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Court File No.

**FEDERAL COURT**

BETWEEN:

**PAIGE DARCY PRODUCTIONS INC.**

Applicant

and

**THE MINISTER OF CANADIAN HERITAGE**

Respondent

APPLICATION FOR JUDICIAL REVIEW UNDER SECTION 18.1 OF THE  
*FEDERAL COURTS ACT*, R.S.C. 1985, c. F-7

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**NOTICE OF APPLICATION**


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TO THE RESPONDENT

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario M5V 1Z4.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: November 6, 2024

Issued by \_\_\_\_\_  
Registry Officer

Address of \_\_\_\_\_ 180 Queen Street West #200  
local office \_\_\_\_\_ Toronto, ON M5V 1Z4  
\_\_\_\_\_

**TO:**       **The Minister of Canadian Heritage**  
The Honourable Pascale St.-Onge  
15 Eddy Street  
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J8X 4B3

Tel: 819-997-7788  
Email: [hon.pascale.st-onges@pch.gc.ca](mailto:hon.pascale.st-onges@pch.gc.ca)

Respondent

## APPLICATION

This is an application for judicial review of a decision of the Minister of Canadian Heritage (the “**Minister**”) made on October 9, 2024 (the “**Decision**”) to deny a Canadian film or video production tax credit certificate (also known as a Part A certificate) (the “**Certificate**”) for the production entitled *Paige Darcy and the Case of the Stoned Cat* (the “**Production**”).

### **The Applicant makes application for:**

1. An order setting aside or quashing the Decision of the Minister;
2. A declaration that the Production qualifies for a Certificate and a *mandamus* order directing the Minister to issue a Certificate for the Production; or, in the alternative, an order directing the Minister to re-consider the Decision and re-determine the application in accordance with the directions and reasons of this Court;
3. Costs of this application, inclusive of disbursements, applicable taxes and interest;  
and
4. Such further and other relief as counsel may advise and this Court may permit.

### **The grounds for the application are:**

#### ***The Parties and Background***

5. The Applicant, Paige Darcy Productions Inc. (the “**Production Company**”), is a corporation incorporated pursuant to Canada’s *Business Corporations Act*. The Applicant was created solely for the purposes of producing the Production.

6. The Respondent, the Minister, is conferred (pursuant to the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) (the “*ITA*”)) with the power, among other things, to issue certificates that entitle holders to claim tax credits with respect to film productions.
7. Canada offers tax credits to Canadian producers through the Canadian Film or Video Production Tax Credit (“**CPTC**”). The CPTC was designed to encourage the creation of Canadian film and television programming, and to stimulate the development of an active domestic independent production sector in Canada. The Applicant was induced by the incentives offered by the CPTC to produce the Production in Canada.
8. The Minister determines eligibility for the tax credit on the basis of information provided by the producer and the recommendation made by the Canadian Audio-Visual Certification Office (“**CAVCO**”), a unit of the Department of Canadian Heritage focused on the implementation of these programs. CAVCO and the Canada Revenue Agency (the “**CRA**”) jointly administer the CPTC.
9. CAVCO’s publicly-stated standard for processing applications is 176 calendar days (i.e., approximately 6 months). If a production is eligible, the Minister issues a *Canadian Film or Video Production Certificate* (known as a Part A certificate), the filing of which is prerequisite for a company to qualify for the tax credit.
10. Complementary tax credit programs are also administered by Ontario, including through the Ontario Film & Television Tax Credit (“**OFTTC**”). OFTTC, which has a substantively identical framework as the federal/CPTC program administered by the

Minister/CAVCO, has approved the Production in the ordinary course and has neither delayed the review process nor raised any objections in a manner similar to CAVCO.

11. Matthew Campagna is the sole director of the Production Company. Mr. Campagna, through related entities, previously produced four film productions in Canada with a substantively identical financing model as the Production, all four of which were approved for tax credits by CAVCO, Ontario's counterpart programs and the CRA in the ordinary course.

12. Specifically, the financing model for the Production and the previous four film productions involved raising funds through share purchases by cast and crew members (sometimes referred to as "reinvestments"). This model allows non-producers, such as cast and crew members, to share in the profits of the film production. CAVCO's guidelines expressly endorse share purchases as an acceptable form of financing, stating that (i) a corporation may raise funds by issuing shares of its stock, such as preferred shares, and (ii) such funds raised are not considered "assistance" (in other words, funds raised via share purchases are therefore counted towards the qualified labour expenditure).

13. CAVCO's approval of this financing model for the previous four film productions was consistent with its publicly-stated guidelines; and, as can be expected, these facts and the publicly-stated guidelines induced Mr. Campagna to structure the Production in a similar manner as the previous four productions and to produce the Production in Canada (as opposed to in other countries offering competing tax credits and/or incentives to film producers). At no point did CAVCO provide any notice to the public that CAVCO no

longer considered this financing model to be acceptable or that CAVCO's policy had changed.

