

1980

## c 35 Audit Act

Ontario

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## CHAPTER 35

## Audit Act

## 1. In this Act,

Interpre-  
tation

(a) "agency of the Crown" means an association, authority, board, commission, corporation, council, foundation, institution, organization or other body,

(i) whose accounts the Auditor is appointed to audit by its shareholders or by its board of management, board of directors or other governing body,

(ii) whose accounts are audited by the Auditor under any other Act or whose accounts the Auditor is appointed by the Lieutenant Governor in Council to audit,

(iii) whose accounts are audited by an auditor, other than the Auditor, appointed by the Lieutenant Governor in Council, or

(iv) the audit of the accounts of which the Auditor is required to direct or review or in respect of which the auditor's report and the working papers used in the preparation of the auditor's statement are required to be made available to the Auditor under any other Act,

but does not include one that the *Crown Agency Act* states is not affected by that Act or that any other Act states is not a Crown agency within the meaning or for the purposes of the *Crown Agency Act*; R.S.O. 1980,  
c. 106

(b) "Assistant Auditor" means the Assistant Provincial Auditor;

(c) "Auditor" means the Provincial Auditor;

(d) "Board" means the Board of Internal Economy referred to in section 84 of the *Legislative Assembly Act*;

R.S.O. 1980,  
c. 235

(e) "Crown controlled corporation" means a corporation that is not an agency of the Crown and having 50 per cent or more of its issued and outstanding shares vested in Her Majesty in right of Ontario or having the appointment of a majority of its board of directors made or approved by the Lieutenant Governor in Council;

R.S.O. 1980,  
c. 291

(f) "fiscal year" has the same meaning as in the *Ministry of Treasury and Economics Act*;

(g) "inspection audit" means an examination of accounting records;

(h) "Office of the Auditor" means the Office of the Provincial Auditor;

R.S.O. 1980,  
c. 161

(i) "public money" has the same meaning as in the *Financial Administration Act*. 1977, c. 61, s. 1; 1979, c. 34, s. 1.

Office  
of the  
Auditor

**2.** The Office of the Provincial Auditor shall consist of the Auditor, the Assistant Auditor and such employees as may be required from time to time for the proper conduct of the business of the Office. 1977, c. 61, s. 2.

Provincial  
Auditor

**3.** The Auditor shall be appointed as an officer of the Assembly by the Lieutenant Governor in Council on the address of the Assembly after consultation with the chairman of the standing Public Accounts Committee of the Assembly. 1977, c. 61, s. 3.

Tenure of  
office and  
removal

**4.** The Auditor may hold office until the end of the month in which he attains the age of sixty-five years and may be reappointed for a period not exceeding one year at a time until the end of the month in which he attains seventy years of age, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. 1977, c. 61, s. 4.

Salary of  
Auditor

**5.—(1)** The Auditor shall be paid a salary within the highest range of salaries paid to deputy ministers in the Ontario civil service and is entitled to the privileges of office of a senior deputy minister.

Idem

(2) The salary of the Auditor, within the salary range referred to in subsection (1), shall be determined and reviewed annually by the Board.

(3) The salary of the Auditor shall be charged to and paid out of the Consolidated Revenue Fund. 1977, c. 61, s. 5. Idem

6.—(1) The Assistant Auditor shall be appointed as an officer of the Assembly by the Lieutenant Governor in Council upon the recommendation of the Auditor. Assistant Auditor

(2) The Assistant Auditor, under the direction of the Auditor, shall assist in the exercise of the powers and the performance of the duties of the Auditor and, in the absence or inability to act of the Auditor, shall act in the place of the Auditor. 1977, c. 61, s. 6. Idem

7. The persons appointed as Auditor and Assistant Auditor shall be persons who are licensed under the *Public Accountancy Act*. 1977, c. 61, s. 7. Qualifications R.S.O. 1980, c. 405

