

Review of Government Advertising

Significant Changes to Government Advertising Act, 2004 Lead to Government Advertising Up Sharply

The 2016/17 fiscal year was the first full year that the 2015 amendments to the *Government Advertising Act, 2004* (Act) were in effect. The amendments weakened our Office’s authority to ensure that public money is not spent on advertising that gives the government a partisan advantage.

The original Act, which took effect in late 2005, required the government to submit most advertisements to the Auditor General for review to ensure they were not partisan. Only advertisements that passed this review could be put into market.

The original Act also provided standards to guide this work, and gave the Auditor General discretionary authority to determine what is partisan. Under this system, our Office approved the overwhelming majority of the thousands of advertisements submitted for review over a decade.

Significant amendments to the Act took effect on June 16, 2015. We cautioned at the time 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.

Although my Office still must approve most government advertising before it can be used, the amendments did away with the Auditor General’s

discretionary authority to determine what is partisan. Instead, the amendments imposed a specific and narrow definition of “partisan” as the only measure we can use in our reviews.

In 2016/17, the government spent more than \$58 million on advertising—the most since the 2006/07 fiscal year. A sizeable proportion—just over 30%—was for advertisements we believe had as their primary goal to foster a positive impression of the government party. Although we were required to approve these ads as compliant under the amended Act, we noted that they would not have passed our review under the original Act—and therefore would not have been broadcast or printed.

We have made clear since 2015 that our preference would be to restore the original Act. A private member’s bill to this effect received first reading in the Legislature on March 27, 2017. The bill’s explanatory note said it aimed to amend the Act “so that the Act reads as it did prior to the 2015 amendments.” However, the bill was defeated in second reading three days later.

Approval from the Auditor General is still required under the amended Act before an advertisement can run. However, this approval is almost always automatic because the amended Act stipulates that an ad may be deemed partisan only if:

- “it includes the name, voice or image of a member of the Executive Council or a member of the Assembly, unless the item’s primary target audience is located outside of Ontario;

- “it includes the name or logo of a recognized [political] party ...;
- “it directly identifies and criticizes a recognized party or a member of the Assembly; or
- “it includes, to a significant degree, a colour associated with the government party ...”

The above requirements essentially mean that as long as the government avoids using the name or image of an elected official or political party in an advertisement, the Auditor General cannot find the ad partisan under the Act.

The original Act also stipulated each item submitted to our Office had to be a reasonable means of:

- informing people about government programs, policies and services;
- informing people about their rights and responsibilities;
- changing social behaviour in the public interest; or
- promoting Ontario as a good place in which to live, work, invest, study or visit.

However, the 2015 amendments repealed those standards, which means advertisements can be found in compliance with the Act even if they do not inform. We found the original Act helped promote transparency and accountability in government advertising, and ensured that items provided useful information without promoting the government party or criticizing its opponents.

Since the amendments, however, our Office has had to approve millions of dollars in advertising that we believe had as its primary purpose to promote the government’s partisan political interests or give the government credit for its accomplishments, rather than to inform citizens. We present examples below.

Budget Ads Target Opposition Ridings

The government submitted a \$330,000 radio campaign for review in May 2017 to promote the new provincial budget. We noted that the items used

vague feel-good statements such as “we’re building a stronger, healthier Ontario” and “it’s a balanced budget for all of us.”

In addition, the advertisements referred to four Ontario communities that were all in opposition-held ridings. As they came barely a year before the provincial election scheduled for June 2018, these ads could leave the impression that these communities were specifically targeted for government-friendly advertising.

Under the previous Act, we would have rejected these advertisements as partisan, meaning they could not run. However, these ads were in compliance with the amended Act and we had to approve them.

Hydro Rate Ads Misleading

The Ministry of Energy (Ministry) spent just over \$1 million in 2016/17, and planned in the first half of 2017/18 to spend another \$2.9 million, on campaigns to promote the government’s plan to cut Ontario Hydro rates by 25% starting in summer 2017.

Under the amended Act, we were required to approve all the items as compliant, although we had several concerns about some of the claims they made, and their self-promotional tone.

