

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Spell Love Road Productions Ltd. v British Columbia (Finance)*,
2026 BCSC 1861

Date: 20261001
Docket: S256359
Registry: Vancouver

Between:

Spell Love Road Productions Ltd.

Petitioner

And

**Minister of Finance of British Columbia
and Minister of National Revenue**

Respondents

- and -

Docket: S256360
Registry: Vancouver

Between:

Spell Love Road Productions Ltd.

Petitioner/Appellant

And

**His Majesty the King in right of the Province of BC
and BC Ministry of Tourism, Arts, Culture and Sport**

Respondents

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Petitioner/Appellant:

J. Nitikman, K.C.
H. Cho

Counsel for the Respondent, His Majesty
the King in right of the Province of BC:

E. Barchuk
M. Mjaaland

Counsel for the Respondent, Minister of
National Revenue:

C. Mah

Place and Date of Hearing:

Vancouver, B.C.
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Place and Date of Judgment:

Vancouver, B.C.
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Introduction

[1] Spell Love Road Productions Ltd. challenges, by judicial review and appeal, the denial of approximately \$750,000 of Film Incentive BC (“FIBC”) refundable tax credits, available under Part 5 of the BC *Income Tax Act*, RSBC 1996, c. 215 [BCITA].

[2] Spell acknowledges filing its claim for the credits two weeks after expiry of the statutory deadline. It appeals the administrative failure to issue its requisite “completion certificate” in time to meet its deadline, and argues that the subsequent administrative refusals to waive the certificate were unreasonable in the circumstances.

[3] The respondents argue that Spell’s own delays caused the late delivery of its certificate and missed filing deadline, and that the refusal to waive was reasonable because the statutory framework expressly prohibits any extension of the deadline in question.

[4] I agree with Spell that its waiver application should be returned to the CRA for reconsideration. In my respectful view, the CRA decision was unreasonable in that it did not grapple with Spell’s primary bases for requesting waiver of the completion certificate, being that: (a) its complete and satisfactory application was submitted 2.5 months before the filing deadline; (b) once prompted, the administrative body was able to approve its application within a few days; and (c) absent the waiver, Spell will suffer significant financial hardship.

[5] I dismiss Spell’s appeal from the failure to issue its completion certificate in time. In my view, this failure does not fall within the appeal rights in BCITA s 92(2)(a), which allows for appeal of a decision to “refuse to issue a certificate”. The late delivery of the certificate does not amount to a refusal under s 92(2)(a).

Film and Television Tax Credits

[6] Spell is a BC corporation in the film and television production business. The tax credits in issue relate to its production, in 2022-2023, of a movie called *Color My World With Love*.

[7] BCITA Part 5 permits tax credits for certain film and television productions. To qualify, Spell was required to file with the CRA two certificates from the certifying authority under the *Act*, which in this case is the Provincial Minister of Tourism, Arts, Culture and Sport ("Tourism Minister"). The two certificates are: (a) an eligibility certificate, which may be applied for before production begins; and (b) a completion certificate, which may be applied for after production completes (s 85(1)(a)(ii)). It is Spell's late-filing of the completion certificate which led to the refusal of its tax credits.

[8] Part 5 designates Creative BC to administer the FIBC tax credit applications, on behalf, and under the supervision, of the Tourism Minister. Creative BC is a non-profit corporation governed by the *Societies Act*, SBC 2015, c 18. Its mandate is to foster various of BC's creative industries, including television and film, in collaboration with industry and government.

[9] Creative BC's role includes reviewing applications for the two types of certificate and, if appropriate, submitting them to the Tourism Minister for review and signature. Once signed, Creative BC uploads the certificates to its tax credit portal and notifies the applicant of their availability for downloading.

[10] The applicant files its claim for the Part 5 tax credits with the Minister of National Revenue, through the CRA. Under a Tax Collection Agreement, the CRA administers the provincial tax credits on behalf of the BC Minister of Finance, including receiving and auditing completion certificates and deciding whether to pay a tax refund on behalf of the Minister.

The Missed Deadline

[11] The statutory deadline missed by Spell is imposed in *BCITA* s 85(3). It requires the taxpayer corporation to file all requisite information and records with the CRA within 18 months of the end of its taxation year in which the film or show is produced. Section 47(3) expressly prohibits the extension of the s 85(3) deadline.