8. The Provincial Auditor and the Assistant Provincial Auditor holding office under *The Audit Act*, being chapter 36 of the Revised Statutes of Ontario, 1970, immediately before the 1st day of April, 1978 shall be deemed to be appointed under this Act. 1977, c. 61, s. 8, *revised*. Transitional

9.—(1) The Auditor shall audit, on behalf of the Assembly and in such manner as the Auditor considers necessary, the accounts and records of the receipt and disbursement of public money forming part of the Consolidated Revenue Fund whether held in trust or otherwise. Audit of Consolidated Revenue Fund

(2) Where the accounts and financial transactions of an agency of the Crown are not audited by another auditor, the Auditor shall perform the audit, and, notwithstanding any provision of any other Act, where the accounts and financial transactions of an agency of the Crown are audited by another auditor, the audit shall be performed under the direction of the Auditor and such other auditor shall report to the Auditor. Audit of agencies of the Crown

(3) Where the accounts of a Crown controlled corporation are audited other than by the Auditor, the person or persons performing the audit, Audit of Crown controlled corporations

(a) shall deliver to the Auditor forthwith after completion of the audit a copy of their report of their findings and their recommendations to the management and a copy of the audited financial statements of the corporation;

(b) shall make available forthwith to the Auditor, when so requested by the Auditor, all working papers, reports, schedules and other documents in respect of the audit or in respect of any other audit of the corporation specified in the request;

(c) shall provide forthwith to the Auditor, when so requested by the Auditor, a full explanation of work performed, tests and examinations made and the results obtained, and any other information within the knowledge of such person or persons in respect of the corporation.

Additional  
examination  
and  
investigation

(4) Where the Auditor is of the opinion that any information, explanation or document that is provided, made available or delivered to him by the auditor or auditors referred to in subsection (2) or (3) is insufficient, the Auditor may conduct or cause to be conducted such additional examination and investigation of the records and operations of the agency or corporation as the Auditor considers necessary. 1977, c. 61, s. 9.

Information  
and access  
to records

**10.** Every ministry of the public service, every agency of the Crown and every Crown controlled corporation shall furnish the Auditor with such information regarding its powers, duties, activities, organization, financial transactions and methods of business as the Auditor from time to time requires, and the Auditor shall be given access to all books, accounts, financial records, reports, files and all other papers, things or property belonging to or in use by the ministry, agency of the Crown or Crown controlled corporation and necessary to the performance of the duties of the Auditor under this Act. 1977, c. 61, s. 10.

Accommoda-  
tion in  
ministries  
and Crown  
agencies

**11.** For the purposes of the exercise of his powers or the performance of his duties under this Act, the Auditor may station one or more members of the Office of the Auditor in any ministry of the public service, in any agency of the Crown and in any Crown controlled corporation and the ministry, agency or corporation shall provide such accommodation as is required for such purposes. 1977, c. 61, s. 11.

Annual  
report

**12.**—(1) The Auditor shall report annually to the Speaker of the Assembly after each fiscal year is closed and the Public Accounts are laid before the Assembly, but not later than the 31st day of December in each year unless the Public Accounts are not laid before the Assembly by that day, and may make a special report to the Speaker at any time on any matter that in the opinion of the Auditor should not be deferred until the annual report, and the Speaker shall lay each such report before the Assembly

forthwith if it is in session or, if not, not later than the tenth day of the next session.

(2) In his annual report in respect of each fiscal year, <sup>Contents of report</sup> the Auditor shall report on,

