



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

GOVERNMENT ADVERTISING STANDARDS ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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GOVERNMENT ADVERTISING STANDARDS ACT

CHAPTER G-4.2

1. Definitions

(1) In this Act,

- (a) “**Auditor General**” means the officer of the Legislative Assembly appointed under section 3 of the *Audit Act* R.S.P.E.I. 1988, Cap. A-24;
- (b) “**government advertising**” means advertising material that, in return for the payment of public money, is produced or published by or on behalf of a government office;
- (c) “**government office**” means a department, the Executive Council Office, the Office of the Premier or a reporting entity listed in Schedule B to the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9;
- (d) “**head of office**” means the member of the Executive Council charged with the administration of a government office and, in the case of a reporting entity listed in Schedule B to the *Financial Administration Act*, includes a person designated under section 2 to act as the head of that reporting entity for the purposes of this Act;
- (e) “**item**”, with respect to government advertising, means a reviewable advertisement, reviewable printed matter or a reviewable message, as the case may be;
- (f) “**public money**” means public money as that term is defined in the *Financial Administration Act*.

Exception

- (2) This Act does not apply to the official website of the Government of Prince Edward Island. *2019, c.15, s.1.*

2. Designation

The member of the Executive Council with responsibility for a reporting entity listed in Schedule B to the *Financial Administration Act* may, in writing, designate a person to act as head of office for the reporting entity for the purposes of this Act. *2019, c.15, s.2.*

3. Application

For the purposes of this Act, advertising includes, but is not limited to,

- (a) advertisements on television or radio or in newspapers and magazines;
- (b) advertising on the Internet;
- (c) brochures, signs, posters and billboards;
- (d) mailing inserts;
- (e) newsletters;
- (f) displays or exhibitions;

- (g) cinema advertisements;
- (h) advertisements on vehicles; and
- (i) a medium specified in the regulations. *2019,c.15,s.3.*

4. Advertising standards

- (1) All government advertising shall meet the following standards:
- (a) it shall be a reasonable means of achieving one or more of the following purposes:
 - (i) to inform persons of current or proposed government policies, programs or services available to them,
 - (ii) to inform persons of their rights and responsibilities under the law,
 - (iii) to encourage or discourage specific social behaviour, in the public interest, or
 - (iv) to promote the province 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 the province's economy;
 - (b) it shall include a statement that the item is paid for by the Government of Prince Edward Island;
 - (c) subject to subsection (4), it shall not include the name, voice or image of a member of the Executive Council or a member of the Legislative Assembly;
 - (d) it shall not be partisan;
 - (e) it shall not use the name of or an image or logo identified with a registered political party;
 - (f) it shall not be a primary objective of the item to foster a positive impression of the governing party or a negative impression of a person or entity that is critical of the government;
 - (g) subject to subsection (5), it shall not include, to a significant degree, a colour associated with the governing party, other than an approved corporate colour of the Government of Prince Edward Island and its approved trademark and wordmark;
 - (h) it shall meet any additional standards that may be prescribed.

Partisan advertising

- (2) 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.

Factors to be considered

- (3) The Auditor General shall consider the factors specified in subsection (1), and may consider any additional factors that he or she considers appropriate, in deciding whether a primary objective of an item is to promote the partisan political interests of the governing party.

Exception

- (4) Clause (1)(c) does not apply to the use of the name, voice or image of a member of the Executive Council or a member of the Legislative Assembly
- (a) if the audience for which the item is intended is located outside the province; or
 - (b) if the purpose of the item is primarily to recognize
 - (i) a significant achievement,
 - (ii) a national or provincial event, or
 - (iii) an event by or on behalf of a participant in an industry sector such as tourism or a community organization.

Exception - colour

- (5) Clause (1)(g) does not apply to the depiction of a thing that is commonly depicted in a colour associated with the governing party.

Exception

- (6) Clause 4(1)(b) does not apply with respect to a notice to the public that is required by law, an advertisement about an urgent matter affecting public health or safety, a job advertisement or an advertisement about the provision of goods or services to a government office.

Exception - notice of advertisement

- (7) Clause (1)(b) does not apply to an item on Google Ads or a similar service or social media such as Twitter or Facebook where the service or social media platform provides a notice that the item is an advertisement or a sponsored post. *2019, c.15, s.4.*

5. Request to Auditor General

- (1) A head of office may request the Auditor General to decide whether a specified item not yet made public meets the standards set out in this Act.

Inquiry

- (2) Upon receipt of a request under subsection (1), the Auditor General shall
- (a) examine the item in question; and
 - (b) provide a written decision with reasons as to whether the item meets the standards set out in this Act to the head of office who made the request.