[12] As already mentioned, Spell concedes missing the s 85(3) deadline. Spell filed its completion certificate with the CRA on August 15, 2024. However, the show was produced in Spell's 2023 taxation year – running from February 1, 2022 to January 31, 2023 – and so the 18-month deadline expired on July 31, 2024.

[13] Spell relies on s 220(2.1) of the federal *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*], for the CRA's discretion to waive the requirement for filing the completion certificate. It says:

Waiver of filing of documents

(2.1) Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or information at the Minister's request.

Key Chronology

[14] In June 2022, Spell released its production to broadcasters and distributors as a "Movie of the Week".

[15] On October 17, 2022, Spell applied for its eligibility certificate. On January 31, 2023, it received the eligibility certificate from the Tourism Minister, certifying it had met the requirements for claiming the FIBC tax credit.

[16] On February 29, 2024, Spell filed its 2023 Federal and BC income tax returns, claiming the FIBC tax credits for certain expenses.

[17] On March 21, 2024, the CRA reminded Spell of the completion certificate filing deadline of July 31, 2024.

[18] On May 10, 2024, Spell submitted its completion certificate application to Creative BC, 2.5 months before the s 85(3) deadline of July 31, 2024. This submission was late in the sense that Creative BC's website recommends that production companies apply for these certificates at least six months before their tax filing deadline.

[19] On June 10, 2024, CRA requested Spell's completion certificate, and advised that failure to provide the certificate by the deadline could result in denial of the tax credit.

[20] On August 9, 2024, Spell followed up with Creative BC about the status of its completion certificate.

[21] On August 15, 2024, Creative BC provided the completion certificate, which Spell immediately filed with the CRA.

[22] On October 16, 2024, the CRA denied the tax credit and Spell's associated tax refund, due to its completion certificate being not being filed within the 18-month deadline in s 85(3).

Spell Tries to Salvage the Tax Credits

[23] Spell then made various applications to try to salvage its lost tax credits, including to:

- a) The CRA, to waive the requirement of a completion certificate. By letter of April 28, 2025, the CRA auditor declined to do so ("CRA Decision").
- b) The MoF, also to waive the requirement of a completion certificate. By email of July 21, 2025, MoF advised that the CRA administered this matter on behalf of Province and so directed Spell back to the CRA (the "MoF Response").

[24] Spell seeks to overturn these two decisions by judicial review for being unreasonable, in the sense that they did not grapple with its key arguments supporting the waiver.

[25] Spell also appeals the Tourism Minister's failure to issue the completion certificate in time for Spell to file it with the CRA by the July 31, 2024 deadline. *BCITA* s 92(2)(a) allows an appeal from a decision of the certifying authority "to refuse to issue a certificate" under the *Act*. Spell submits that the late delivery of the certificate amounted to an effective and unjustified refusal to issue the certificate.

The CRA Decision

[26] By its lawyer's letter of February 27, 2025, Spell applied to the CRA, asking the Minister of National Revenue, as agent for the BC Minister of Finance, to waive the necessity for obtaining and filing the completion certificate.

[27] Spell relied on it having applied for the certificate more than two months in advance of the deadline in s 85(3), and Creative BC and the Tourism Minister's apparent ability to approve its application within a few days after being prompted by Spell on August 9, 2024.

[28] Spell also relied on *Onex Corporation v Canada (Attorney General)*, 2024 FC 1247, in which the court granted judicial review of the CRA's refusal to allow a taxpayer to re-file a special election that was initially omitted. Regarding the remedial nature of s 220(2.1), *Onex* said this:

[7] For the following reasons, the CRA's decisions are unreasonable. While the CRA did apply the principles of statutory interpretation, it failed to consider the context within which subsection 220(2.1) and subsection 220(3) of the *ITA* were adopted, that the subsections are remedial in nature, and that those subsections were adopted as part of a "Fairness Package" adopted by Parliament to grant the Minister extensive discretion to provide remedies for undue hardship resulting from the application of the *ITA*. The CRA also failed to consider section 12 of the *Interpretation Act*, RSC 1985, c I-21 [*Interpretation Act*], requiring that every enactment be deemed remedial and given fair, large and liberal interpretation to best ensure the attainment of its objectives.

