when necessary.

With regard to accountability, we raised the following concerns:

- As worded, the Trust Agreement effectively removes the Minister of Energy, Science and Technology, who is the named sponsor of the Trust, from the accountability cycle as it relates to the Trust. Therefore, the accountability of the Trust to the government and in turn to the Legislative Assembly is seriously impaired. For instance, Crown agencies are normally accountable to the Legislature through a minister, and it is usually the duty of the minister responsible to answer questions raised in the Legislature regarding government agencies. Since the Trust is not an agency of the Crown, there is no ministerial accountability for the activities of the Trust to the Legislative Assembly.

In addition, there is no requirement in the Trust Agreement for the government and/or the Legislature to receive information on the efficiency and cost-effectiveness of the board in achieving program objectives. There also appear to be no mechanisms whereby the government, via internal audit or other means, can review the operations of the Trust to

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ensure that its decision-making process is well supported, its controls are sound and funds provided are spent prudently and effectively.

Currently, the spending of the initial \$250 million by the Trust, and any future funding that may be provided to it, are effectively outside the control of the government and the Legislature, which has no mechanism to independently review the program to ensure value for money for the taxpayer.

The Ministry of Finance responded to these concerns as follows:

*The Ontario Innovation Trust Board is accountable to the beneficiaries of the Trust under the Trustee Act of Ontario and the government is represented on the Trust's Board. The Board and Trustee are accountable for funding and investment decisions and other powers and responsibilities as clearly set out in the Trust Agreement. There is also a requirement that the operations of the Trust Fund be audited annually by an independent third party and the results of this audit will be available to the public and the beneficiaries of the Trust.*

*Additionally...it is the intention of the Board to develop full and effective public accountability and reporting practices.*

While the Ministry indicated the board's commitment to develop full and effective public accountability and reporting practices, the Trust Agreement does not specifically require the board to do so.

We will follow up in due course on the public accountability and reporting practices that the board implements.

- Because the Trust is not a Crown controlled corporation as defined in the *Audit Act*, its activities will not be subject to the following mandatory audit procedures specified for Crown controlled corporations by the *Audit Act*. The auditor of a Crown controlled corporation is required to:
  - deliver to the Provincial Auditor a copy of the audited financial statements and the management letter;
  - make available for review all working papers, reports, schedules and documentation requested by the Provincial Auditor; and
  - if requested by the Provincial Auditor, provide explanations and information as to the nature and extent of the audit work carried out and the results obtained.

As well, the Trust Agreement provides no mechanism for the Provincial Auditor to conduct, or cause to be conducted, additional examinations, such as value for money audits. Also, because the Trust is not an agency of the Crown, the Provincial Auditor will be precluded from performing inspection audits, as defined in the *Audit Act*, of the end recipients of government grants. We believe it is necessary for good accountability that, through the Provincial Auditor, the Legislature has a better audit regime than that currently stipulated in the Trust Agreement.

We are concerned that all of the foregoing weaknesses will significantly impair, if not negate, accountability to the Legislature for government grants that flow through the Trust to third party organizations.

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We are of the view that, in future, any similarly structured trust agreements 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 action needs to be taken.

## **GUIDELINES RECOMMENDED FOR GOVERNMENT ADVERTISING**

During the latter part of 1998, the Office received several inquiries from the public questioning the appropriateness of the government's use of public funds for certain advertising and communications campaigns. The inquirers apparently interpreted some of the advertising to be of a party-political nature. In view of the public concerns expressed, we decided to research the subject of government advertising to determine what, if any, guidelines were in place to assist in differentiating between government advertising and party-political communications.

We reviewed the Management Board of Cabinet Directive on Advertising and Creative Communication Services which is the sole source of principles and guidelines for the acquisition of advertising and creative communication services. However, the Directive does not provide criteria to help distinguish between informative government advertising and party-political advertising.

The distinction between government advertising and party-political advertising can sometimes be unclear. In order to provide adequate public accountability on this subject, legislators and public servants need the tools to distinguish between government advertising appropriately funded by the taxpayer and party-political communications.

Although the Canadian federal government and the other nine Canadian provinces do not have guidelines in place to help distinguish between political and non-political advertising, from our preliminary review of information on the subject of government advertising, we found that a number of Commonwealth jurisdictions recognize the need for the establishment of policies and/or guidelines that clearly differentiate between political and non-political material.

The United Kingdom and New Zealand have adopted conventions acknowledging that it is quite legitimate for governments to use advertising to communicate with their publics. However, these conventions also recognize that there is a need for guidelines to be established for government advertising. For example, we noted that the government of New Zealand has guidelines in place that were principally drawn from the following 1989 suggestion of the New Zealand Audit Office:

*A government **may**, for example, disseminate material that:*

- explains its policies;*
- informs the public of government services available to them; or*
- informs the public of their rights and liabilities under the law.*

*A government **should not**, for example, disseminate material that:*

- is designed to promote, or has the effect of promoting, its interests above those of other parliamentary groupings; or*

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- *is designed to secure, or has the effect of attempting to secure, popular support for party-political persuasion of the members of the Government.*

With respect to the wide public debate on the subject of government advertising, we believe it would be in the interest of improving public accountability for the government and/or the Legislature as a whole to consider the establishment of principles, guidelines and criteria that clearly define the nature and characteristics of taxpayer-funded advertising.