The first campaign, at a cost of just over \$1 million, was for radio advertisements that went to market in March 2017, a couple of months before enabling legislation for the rate cut was passed in the Legislature. We found these items to be misleading in suggesting that investments in “clean, reliable energy” were the only factors that led to Hydro bills that “have become harder to pay.”

Finally, the phrases “we’ve heard you” and “fair for everyone” led us to conclude that the campaign was self-congratulatory and aimed primarily at ensuring the government gets credit for its action on energy prices.

In the 2017/18 fiscal year, the Ministry sought approval for television, additional radio and digital advertisements that it estimated would cost

\$2.9 million to further promote the Fair Hydro Plan, using messaging consistent with the previous year. Under the amended Act, we were required to approve these items, too.

Government Advertising that Could be Perceived as Political

The Ministry of Education (Ministry) submitted an advertising campaign in October 2017 regarding the creation of more licensed child-care spaces over the next five years. The Ministry estimated this campaign would cost \$1.9 million. The television ads tell viewers that: “Over the next five years, we’ll help double the amount of licensed child care for kids, aged 0 to 4.” It is not until the 30-second ads draw to a close that it is possible to determine who in fact paid for the ad. We told the Ministry that besides not providing any useful information and fostering a positive impression of the government, these ads could be perceived as political in light of the election scheduled in June 2018.

Climate Change Campaigns Contained Little Information

The Ministry of the Environment and Climate Change (Ministry) submitted two major climate change campaigns during 2016/17 that cost a total of more than \$5.6 million. We approved both of them as compliant with the amended Act, but we had concerns about them.

The first campaign, entitled “Let Them Figure It Out,” included a total of 17 submissions whose theme was that children would inherit the consequences of climate change in the future unless adults act now.

We approved these ads as compliant under the revised Act, but advised the Ministry that the items did not provide viewers with any useful information and appeared designed to “create apprehension about the effects of climate change so viewers will be more likely to support Ontario’s Climate Change Action Plan.”

The second major climate-change campaign, entitled “Save the Everything,” comprised five submissions. We approved all of them as compliant under the revised Act, three of them without issue.

However, the other two submissions, including one containing digital advertisements calling on Ontarians to “save the recess breaks” and “save the road trips” by taking action on climate change, did not provide viewers with any useful information. We also noted that “the claims appear overstated,” and we concluded that a primary objective of the advertisements was “to foster a positive impression of the government.”

Education Ads Tout Program That Was Unavailable

Two sets of advertisements aimed at post-secondary students and their parents during 2016/17 also raised concerns, although we had to approve them as being compliant with the amended Act.

The first, a digital campaign, to promote the Ontario Student Grant, ran a full year before students could actually apply for the grant. We advised the government that we found the campaign misleading and we concluded that a primary objective of the advertisements was to foster a positive impression of the governing party. This campaign would not have passed our review under the old Act.

The second item, a preliminary submission for a cinema advertisement, touted the merits of the Ontario Student Assistance Plan (OSAP). However, we found the advertisement misleading because it did not mention that one must apply and be considered eligible in order to receive assistance. This issue was addressed in the final version, which we found to be in compliance with the amended Act. Subsequent advertising on OSAP passed our review without reservation.

Advertising Cited Last Year Still Running This Year

Three campaigns that we had to approve as compliant with the legislation in 2015/16 were still in market during 2016/17. Although complete information about costs was unavailable in the previous year, the totals came into clearer focus in 2016/17 and are given below. All three campaigns appeared designed primarily to give the government credit for its accomplishments, and we describe them below:

- **A campaign to promote “Ontario’s nearly \$160-billion investment in infrastructure.”** In having to approve this \$2.95-million television and digital campaign as compliant with the Act, we advised the government that none of the items mentioned the fact that this spending will be spread over the next 12 years—a period when three provincial elections and any number of other unanticipated economic developments could alter the spending plan. We also observed that information in the government’s own submission for the campaign cited polling showing fewer than 50% of Ontarians know about the government’s investment in public infrastructure. This led us to conclude that the overall thrust of these advertisements was self-congratulatory and aimed at ensuring that the government gets credit for its potential future spending plans.
- **Two campaigns to tell Ontarians that the government is increasing health-care funding by \$1 billion in the current fiscal year and that health care is improving.** In its submissions for these television, print, radio and digital advertisements, with a total combined budget of nearly \$5.2 million, the government cited “survey results showing that many Ontarians believe that severe cuts are happening within the health-care system.” In reviewing and having to approve these ads as compliant with the legislation, we noted that the campaigns appeared to be self-

congratulatory and aimed at ensuring that the government gets credit for its planned health-care spending. We also advised the government that these ads would not have passed under the previous Act because we would have determined that a primary objective of the items was to foster a positive impression of the governing party, rather than provide the public with useful information.

- **A campaign (Education Life Cycle) saying that “when Ontario students realize their full potential today, they’re ready to take on tomorrow.”** We advised the government that this \$2.88-million television and digital campaign would not have passed under the previous Act because we felt the general thrust of this feel-good campaign is to foster a positive impression of the government. These advertisements continue to run in the current fiscal year (2017/18) at an estimated additional cost of \$1.06 million.

Other Issues

Government Advertising Before and During Elections

The amended Act included new restrictions on government advertising during election periods. The government now cannot advertise as of the day when an election writ is issued (or as of the day 60 days before an election writ is issued, in the case of a fixed-date election), and ending on polling day. However, these rules do not apply if the government determines that the advertising relates to a revenue-generating activity, is time sensitive, or meets any other criteria that they may prescribe. As well, government offices must “cease” any ongoing advertising that began before the writ was issued, unless it is not practical to do so.

Over the last three general election periods (2007, 2011 and 2014), using our former discretionary power, we approved government advertising to run that we deemed as non-partisan. While it had been a long-standing practice of the government to

limit its advertising only to those items dealing with urgent matters or revenue-generating activities, our Office still provided a vital safeguard to ensure that the governing party received no perceived partisan benefit from government advertising during this time. Examples of past campaigns we approved to run during election periods included Ontario Savings Bonds, Foodland Ontario and advertising directed at international audiences.

New election finance reform legislation that passed in December 2016 banned corporate and union donations to political parties, set maximums for individual contributions, and instituted rules regarding fundraising. It also imposed restrictions and rules on advertising by political parties, third parties, and the government itself.

New spending limits were imposed on advertising by political parties and third parties in the six months before a scheduled election. Political parties are limited to spending no more than \$1 million and third parties are limited to \$600,000 during this time. The *Election Finances Statute Law Amendment Act, 2016* also affected the *Government Advertising Act, 2004* by placing limits on when the government can advertise prior to a scheduled election period. No spending limits were placed on government advertising.

As a result, government advertising is now prohibited in the 60 days *before* the writ is issued unless, as during the campaign period, the advertising relates to a revenue-generating activity, is time sensitive, or meets any other criteria that may be prescribed. It is the government that will determine which advertisements can run during this pre-election period.

Although Ontario Government advertising still must be submitted to our Office, we are restricted by the narrow definition of partisanship in the revised Act and unable to use any other criteria to determine whether an item could give a partisan advantage to the government.

During second reading of the *Election Finances Statute Law Amendment Act, 2016* in November 2016, I submitted a written presentation to the Standing Committee on General Government

expressing these concerns. We also noted that the legislation deals only with general elections and not by-elections. Thus, there are no restrictions on government advertising during a by-election period.

With next year's June 7 general election approaching, we expect the government to cease most advertising on March 10, 2018.

Digital Advertising Loopholes

The authority to review digital advertising was not in the original *Government Advertising Act*, and we had been asking for this authority since 2011. A new regulation under the 2015 amendments gave us the authority to review “an advertisement consisting of video, text, images or any combination of these that a government proposes to pay to have displayed on a website.”

However, this regulation specifically exempts two key areas from our review: advertisements on social media websites, such as Facebook, Twitter and Instagram, and advertisements displayed on a website by search-marketing services, such as Google AdWords.