- (a) the work of the Office of the Auditor, and on whether in carrying on the work of the Office the Auditor received all the information and explanations required;
- (b) the examination of accounts of receipts and disbursements of public money;
- (c) the examination of the statements of Assets and Liabilities, the Consolidated Revenue Fund and Revenue and Expenditure as reported in the Public Accounts, and shall express an opinion as to whether the statements present fairly the financial position of the Province, the results of its operations and the changes in its financial position in accordance with the accounting principles stated in the Public Accounts applied on a basis consistent with that of the preceding fiscal year together with any reservations the Auditor may have;
- (d) all special warrants issued to authorize payments, stating the date of each special warrant, the amount authorized and the amount expended;
- (e) all orders of the Management Board of Cabinet made to authorize payments in excess of appropriations, stating the date of each order, the amount authorized and the amount expended;
- (f) such matters as, in the opinion of the Auditor, should be brought to the attention of the Assembly including, without limiting the generality of the foregoing, any matter related to the audit of agencies of the Crown or Crown controlled corporations or any cases where the Auditor has observed that,
  - (i) accounts were not properly kept or public money was not fully accounted for,
  - (ii) essential records were not maintained or the rules and procedures applied were not sufficient to safeguard and control public property or to effectively check the assessment, collection and proper allocation of

revenue or to ensure that expenditures were made only as authorized,

- (iii) money was expended other than for the purposes for which it was appropriated,
- (iv) money was expended without due regard to economy and efficiency, or
- (v) where procedures could be used to measure and report on the effectiveness of programs, the procedures were not established or, in the opinion of the Auditor, the established procedures were not satisfactory. 1977, c. 61, s. 12.

Inspection  
audit

**13.**—(1) The Auditor may perform an inspection audit in respect of a payment in the form of a grant from the Consolidated Revenue Fund or an agency of the Crown and may require a recipient of such a payment to prepare and to submit to the Auditor a financial statement that sets out the details of the disposition of the payment by the recipient.

Obstruction  
of Auditor

(2) No person shall obstruct the Auditor or any member of the Office of the Auditor in the performance of an inspection audit or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the inspection audit.

Offence

(3) Every person who knowingly contravenes subsection (2) and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

Idem,  
corporation

(4) Where a corporation is convicted of an offence under subsection (3), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. 1977, c. 61, s. 13.

Examination  
on oath

**14.** The Auditor may examine any person on oath on any matter pertinent to any account subject to audit by the Auditor or in respect of any inspection audit by the Auditor and for the purpose of such an examination the Auditor has the powers conferred upon a commission under Part II of the *Public Inquiries Act*, which Part applies to the examination as if it were an inquiry under that Act. 1977, c. 61, s. 14.

R.S.O. 1980,  
c. 411

Proviso

**15.** Nothing in this Act shall be construed to require the Auditor,

- (a) to report on any matter that, in the opinion of the Auditor, is immaterial or insignificant; or
- (b) to audit or direct the audit of or report on the accounts of a body not referred to in this Act in the absence of such a requirement in any other Act in respect of the body. 1977, c. 61, s. 15.

**16.** At the request of the standing Public Accounts Committee of the Assembly, the Auditor and any member of the Office of the Auditor designated by the Auditor shall attend at the meetings of the committee in order,

Attendance at standing Public Accounts Committee of the Assembly

- (a) to assist the committee in planning the agenda for review by the committee of the Public Accounts and the annual report of the Auditor; and
- (b) to assist the committee during its review of the Public Accounts and the annual report of the Auditor,

and the Auditor shall examine into and report on any matter referred to him in respect of the Public Accounts by a resolution of the committee. 1977, c. 61, s. 16.

**17.** The Auditor shall perform such special assignments as may be required by the Assembly, the standing Public Accounts Committee of the Assembly, by resolution of the committee, or by a minister of the Crown in right of Ontario but such special assignments shall not take precedence over the other duties of the Auditor under this Act and the Auditor may decline an assignment by a minister of the Crown that, in the opinion of the Auditor, might conflict with the other duties of the Auditor. 1977, c. 61, s. 17.

Special assignments

**18.** The Auditor may advise appropriate persons employed in the public service of Ontario as to any matter that comes or that may come to the attention of the Auditor in the course of the exercise of his powers or the performance of his duties as Auditor. 1977, c. 61, s. 18.