[8] As for the CRA's decision to refuse to exercise the Minister's discretion, the CRA failed to consider and weigh the extensive consequences facing *Onex* in the circumstances; including *Onex*'s arguments that, through their structures, they always reasonably intended to benefit from the substantive result later also achieved under Bill C-43 (even without the filing of the Election), that *Onex*'s 2012 and 2013 tax returns had already been filed prior to the enactment of the Amendments and therefore had to be amended,

that Onex's request was not an attempt at retroactive tax planning, and that Onex has a history of tax compliance.

[29] The CRA Decision of April 28, 2025 attached a working paper of April 1, 2025 providing detailed reasons for refusing the waiver. After setting out the key statutory background and factual chronology, the working paper made the following points:

- a) Spell filed its completion certificate application almost two years after the initial release of its production.
- b) The Creative BC website recommends applying for the completion certificate at least six months before the s 85(3) filing deadline.
- c) On March 21, 2024, a CRA officer called Spell to advise of the completion certificate deadline. By letter of June 10, 2024, the CRA advised it was still awaiting the certificate and emphasized the 18-month deadline.
- d) Section 47(3) says the deadline in s 85(3) must not be extended and there is no provision in the *BCITA* permitting such an extension.
- e) The court cases cited by Spell on s 220(2.1) were irrelevant because they did not deal with a situation like s 47(3) where there are no circumstances in which to allow an extension of the statutory 18-month deadline.
- f) The onus falls on the applicant to ensure they have submitted the appropriate certificate for the Film Tax Credits within the filing deadline.
- g) It is a legislative requirement to file a completion certificate under s 85(1)(a)(ii), as such that requirement would not be waived.

The MoF Response

[30] Next, by letter of June 25, 2025, Spell applied to the Minister of Finance to waive the completion certificate requirement, which the CRA had refused to do as the Minister of Finance's agent.

[31] The MoF Response, July 21, 2025, advised that the decision was to be made by the CRA under the Tax Collection Agreement between it and the Province. It said this:

We understand that you are writing ... to request that the Minister of Finance: Waive the requirement under the Film and Television Tax Credit program to file a completion certificate; or, Direct the Canada Revenue Agency (CRA) to

waive the requirement under the Film and Television Tax Credit program to file a completion certificate.

Please note, we are unable to discuss specific details related to Spell because we do not have a signed consent form from them allowing us to disclose those details. However, we can provide that Creative BC's service standards (see FAQ, "How long does it take to get an eligibility or completion certificate?"), as well as recommendations related to certificate application timing (see "When to submit an FIBC application"), are publicly available on their website.

In addition, pursuant to the terms of the Tax Collection Agreement (TCA) between the Province of British Columbia (province) and the CRA, the province agrees to accept CRA's administration in this matter.

As a result, your request should be directed to the CRA...

Governing Law

[32] The parties agree that this judicial review is to apply the reasonableness standard, not correctness. Under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, reasonableness is the presumptive standard where the legislature has created a decision-makers such as the Minister of Finance and the CRA to administer a statutory scheme. None of the established exceptions that would alter that standard apply in this case.

[33] The aim of a reasonableness review is to balance: (a) deference for the legislative intent to leave certain decisions to the administrative body, with, (b) the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law (*Vavilov*, para 82).

[34] Courts are to take a "reasons first" approach that evaluates the administrative decision-maker's justification for its decision rather than the conclusion the court itself would have reached in the decision-maker's place. Administrative reasons must be read "in light of the record and with due sensitivity to the administrative regime in which they were given". The decision-maker's specialized knowledge and experience are relevant considerations, calling for an understanding of the institutional limitations of the court and a correspondingly respectful measure of judicial deference. Absent exceptional circumstances, a reviewing court will defer to

an administrative decision-maker's factual findings (*Vavilov* paras 31, 75, 93, 103; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, para 73).

[35] At the same time, however, a reasonableness review must not be a mere “rubber-stamping” process that shelters administrative decision-makers from accountability. It must remain a “robust form of review” that highlights the need to develop and strengthen a culture of justification in administrative decision making (*Mason*, para 63).

[36] One type of shortcoming that can render a decision unreasonable is a failure to acknowledge and grapple with one or more key arguments raised by the applicant. Such shortcomings become even more important when the consequences to the applicant of an adverse decision are high. In such cases, there is a “heightened responsibility” to ensure that the reasons “reflect those stakes” by demonstrating consideration of “the consequences of a decision and that those consequences are justified in light of the facts and law” (*Vavilov*, paras 133-135; *Mason*, para 76) (See also *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 at para 40, and *The Office of the Information and Privacy Commissioner for British Columbia v. Airbnb Ireland UC*, 2024 BCCA 333 at paras 61, 65).