In the fiscal year ending March 31, 2017, the government spent \$4.67 million on digital advertisements that were exempt from our review and our Office still lacks the authority to verify that all digital spending is for non-partisan purposes.

We take the view that this loophole should be closed, although the addition of some digital advertising to our review authority has not been meaningful in light of the legislated limits on our ability to determine what constitutes a partisan advertisement.

Limitation in the Act Regarding Mail

On April 19, 2017, we received a letter from an MPP inquiring about an insert included with electricity bills from local power-distribution utilities sent to thousands of Ontario ratepayers. The insert's headline read: “On January 1, 2017, your electricity costs went down 8%.”

Under both the original and amended Acts, all printed materials sent unaddressed by mail or any other bulk distribution method to Ontario residents must first be submitted for review. However, any material sent in addressed mail—like the electricity bill insert—is not subject to review. The insert, which the government directed the utilities to include with bills, was therefore not submitted to our Office for review.

Although the message in this particular insert would likely have passed our review, it recalled an issue in 2011, when the government included an insert about its Ontario Clean Energy Benefit—a five-year, 10% rebate on electricity rates—in bills that arrived a month before that year’s provincial elections.

We wrote in our *2011 Annual Report* that this showed a “possible limitation” of the Act, and could be seen as “violating the intent of the Act.” This latest incident suggests, again, that the Act continues to overlook a potential loophole that could be used to send partisan messages directly to Ontarians through addressed mail.

Government Advertising Spending on the Rise

In the fiscal year ending March 31, 2017, we reviewed 2,669 advertising items—a 93% increase over the previous year—in 318 submissions. The government spent \$53.7 million on these items, a rise of almost 33% over 2015/16.

Excluded from this total is the \$4.67 million spent on digital advertising that is exempt from our review (this includes ads placed on social media websites and advertisements displayed as a result of using a search-marketing service). Including this amount, the total value of government advertising for 2016/17 was \$58.39 million.

Last fiscal year, the government spent \$43.65 million on 1,384 individual advertising items in 182 submissions. Digital advertising (including social and search-marketing services) was worth another \$6.27 million, for a total value of \$49.9 million.

See **Figure 1** for a breakdown of 2016/17 reviewable advertising costs by government ministry and **Figure 2** for a breakdown of spending by category. **Figure 3** shows a breakdown of government advertising costs since 2007. Since the changes to the Act came into effect in 2015, government spending on advertising has increased noticeably.

The top 15 advertising topics in 2016/17 by expenditure are listed in **Figure 4**. These campaigns accounted for almost 63% of the total reviewable expenditure on advertisements that our Office reviewed in the past fiscal year. It is worth noting that three out of the top six would not have passed our review prior to the 2015 amendments to the Act, and one other included some submissions we had concerns with.

Three Violations, One Contravention under Amended Act

We found all advertising submitted to our Office in the 2016/17 fiscal year complied with the amended Act, with the exception of three submissions as follows:

- A preliminary version of a \$1.95-million Ministry of Health and Long-Term Care television campaign called “Investing in Health Care” was found in violation of section 6(1)1 of the Act because it failed to include a statement saying the items had been paid for by the Government of Ontario.
- A preliminary version of a \$300,000 cinema advertisement by the Ministry of Advanced Education and Skills Development about the Ontario Student Assistance Program was found in violation of section 6(1)1 of the Act because it failed to include a statement saying the items had been paid for by the Government of Ontario.
- The final version of a Ministry of Natural Resources television advertisement promoting the 50 Million Trees Program was found in violation of section 6(1)1 of the Act because it failed to include a statement saying the item had been paid for by the Government of Ontario.