Decision final

- (3) Subject to subsection 6(2), the Auditor General's decision is final and binding on the head of office and the Executive Council.

Prohibition

- (4) A government office shall not publish, display or broadcast an item before the head of office receives notice, or is deemed to have received notice in accordance with the regulations, of the results of the review.

Prohibition against publication

- (5) Where the head of office receives notice that, in the Auditor General's opinion, the item does not meet the standards required by this Act, the government office shall not publish, display or broadcast the item. *2019, c.15, s.5.*

6. Complaint to Auditor General

- (1) A member of the Legislative Assembly may make a written complaint to the Auditor General that the item specified in the complaint does not meet the standards set out in this Act.

Further inquiry on decided matter

- (2) Where a complaint to the Auditor General under subsection (1) concerns an item about which the Auditor General has given a decision under subsection 5(2), the Auditor General may hold an inquiry in response to the complaint if the government office made public the item which the Auditor General had decided did not meet the standards set out in this Act.

Basis for complaint

- (3) The member shall specify in the complaint which of the standards set out in section 4 the member believes were not met, and the reasons why.

Refusal to conduct inquiry

- (4) If the Auditor General is of the opinion that
- (a) a complaint is frivolous, vexatious or not made in good faith; or
 - (b) there are no grounds or insufficient grounds for an inquiry,
- the Auditor General shall not conduct an inquiry and shall provide the decision and reasons to the complainant.

Decision and reasons

- (5) At the conclusion of an inquiry, the Auditor General shall provide a decision with reasons to the complainant, to any parties to the inquiry, and to the Speaker of the Legislative Assembly.

Decision final

- (6) A decision of the Auditor General under this section is final and binding. *2019,c.15,s.6.*

7. Auditor General's powers

When conducting an inquiry under this Act, the Auditor General may exercise the powers of a commissioner under sections 3 and 4 of the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31. *2019,c.15,s.7.*

8. Disclosure

- (1) The Auditor General shall not disclose to any person information disclosed to the Auditor General during an inquiry under section 6, or the Auditor General's decision and reasons in respect of that inquiry, except
- (a) with the consent of the member of the Legislative Assembly who made the request;
 - (b) in a criminal proceeding, as required by law; or
 - (c) as provided in subsection (2).

Disclosure to complainant

- (2) If a complaint to the Auditor General under section 6 concerns an item about which the Auditor General has given a decision under section 5, the Auditor General shall disclose to the complainant the Auditor General's decision and reasons for it. *2019,c.15,s.8.*

9. Annual report

- (1) Each year, the Auditor General shall report to the Speaker of the Legislative Assembly about those matters the Auditor General considers appropriate relating to his or her powers and duties under this Act.

Contraventions

- (2) In the annual report, the Auditor General shall notify the Speaker about any contravention of section 4 identified by the Auditor General pursuant to a request made under section 5 or a complaint made under section 6.

Special report

- (3) The Auditor General may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor General should not be deferred until the annual report.

Submission of annual report

- (4) The annual report of the Auditor General shall be submitted to the Speaker, and dealt with by the Speaker, in accordance with the requirements of section 18 of the *Audit Act, 2019, c.15, s.9*.

10. Access to records

The Auditor General may examine the records of a government office at any time for the purpose of determining whether section 4 has been contravened, and the Auditor General, or a person in the office of the Auditor General to whom the Auditor General has delegated the function, shall be given access to any records he or she considers necessary for that purpose. *2019, c.15, s.10.*

11. Immunity - publication, etc.

- (1) No action or other proceeding shall be brought against a person who publishes, displays or broadcasts an item on behalf of a government office on the sole ground that, under this Act, the government office was not permitted to use it to communicate with the public.

Immunity - distribution

- (2) No action or other proceeding shall be brought against a person who distributes an item on behalf of a government office on the sole ground that, under this Act, the government office was not permitted to distribute it.

Immunity - conveying message

- (3) No action or other proceeding shall be brought against a person who conveys an item to the public on behalf of a government office on the sole ground that, under this Act, the government office was not permitted to convey it to the public. *2019, c.15, s.11.*

12. Regulations

The Lieutenant Governor in Council may make regulations

- (a) specifying additional advertising mediums not included under section 3;
- (b) specifying additional advertising standards for the purposes of clause 4(1)(h);
- (c) respecting the process for providing notice to a head of office under section 5, including determining when notice may be deemed to have been received by the head of office;
- (d) defining terms used but not defined in this Act;
- (e) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of this Act. *2019, c.15, s.12.*

13. Commencement

This Act comes into force on January 1, 2020.