We provided the foregoing concerns and information to the Secretary of Cabinet on December 16, 1998. By way of letter dated January 26, 1999, the Secretary of Cabinet expressed appreciation for the material, which we enclosed with our letter. However, there was no indication what action is being taken to develop tools to assist legislators and public servants in distinguishing between government advertising that is appropriate and that which is party-political.

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## ***AGENCY GOVERNANCE AND ACCOUNTABILITY***

Governance can be defined as the processes and structures used to ensure that a government agency is operating effectively, fulfilling its mandate and meeting its objectives, and is being held accountable for the expenditure of public funds. The governance framework for each agency is established by that agency's constituting instrument. The relationship between the government and the agencies is defined in directives approved by Management Board of Cabinet (MBC) and developed and administered by Management Board Secretariat (MBS). Effective governance is a key factor in ensuring that the citizens of Ontario are well served by these agencies.

Agencies are accountable to the government through the responsible minister as established in the agency's constituting instrument. Effective accountability requires that the roles and responsibilities of the minister, governing board and management be well defined. In addition, sufficient information should be available to monitor and evaluate agency performance without compromising agency independence.

During the past year, we reviewed the state of governance in Ontario's 315 provincially scheduled agencies with emphasis placed on operational agencies. Our review focused on three key accountability mechanisms: the memorandum of understanding; accounting for results; and annual reports. Our review included meeting with staff responsible for government agencies at both the ministry level and MBS, which is responsible for developing and administering the directives that govern the establishment and accountability of agencies. Additionally, we surveyed a sample of board members of operational agencies.

Our detailed observations and recommendations for strengthening the governance and accountability of government agencies were provided to MBS in a report to assist in its project to update the existing MBC directives on agency establishment and accountability. It is anticipated that MBC will approve the revised directive in the fall of 1999.

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# LEGISLATIVE PROPOSALS TO IMPROVE PUBLIC ACCOUNTABILITY

## STATUS OF RECOMMENDATIONS FOR AMENDMENTS TO THE AUDIT ACT

Recent Standing Committees on Public Accounts have expressed their support for the Provincial Auditor's views and concerns regarding the current limitations of the scope of inspection audits of certain grant recipients under the *Audit Act*. In aggregate, provincial monies flowing to grant recipient organizations represent the single most significant fiscal demand on the province's Treasury. In 1998/99, grant recipient organizations received just over \$30 billion, which is about 50% of total government expenditures.

Under the current *Audit Act*, the Provincial Auditor may carry out only financial and compliance audits of grant recipients to determine whether the grants were used for the intended purposes. In early 1996, the Committee held public hearings on proposed amendments to the *Audit Act* and invited the deputy ministers of the main transfer payment ministries, representatives of the major transfer payment recipients and other interested organizations to meet and discuss the proposed changes. The primary objective of the proposed amendments was 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. Other amendments, mainly of an administrative nature, were also proposed.

At the conclusion of the public hearing process on June 13, 1996, the Provincial Auditor submitted to the Committee specific draft proposals for amending the *Audit Act*. After discussion of the proposed amendments, the Committee unanimously adopted 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 Committee Chair dated September 26, 1996, the Minister of Finance 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.*

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

The Provincial Auditor met with the Minister of Finance 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 as a result of the “Who Does What” discussions. In this regard, it was the Minister's preference to await the outcome of the transfer payment restructuring exercise, which he expected to be substantially completed by the fall of 1997, before considering possible amendments to the *Audit Act*. By the summer of 1999, no action had been taken to amend the *Audit Act*.

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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.*

The expectation was that the Minister of Finance would introduce this Act during the Legislature's 1997 fall session. However, by the summer of 1999, the proposed Act had not been introduced in the Legislature for first reading.

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.*

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*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.*

## **CONCLUSION**

In his September 26, 1996 letter to the Standing Committee on Public Accounts, the Minister of Finance stated that the draft bill to amend the *Audit Act* represented “a significant step towards the fundamental reform of the public sector accountability system and I agree with the principles upon which it is based.”

The Provincial Auditor believes that the proposed *Audit Act* amendments are directly related to enhancing public sector accountability. Now that the government’s restructuring exercise has been completed, we again urge the government to consider implementing our proposed amendments to the *Audit Act*.

The Provincial Auditor continues to be a strong advocate of any legislation that enhances public accountability and looks forward to the Minister of Finance proceeding with public sector accountability enhancements through the proposed Public Sector Accountability Act.