Figure 1: Expenditures for Reviewable Advertisements under the Government Advertising Act, 2004, April 1, 2016 – March 31, 2017*

Source of data: Ontario Government ministries

Ministry	# of		Production/ Agency Costs (\$)	Media Costs (\$)				Total (\$)	
	Submissions	Items		TV	Radio	Print	Digital		Out-of-Home ¹
Advanced Education and Skills Development	14	137	2,017,603	282,568	33,199	6,362	627,384	110,980	3,078,096
Agriculture, Food and Rural Affairs	3	23	–	882,815	549,873	–	–	94,844	1,527,532
Anti-Racism Directorate – Cabinet Office	3	43	9,252	–	1,020	42,524	–	–	52,796
Attorney General	3	10	1,838	–	–	4,234	12,006	–	18,078
Children and Youth Services	2	14	13,588	–	–	–	511,778	–	525,366
Citizenship and Immigration	6	27	38,204	426,040	75,845	57,430	89,220	–	686,739
Community Safety and Correctional Services	4	6	–	27,277	–	958	25,733	–	53,968
Community and Social Services	4	36	4,425	–	9,117	160,559	128,053	–	302,154
Economic Development and Growth	10	31	–	5,000	–	157,158	134,485	24,823	321,466
Education	5	71	530,486	1,860,516	–	81,723	493,088	–	2,965,813
Energy	4	37	102,248	–	776,175	36,086	247,788	–	1,162,297
Environment and Climate Change	22	221	1,369,369	3,398,437	–	–	855,455	–	5,623,261
Finance	10	195	831,713	–	766,602	892,117	977,224	–	3,467,656
Francophone Affairs/Seniors/Accessibility	3	29	–	–	207,139	196,306	332,986	–	736,431
Government and Consumer Services	17	67	–	–	127,577	9,733	364,469	–	501,779
Health and Long-Term Care	78	1195	2,679,894	3,910,568	2,433,997	3,144,191	3,522,801	4,152,385	19,843,836
Indigenous Relations and Reconciliation	3	5	77	–	–	2,662	–	–	2,739
Infrastructure	4	75	640,214	1,535,711	–	–	773,027	–	2,948,952
International Trade	5	23	144,962	–	435,965	1,781	113,190	–	695,898
Labour	6	74	88,554	–	982,900	166,343	622,235	150,196	2,010,228
Municipal Affairs/Housing	2	4	10,202	–	–	52,357	–	–	62,559
Natural Resources and Forestry	30	149	1,188	56,182	20,161	156,893	62,515	3,080	300,019
Status of Women	1	1	7,743	–	–	–	102,260	–	110,003
Tourism, Culture and Sport	70	177	1,148,748	1,605,774	109,995	152,684	147,312	82,609	3,164,513
Transportation	9	49	472,755	1,578,370	684,186	–	750,652	75,199	3,561,162
Total	318	2,699	10,113,063	15,569,258	7,213,751	5,322,101	10,893,661	4,611,507	53,723,341

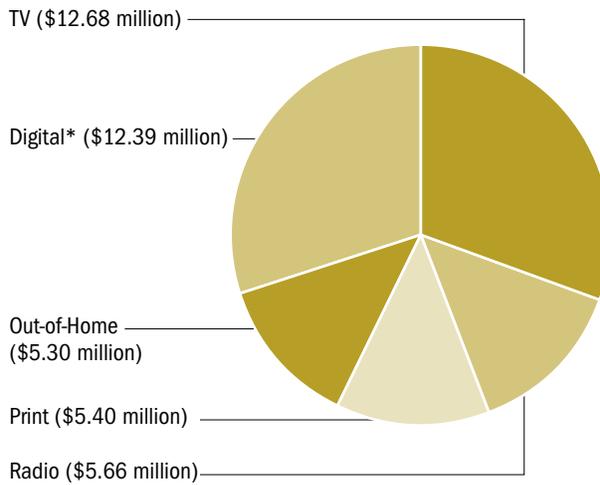
Note: The ministries of Northern Development and Mines, Research, Innovation and Science, and Treasury Board Secretariat did not incur any advertising costs under the Act.

* The Auditor General/Act requires our Office to report annually on expenditures for advertising and printed matter reviewable under the Act. 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. Includes billboards, transit posters, digital screens, etc.