Power to advise

**19.** Audit working papers of the Office of the Auditor shall not be laid before the Assembly or any committee of the Assembly. 1977, c. 61, s. 19.

Audit working papers

**20.** Subject to the approval of the Board and to sections 22, 25 and 26, the Auditor may employ such professional staff and other persons as the Auditor considers necessary for the efficient operation of the Office of the Auditor and may determine the salary of

Staff



the Assistant Auditor and the salaries and remuneration, which shall be comparable to the salary ranges of similar positions or classifications in the public service of Ontario, and the terms and conditions of employment of the employees of the Office of the Auditor. 1977, c. 61, s. 20 (1).

Oath of office and secrecy and oath of allegiance

**21.**—(1) Every employee of the Office of the Auditor, before performing any duty as an employee of the Auditor, shall take and subscribe before the Auditor or a person designated in writing by the Auditor,

(a) the following oath of office and secrecy:

I, ....., do swear (or solemnly affirm) that I will faithfully discharge my duties as an employee of the Provincial Auditor and will observe and comply with the laws of Canada and Ontario and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Auditor.

So help me God. (Omit this line in an affirmation)

(b) the following oath of allegiance:

I, ....., do swear (or solemnly affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), her heirs and successors according to law.

So help me God. (Omit this line in an affirmation)

Idem

(2) The Auditor may require any person or class of persons appointed to assist the Auditor for a limited period of time or in respect of a particular matter to take and subscribe either or both of the oaths set out in subsection (1).

Record of oaths

(3) A copy of each oath administered to an employee of the Office of the Auditor under subsection (1) shall be kept in the file of the employee in the Office of the Auditor.

Cause for dismissal

(4) The failure of an employee of the Office of the Auditor to take and subscribe or to adhere to either of the oaths required by subsection (1) may be considered as cause for dismissal. 1977, c. 61, s. 21.

Benefits

R.S.O. 1980, c. 418

**22.**—(1) The employee benefits applicable from time to time under the *Public Service Act* to civil servants who are not within a unit of employees established for collective bargaining under any Act apply or continue to apply, as the case may be, to the Auditor, the Assistant Auditor and to the full-time permanent and probationary employees of the Office of the Auditor and the Board or

any person authorized by order of the Board may exercise the powers and duties of the Civil Service Commission and the Auditor or any person authorized in writing by the Auditor may exercise the powers and duties of a deputy minister under that Act in respect of such benefits.

(2) The *Public Service Superannuation Act* applies to the full-time permanent and probationary employees of the Office of the Auditor as though the Office of the Auditor were a commission designated by the Lieutenant Governor in Council under section 28 of that Act and to the Auditor and Assistant Auditor as though they were members of such a commission who held positions designated by and whose requests for such designations had been approved by the Lieutenant Governor in Council under section 28 of that Act and all credits in the Public Service Superannuation Fund of the full-time permanent and probationary employees of the Office of the Auditor and of the Auditor and the Assistant Auditor accumulated under that Act immediately before the 1st day of April, 1978 are preserved and continued in accordance with that Act. 1977, c. 61, s. 22, revised.

Super-annuation benefits  
R.S.O. 1980, c. 419

**23.** Subject to the approval of the Board, the Auditor from time to time may appoint one or more persons having technical or special knowledge of any kind to assist the Auditor for a limited period of time or in respect of a particular matter and the moneys required for the purposes of this section shall be charged to and paid out of the Consolidated Revenue Fund. 1977, c. 61, s. 23.

Expert assistance

**24.** The Auditor may delegate in writing to any other member of the Office of the Auditor authority to exercise any power or perform any duty of the Auditor other than reporting to the Assembly. 1977, c. 61, s. 24.

Delegation of authority

**25.—(1)** An employee of the Office of the Auditor shall not,

Political activities of employees of the Office of the Auditor

(a) be a candidate in a provincial or federal election or in an election for any municipal office including a local board of a municipality within the meaning of the *Municipal Affairs Act*;

R.S.O. 1980, c. 303

(b) solicit funds for a provincial, federal or municipal party or candidate; or

(c) associate his position in the Office of the Auditor with any political activity.