Analysis

Evidentiary Issues

[37] For purposes of this judicial review, but not the appeal, the respondents object to the admissibility of paragraphs 6-8 in the affidavit of Ms. Martha Termuende, post-production accountant for Spell, and parts of paragraph 10 and all of paragraph 11 in the affidavit of Rober Wong, Vice-President of Creative BC.

[38] In paragraph 6, Ms. Termuende described her understanding that Creative BC has an internal tracking system for when a completion certificate must be filed with the CRA, and so would have known the completion certificate deadline was July 31, 2024.

[39] In paragraph 7, she explained that she did not contact Creative BC after receiving the CRA letter of June 14, 2024 because Spell's application was filed only a month before, and from experience she knew it would not yet be ready.

[40] In paragraph 8, she explained that, as the July 31, 2024 deadline approached, based on past experience she assumed Spell's certificate would be issued in time, and in the last week of January she was ill with a high fever from COVID-19.

[41] I agree with the respondents that paragraphs 7 and 8 are inadmissible in the judicial review. They were neither part of the record before the CRA nor helpful background information about the FIBC tax credit process. In my view, paragraph 6 is admissible as background information about the FIBC tax credit process. The same subject matter was addressed by Creative BC in Mr. Wong's affidavit, which says this:

10. ... It takes 118 days 90% of the time, from the time Creative BC receives an applicant's Certificate application to the time Creative BC sends the Certificate to the certifying authority for execution, but the times can vary widely from one application to another.

11. The processing time ranges from 63 days to 175 days. Processing time is tracked internally but is not something that is shared publicly. The time it takes to process an application is largely dependent on how complete the application is when received by Creative BC. In particular, if an application is not complete and there is a need for further information from the applicant and the applicant is delayed in responding, the number of days will be higher than if there is no need to follow up. The clock tracking time does not stop while Creative BC is waiting for information.

[42] In my view, this evidence is admissible in the judicial review as helpful background information about the FIBC tax credit process. More specifically, the CRA Decision refers to, and relies on, information about Creative BC's review process and this is helpful information about that process, that was, or should have been, known to the CRA representatives involved in the FIBC tax credit process.

Was the CRA Decision Unreasonable?

[43] Spell argues the CRA's refusal to waive the completion certificate was unreasonable because it failed to grapple with Spell's key points that:

- a) Spell's complete and satisfactory application was submitted to Creative BC 2.5 months before the s 85(3) deadline;
- b) When Spell followed up with Creative BC, the certificate was provided in just a few days; and
- c) *ITA* s 220(2.1) is remedial in nature and its purpose is to provide remedies to relieve a taxpayer from undue hardship.

[44] Spell also points to Mr. Wong's evidence that, although Creative BC does not track an applicant's deadlines, it generally looks at every application to see how close the 18-month deadline is, and if there is a need to expedite the review process for applicants approaching the 18-month deadline.

[45] The respondents argue that the CRA Decision is reasonable in that it makes the following unassailable points:

- a) Spell's delay in applying for its certificate was extreme and the cause of its failure to meet the s 85(3) deadline. Spell waited to apply until more than 700 days after the production's release, 465 days after receiving its eligibility certificate, and 50 days after a CRA reminder on March 21, 2024;
- b) Creative BC published its 120-day processing time on its website since 2021. This is also communicated when each completion certificate application is received. Spell's representatives are familiar with this standard (as they acknowledge in their evidence).
- c) A second reminder from CRA, June 10, 2024, emphasized the importance of submitting the certificate by the deadline. However, Spell took no steps until August 9, 2024, after the deadline had passed, when it followed up with Creative BC.
- d) In these circumstances, in which Spell is responsible for failing to obtain its certificate within the 18-month deadline, waiving the certificate would be inconsistent with the s 47(3) prohibition against extending the s 85(3) deadline.

[46] The respondents also point to s 87(1) of the *Act*, which says that a corporation intending to apply for a tax credit must apply to the certifying authority for a completion certificate “promptly after the completion of the production”.

[47] In my respectful view, the CRA Decision quite properly points out numerous considerations militating against granting the waiver in these circumstances. But it is nevertheless unreasonable in that it fails to weigh these considerations against those militating in favour of the waiver.