***The Production***

14. In reliance upon CAVCO's stated policies and historical practices, the Applicant commenced its process to produce the Production. To that end, the Applicant arranged for a loan of \$1,927,000 with a \$200,000 interest reserve from Royal Bank of Canada ("**RBC**"). Mr. Campagna and his spouse personally guaranteed the RBC loan.

15. In advancing the loan, RBC relied upon a professional accounting opinion that calculated the tax credits that the Production Company expected to receive based on CAVCO's stated policies and historical practices (including the certificates issued by CAVCO for the four preceding productions produced by Mr. Campagna with a substantially identical financing model). The Production Company and Mr. Campagna similarly relied upon CAVCO's stated policies and historical practices in agreeing to, respectively, borrow and personally guarantee the RBC loan.

16. To date, due to the delays and actions of CAVCO, the Applicant has paid approximately \$350,000 in interest to RBC, in far excess of the interest reserve that was calculated based on the assumption that CAVCO would act reasonably and consistent with CAVCO historical practices and guidelines. Approximately \$16,000 in interest was due monthly for the first 20 months of the RBC loan (recently reduced to \$13,000 in monthly interest due to decreased interest rates).

***CAVCO's Prejudicial Two-Year Review: August 2022 to October 2024***

17. On August 2, 2022, the Applicant filed its application for certification of the Production; and payment was completed on September 28, 2022.

18. CAVCO, on behalf of the Minister, issued its notice of decision categorically denying the entire application for a Certificate on October 9, 2024. CAVCO and the Minister both acted in a procedurally unfair and prejudicial manner.

19. CAVCO reviewed the application for over two years, in far excess of its publicly-stated policy to process and determine applications within 6 months. During this time, the Applicant and/or the Applicant's representatives repeatedly and frequently requested CAVCO to expedite its process and expressly alerted CAVCO to the significant financial hardship and prejudice suffered by the Applicant due to CAVCO's delays.

20. CAVCO's protracted process caused the Applicant to unnecessarily incur significant interest payments and deprived the Applicant during that period of the finality necessary to take necessary business and other steps, including the seeking of judicial review.

21. CAVCO conducted an unfair and unreasonable review process, including by making intermittent and staggered requests for modifications of the same documents, and by ignoring and/or not reviewing correspondence and materials sent on behalf of the Applicant.

22. During the two years, CAVCO focused its review primarily on issues relating to distribution and licensing agreements, which CAVCO confirmed on April 18, 2024 were satisfactorily resolved by the Applicant, stating that the relevant agreements “do not contravene any eligibility requirements” and that “the applicant could be informed that these would be acceptable to CAVCO if they were put into place in other productions as well.”

23. Nonetheless, on June 10, 2024, by correspondence from CAVCO director Scott White, CAVCO provided advance notice of its preliminary decision to deny the Certificate for the Production (the “**Advance Notice**”). In the Advance Notice, CAVCO advised, without any reasonable substantiation, that CAVCO had concerns about the reasonableness of the labour expenditure amounts. Moreover, without particularization or substantiation, CAVCO advised for the first time in the two-year long process that “the facts” also “raise questions of authenticity and reliability in the documentation provided”. CAVCO advised vaguely that CAVCO would need to verify the labour expenditures, but failed to explain what was required or what was constitutive of such verification.

24. On July 3, 2024, counsel for the Applicant (Harriet Reisman of Reisman Law Offices) sent a detailed 15-page letter responding fully to the issues raised in the Advance Notice. Counsel for the applicant also provided an extensive database of supporting documents confirming the integrity of the financial model and the authenticity of the documents. CAVCO ignored these submissions. CAVCO did not respond further, nor seek further clarification from the Applicant.

25. On September 17, 2024, Mr. Campagna sent a letter to, among others, the Minister detailing CAVCO's delays and unfair review process. Mr. Campagna requested a meeting with the Minister to address CAVCO's unfair process.

26. A video call was subsequently scheduled between Mr. Campagna and Mr. Matthew Gray (at the time senior policy advisor to the Minister). Mr. Gray advised that there was a concern in the Minister's office about the integrity of CAVCO's administration of the tax credit program, but that he could not provide details. Mr. Gray also advised that the Minister could not become involved directly in the Applicant's matter.

27. Instead, as noted, on October 9, 2024, CAVCO issued the Decision which (instead of reducing qualifying amounts to correspond with what CAVCO maintained were reasonable expenditures) entirely denied the Certificate due to CAVCO's unparticularized, unfounded and highly offensive suggestion that the documents submitted by the Applicant were not authentic. By doing so, CAVCO acted in bad faith and in breach of its statutory duties and obligations.

***CAVCO's Unreasonable Decision and Procedural Unfairness***

28. On April 29, 2024, there was a video call between CAVCO director Scott White and other CAVCO representatives; Mr. Campagna; and Margaret Lewis (of RBC). The April 2024 video call was organized in response to written requests and concerns raised by the Applicant's representatives regarding CAVCO's delayed and unreasonable review process, which was causing significant financial hardship and prejudice to the Applicant.