(2) Contravention of any of the provisions of subsection (1) may be considered as cause for dismissal. 1977, c. 61, s. 25.

Cause for dismissal

Conduct  
and  
discipline

**26.**—(1) The Auditor may make orders and rules for the conduct of the internal business of the Office of the Auditor and, after a hearing, may suspend, demote or dismiss any employee of the Office of the Auditor for cause.

Hearing  
R.S.O. 1980,  
c. 418

(2) The provisions of the *Public Service Act* and the regulation thereunder that apply in relation to suspension from employment pending an investigation and in relation to a hearing by a deputy minister or his delegate as to cause for dismissal, other than as to notice to the Civil Service Commission, apply with necessary modifications where the Auditor is of the opinion that there may exist cause for the suspension without pay, demotion or dismissal of an employee of the Office of the Auditor, and, for the purpose, the Auditor shall be deemed to be a deputy minister.

Appeals

(3) A decision of the Auditor to demote, suspend or dismiss an employee may be appealed by the employee, within fourteen days after the decision has been communicated to him, to the Public Service Grievance Board established under the *Public Service Act*.

Grievance  
Board  
authorized  
to hear  
appeals

(4) The Public Service Grievance Board may hear and dispose of an appeal under this section and the provisions of the regulation under the *Public Service Act* that apply in relation to a grievance for dismissal apply with necessary modifications to an appeal under this section, and, for the purpose, the Auditor shall be deemed to be a deputy minister and the decision of the Public Service Grievance Board is final and the Public Service Grievance Board shall report its decision and reasons in writing to the Auditor and to the appellant. 1977, c. 61, s. 26.

Proceedings  
privileged

**27.**—(1) No proceedings lie against the Auditor, the Assistant Auditor, any person employed in the Office of the Auditor or any person appointed to assist the Auditor for a limited period of time or in respect of a particular matter, for anything he may do or report or say in the course of the exercise or the intended exercise of functions under this Act, unless it is shown that he acted in bad faith.

Information  
confidential

(2) The Auditor, the Assistant Auditor and each person employed in the Office of the Auditor or appointed to assist the Auditor for a limited period of time or in respect of a particular matter shall preserve secrecy with respect to all matters that come to his knowledge in the course of his employment or duties under this Act and shall not communicate any such matters to any person, except as may be required in connection with the administration of this Act or any proceedings under this Act or under the *Criminal Code* (Canada). 1977, c. 61, s. 27.

R.S.C. 1970,  
c. C-34

**28.** A person or persons, not employed by the Crown or the Office of the Assembly, licensed under the *Public Accountancy Act* and appointed by the Board, shall examine the accounts relating to the disbursements of public money on behalf of the Office of the Auditor and shall report thereon to the Board and the chairman of the Board shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. — 1977, c. 61, s. 28.

Examination  
of accounts  
of Office of  
the Auditor  
R.S.O. 1980,  
c. 405

**29.—(1)** The Auditor shall present annually to the Board estimates of the sums of money that will be required for the purposes of this Act.

Estimates

(2) The Board shall review and may alter as it considers proper the estimates presented by the Auditor, and the chairman of the Board shall cause the estimates as altered by the Board to be laid before the Assembly and the Assembly shall refer the estimates laid before it to a committee of the Assembly for review.

Review  
by Board

(3) Notice of meetings of the Board to review or alter the estimates presented by the Auditor shall be given to the chairman and the vice-chairman of the standing Public Accounts Committee of the Assembly and the chairman and the vice-chairman may attend at the review of the estimates by the Board.

Notice

(4) The moneys required for the purposes of this Act, other than under sections 5 and 23, shall be paid out of the moneys appropriated therefor by the Legislature. 1977, c. 61, s. 29.

Moneys