Figure 2: Advertising Expenditure by Medium, 2016/17

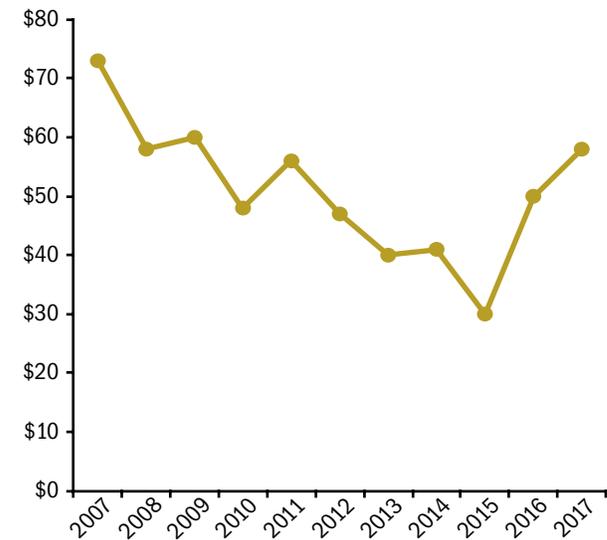
Source of data: Office of the Auditor General/Advertising Review Board



* Includes costs of all digital advertising, including those types that are exempt from our review.

Figure 3: Advertising Expenditures, 2011–2017* (\$ million)

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



* Yearly expenditures include digital advertising costs.

Figure 4: Top 15 Advertising Expenditures per Topic for 2016/17

Source of data: Ontario government ministries

Topic	Ministry	Expenditure (\$ million)
Climate Change ¹	Environment and Climate Change	5.62
Health Care investments ²	Health and Long-Term Care	5.19
Distracted Driving	Transportation	3.26
Growth	Infrastructure	2.95
Ontario 150 ³	Tourism, Culture and Sport	2.92
Education Life Cycle ³	Education	2.88
OSAP ³	Advanced Education and Skills Development	2.86
Smoking Cessation ³	Health and Long-Term Care	2.51
Immunization ³	Health and Long-Term Care	2.06
Ontario Savings Bonds	Finance	1.95
Health-Care Options ³	Health and Long-Term Care	1.93
My Cancer IQ ³	Health and Long-Term Care	1.63
Foodland Ontario	Agriculture, Food and Rural Affairs	1.53
Seasonal Influenza	Health and Long-Term Care	1.50
Menu Labelling ³	Health and Long-Term Care	1.40
Total		33.70

1. Included two campaigns with the same theme "Let them Figure it Out" and "Save the Everything."
2. Included two campaigns with same theme "Investing in Health Care" and "Foundations in Health Care."
3. More costs to be incurred next fiscal year.

In addition, the Ministry of Energy informed us that a radio ad about Indigenous engagement sessions regarding Ontario’s Long-Term Energy Plan ran without first having been reviewed by our Office. The Ministry thus contravened section 4.1(1) of the Act. As well, the ad failed to include a statement saying it had been paid for by the Government of Ontario, as required by section 6(1)1 of the Act.

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 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 for compliance with 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 before they are completed for preliminary review by our Office in each language the government intends to run them. After receiving a preliminary approval, these proposed advertisements must be resubmitted in their final form for approval. (Under the old Act, preliminary reviews were voluntary, and could be submitted in a single language. This was a more efficient and streamlined 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 compliance 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.

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

Websites

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 past discussions with the government, our Office came to an agreement soon after the legislation was originally 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 this page for any content that may not meet the standards of the amended Act. For example, the page must not include a minister’s name or photo.

Social Media

The government significantly increased its presence on social-media websites over the 13 years since the

Act came into effect, and our Office often receives advertisements for approval that use icons pointing to various social-media websites.

Although the original Act was silent on social media, we reached an agreement with the government that we would perform an initial scan of any social-media platform cited in an advertisement to ensure that the standards of the Act are being followed. We do, however, recognize that content on these networks changes frequently and can at times be beyond the control of the government office, so our limited review continues to focus only on the content that the government controls.

Third-Party Advertising

Government funds provided to third parties are sometimes used for advertising. The government and our Office agreed in 2005 that third-party advertising must be submitted for review if it meets all three of the following criteria:

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

This agreement currently remains in place. In the last fiscal year, our Office did not receive any submissions that would constitute third-party advertising.