[48] The analysis portion of the Decision dismisses *Onex* as irrelevant because it is not dealing with a situation of a deadline which is prohibited from being extended. It therefore fails to address the court’s important holdings that, when considering a s 220(2.1) waiver, it is unreasonable to ignore its remedial purpose to relieve undue hardship from the application of the taxing legislation, and in that context to consider the consequences facing the taxpayer without the benefit of waiver. In my view, all of this needed to be considered in circumstances where Spell submitted a complete, satisfactory application 2.5 months before the deadline but forfeited its approximately \$750,000 refundable tax credit due to the application not being processed in time.

[49] The CRA Decision also fails to address whether, despite Spell’s undeniable delays, in these circumstances the waiver does not constitute an impermissible extension of the s 85(3) deadline. Rather than constituting such an extension, the waiver arguably reflects that relief from the certificate was justified because Spell’s application was delivered well before the deadline, but not processed in time, and the harsh consequences of not receiving the applicable tax credits in those circumstances.

[50] In my view, the CRA should reconsider Spell’s request to waive the requirement for its completion certificate, taking into account that Spell’s application was filed more than 2.5 months before the s 85(3) deadline, the speed with which its application was processed once prompted, the remedial nature of *ITA* s 220(2.1), and the harsh consequences to Spell absent the waiver.

Was the MoF Response Unreasonable?

[51] I agree with the respondents that the MoF Response was not a decision capable of judicial review.

[52] The central point in the MoF Response was that Spell's request should be directed back to the CRA, because the CRA was administering the matter under the binding agency relationship established under the Tax Collection Agreement. Thus, it clearly declined to make its own decision about whether to deny Spell's waiver application.

[53] In *British Columbia (Director of Civil Forfeiture) v Sanghera*, 2017 BCSC 1519, para 68, the court said that such a Tax Collection Agreement "neuters the Government of British Columbia's ability to interfere with the CRA's determinations with respect to the administration of the *BCITA*".

[54] I do not accept Spell's argument that the reference in the MoF Response to Creative BC's online service standards and Frequently Asked Questions regarding application timing constituted MoF's own decision not to waive the completion certificate requirement. Although providing this information may be somewhat inconsistent with deferring to the CRA's administration of the matter, when reading the response as a whole, these references do not constitute an independent decision regarding Spell's application.

Completion Certificate Appeal

[55] Spell appeals the waiver refusal under *BCITA* s 92(2)(a), which allows an appeal from a decision of the certifying authority "to refuse to issue a certificate" under the *Act*.

[56] Spell says the Tourism Minister's failure to issue the completion certificate before Spell's deadline amounted to an "effective refusal" to issue it.

[57] The *BCITA* does not prescribe a standard of review for such appeals and so the appellate standard applies. Questions of law are subject to a correctness

standard, while questions of fact or of mixed fact and law, where there is no extricable question of law, are subject to a standard of palpable and overriding error (*Cassiar Jade Contracting Inc. v. Messmer*, 2021 BCSC 1963, para 43).

[58] Spell of course acknowledges that the completion certificate was in fact issued on August 14, 2024, and so in that sense there was no refusal to issue. However, Spell says that the word “refuse” in s 92(2)(a) should be read to include an effective refusal, which it says occurred here because the Tourism Minister, through Creative BC, did not issue the certificate by the statutory deadline despite Spell having applied in more than enough time to have the application processed. This, Spell says, was an unreasonable delay amounting to an effective refusal.

[59] In my view, there is nothing in the text, context or purpose of *BCITA* Part 5 to suggest that, in these circumstances, the Tourism Minister refused to issue the completion certificate within the meaning of s 92(2)(a).

[60] The certificate was issued 97 days after receipt of the application, well within the 120-day service standard. Despite CRA’s warnings, Spell did not follow up with Creative BC at any time before expiry of the s 85 deadline to request expedition of its application as the deadline approached. When Spell finally did follow up, Creative BC and Tourism BC promptly processed the application and the certificate was granted.

[61] The appeal is therefore dismissed.

Conclusion

[62] The CRA is ordered to reconsider Spell’s request to waive the requirement for its completion certificate, taking into account: (a) that Spell’s application was filed more than 2.5 months before the s 85(3) deadline; (b) that the application was processed within a few days of prompting; (c) the remedial nature of *ITA* s 220(2.1); and (d) the harsh consequences to Spell of not waiving the requirement.

[63] Spell's appeal in Action No. S256360 is dismissed.

"Coval J."