29. During the video call, Mr. White (Director of CAVCO) confirmed that although the review process and correspondence between the parties over the previous two years was focused primarily on the distribution/licensing agreements and other minor issues, CAVCO's true concern was the basic financing model. This was the first time in the two-year review process that CAVCO expressed any issue with the basic financing model involving share purchases. By concealing these concerns in this manner, CAVCO acted in bad faith and in breach of its duty to proceed in an open, fair and transparent manner. CAVCO knew, or ought to have known, that its proceeding in this manner would cause severe financial harm to the Applicant.

30. During the video call, Mr. Campagna emphasized that the four previous production films approved by CAVCO had the identical financing structure of share purchases; and that lenders, such as RBC, relied upon CAVCO's practices and precedents in lending funds. Mr. White replied that CAVCO does not consider itself bound to follow the precedents of its previous four decisions. This shocking admission demonstrates that CAVCO is willing and able to breach the rules of natural justice and the rule of law.

31. Mr. White also confirmed on the video call that CAVCO would complete its review within 3-4 weeks (i.e., by May 28, 2024). Despite subsequent correspondence sent on behalf of the Applicant expressly reminding CAVCO representatives of Mr. White's promise, CAVCO did not complete its review within this timeframe, causing further financial hardship and prejudice to the Applicant.

32. Although CAVCO claimed in the Notice that it was “not signalling” that it now considered share purchases to be “unacceptable,” the Decision and actions of CAVCO constitutes a policy change effectively deeming such share purchases to be an unacceptable form of financing, as conveyed by Mr. White during the April 2024 video call.

33. CAVCO’s actions have been guided by undisclosed and/or irrelevant factors that have not been properly disclosed to the Applicant or the public.

34. During the two-year review process and at all material times, the Applicant cooperated with CAVCO in good faith and responded to CAVCO’s numerous requests for clarification and documents. Regrettably, the two-year review process was not conducted by CAVCO in good faith or in a procedurally fair manner.

35. The Decision is substantively unreasonable; no Government agency is permitted to act in an arbitrary and capricious manner, especially when doing so will cause severe financial harm to the Applicant. The Decision constitutes an abrupt policy change which has been made by CAVCO without complying with the advance notice and other requirements of natural justice and procedural fairness.

36. The rule of law entitles the Applicant, *inter alia*, to a sense of orderliness of subjection to public, known rules and to protection from arbitrary exercises of power. Procedural fairness requires, *inter alia*, that CAVCO sufficiently particularize the basis for its decisions and to provide the Applicant an opportunity to be fairly heard.

37. CAVCO's actions have violated the rule of law, and deprived the Applicant of natural justice and its rights to a fair procedure. CAVCO failed to take relevant facts and evidence into consideration; relied upon inaccurate industry standards; departed from its own historical practices and publicly stated guidelines; and was motivated by undisclosed and irrelevant factors.

38. CAVCO exceeded its jurisdiction, acted beyond its proper scope, and assumed decision-making authority properly belonging to other entities, including the CRA who according to CAVCO's guidelines is the proper entity to make determinations about the reasonableness and quantum of labour expenditures.

39. CAVCO's retroactive decision to disqualify financings involving share purchases similar to the financing model of the Production, which was decided without notifying the public or the Applicant properly in advance, constitutes an abuse of process. It will not only have a devastating impact on the Applicant but will bring a negative, chilling effect to the film production industry in Canada. This is contrary to the stated mandate of the Minister and defeats the foundational purposes underlying Canada's tax credit program.

40. At all material times, CAVCO purported to act on behalf of the Minister.

41. The *Application Guidelines* for the Canadian Film or Video Production Tax Credit (CPTC), published March 3, 2020 (last revised February 20, 2023);

42. The *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, including sections 18 and 18.1 thereof;

43. The *Federal Courts Rules* (SOR/98-106), including Rule 300 thereof;
44. The *ITA*, including section 125.4 thereof; and
45. Such further and other grounds as counsel may advise and this Court may permit.

**This application will be supported by the following material:**

46. The affidavit of Matthew Campagna, to be filed; and
47. Such further and other evidence as counsel may advise and this Court may permit.

**The Applicant requests the Minister to send a certified copy of the following material that is not in the possession of the Applicant, but is in the possession of the Minister, to the Applicant and to the Registry:**

48. All documents, records and communications in the possession of the Minister, (including CAVCO, Mr. Scott White and other CAVCO representatives) relating to the Decision of the Minister and to the matters raised in this application.

November 6, 2024



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*Lawyers for the Applicant*

**PAIGE DARCY PRODUCTIONS INC.**  
Applicant

-and-

Court File No.:  
**MINISTER OF CANADIAN HERITAGE**  
Respondent

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**FEDERAL COURT**

Proceeding Commenced at Toronto

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**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**  
Application under Section 18.1 of the *Federal Courts Act*

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**NOTICE OF APPLICATION**

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