FilmOntario

FILM · TELEVISION · INTERACTIVE

July 6, 2020

Amarjot Sandhu, MPP, Chair
Julia Douglas, Clerk
Standing Committee on Finance and Economic Affairs
Room 1405, Whitney Block
Queen's Park, Toronto, ON M7A 1A2

Re: Study of the recommendations relating to the *Economic and Fiscal Update Act, 2020* and the impacts of the COVID-19 crisis on certain sectors of the economy

Dear Standing Committee Members:

FilmOntario is pleased to submit the following comments regarding the impact of the COVID-19 crisis on the Culture and Heritage Sector, and more specifically on the film and television industry.

FilmOntario members include Ontario-based production companies, unions, studios, equipment suppliers and other organizations in the province's screen-based industry. In 2019, our members generated a record-breaking $2.16 billion in direct spending in Ontario and creating almost 45,000 jobs.[1] Before the pandemic hit, we were well on our way to surpassing this milestone. Now, as with every sector of the economy, the story is very different. As of the end of June, we estimate that at least $713 million in direct spending will be lost for this year, and most industry workers have been unemployed throughout the economic shutdown. This is true worldwide as the global film and television production business essentially ground to a halt as a result of the current pandemic.

We are confident that this industry will be able to recover and return to having a significant economic impact on the province of Ontario. The industry has always benefitted from all-party support, and in particular this government's commitment to ensuring that we operate in a predictable business environment with stable and effective tax credits. While the global business environment is anything but predictable at this moment, there are a few things this government can do to restore stability for the industry in Ontario and ensure that our return to business is a success:

1. Mitigate the risk of another economic shutdown by ensuring that all Ontario-based producers have access to a backstop for COVID-19 related insurance claims.

2. Provide support through the tax credits for the increased costs associated with mitigating the risk of COVID-19 on sets.

3. Demonstrate Ontario's ongoing commitment to the economic strength of this sector by making sure the province has stable and effective tax credits, with expedited payment

[1] 2019 Production Statistics, www.ontariocreates.ca.

terms, less red tape, and certainty for companies who had to shut down productions in March.

4. Support for domestic producers.

5. Training and other initiatives to lay the groundwork for a diverse and inclusive workforce to ensure industry growth.

By investing in these areas, the government can provide certainty to the film and television sector, ensuring that the jobs and investment we create throughout the province not only return, but do so in a way that is better and stronger than ever.

On behalf of all the members of FilmOntario, we would like to thank the government for the actions that have been taken to date to address the huge economic impact that the COVID-19 pandemic has had on our industry and on the entire province of Ontario. In particular, Minister MacLeod's quick move to re-configure the Minister's Film and Television Advisory Panel to focus on COVID-19 recovery demonstrated her understanding of the significant impact COVID-19 has had on our sector and gave industry the leaders the opportunity to propose solutions that will ensure that we can come back to work, and do so safely.

FilmOntario was involved in developing the recommendations that were put forward to the Film and TV Advisory Panel and we support them completely. We greatly appreciate the work that has already been done on those proposals by staff at the Ministry of Heritage, Sport, Tourism and Culture Industries, the Ministry of Finance, and Ontario Creates, and we look forward to continuing to work together to ensure the best possible outcomes for our sector. The proposals outlined here are meant to support and enhance those recommendations.

1. Risk Mitigation

As has been reported widely,[2] one of the biggest hurdles to returning to work for most film and television production companies will be the inability to obtain insurance that covers the risk of another pandemic-related production shutdown. Production insurance is a necessary component of mitigating risk for producers and their financial backers; without it, the risk is too great for individual producers to bear on their own. This issue is not unique to Ontario producers, rather, it is one that is of national and indeed even international concern.

For this reason, FilmOntario is supporting our colleagues at the Canadian Media Producers Association (CMPA), Canada's national trade association for independent English-language media producers, on an insurance proposal to the federal government. This proposal would have the federal government commit to a temporary reserve fund that would backstop claims related to communicable diseases or COVID-19 specifically. Producers would pay an additional fee or premium into a pool to cover COVID-related potential losses; the government backstop would cover amounts in excess of the pool.

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[2] See, for example, Barry Hertz, "Before cameras roll, Canadian film and TV producers face one large, un-sexy issue: insurance", www.theglobeandmail.com, 18 June 2020.

This proposal shares the risk of re-starting production, and the jobs that go along with it, between government and the private sector. We therefore ask that the government ensure that this type of insurance is available for producers here in this province, by working with your counterparts at the federal government to create a backstop for the sector, or by leading the way and creating a made-in-Ontario solution that would mitigate risk for Ontario-based producers.

2. **COVID-19 Mitigation Costs**

Since production shut down in mid-March, the industry has been working together to make sure that as we get back to work, we will do so in ways that are as safe as possible. This not only protects our workers and our communities, our top priority, it also reduces the risk of further COVID-19 or other communicable disease transmission and, hopefully, the need for any insurance claims as outlined above. We were very pleased to work with the Ministry of Labour, Training and Skills Development to have a set of industry guidelines approved. These guidelines will ensure that we mitigate the risk of a COVID-19 outbreak on sets and in our workplaces.

That being said, the cost of these new health and safety measures are substantial, estimated at between five and fifteen percent of a production's budget. These are not costs that have been included in production financing arrangements, which are typically made well before a production is ready to start filming. This is a gap that needs to be addressed if the industry is to get back to work.

We ask that the province of Ontario, on a temporary basis, use the film and television tax credits to reimburse productions for 100% of the additional costs related to COVID-19 mitigation measures. In addition, we ask that the government confirm that those costs that would normally be eligible for the credits (e.g., labour, cost of services, etc.) but are higher than normal or include new positions due to COVID-19 mitigation, are indeed eligible costs for the tax credits, and will continue to remain eligible even if the government declines to provide additional support for these costs.

As each of the three tax credits is slightly different, the details of the additional support needed are outlined in **Appendix 1: Health and Safety Costs for Tax Credit Eligibility**. This is a temporary measure designed to give the industry time to adjust to new production protocols and the associated financing required. We would be happy to work with government partners to determine an appropriate sunset clause, based on evolving public health standards and when measures can be relaxed.

The province of Quebec has recently indicated that it will be providing support to producers for these types of costs. If Ontario were to do the same this would level the playing field for our producers.

3. **Stable, Effective and Competitive Tax Credits**

The government's 2019 Budget commitment to stable tax credits laid the groundwork for continued growth in the industry. The record-breaking production spending we referenced earlier in this submission was a 14.5% increase over the previous year, and 2020 was lining up to be another record-breaker. Prior to the economic shutdown, Premier Ford often noted that he would like to see a $5 billion film and television industry in this province – a goal that we shared then and that we believe is still possible with the proper support that will allow us to recover from COVID-19. Stable, effective, and competitive tax credits are a key part of this support. We ask that the government continue its commitment to stability for the film and television tax credits.

A first step in signalling this commitment will be for the government to ensure that those companies who had their productions halted due to the health emergency remain eligible for the tax credits, whether or not they are able to complete their productions. We have already submitted to government a list of eligibility adjustments that will ensure that the following types of productions remain eligible for tax credits on investments these companies have already made in the province:

- productions that shut down during pre-production, and do not currently have a scheduled date for the start of principal photography;
- productions that shut down after principal photography began but before production was completed, and do not currently have a date to re-start production and/or complete production; and/or
- productions that are facing longer-than-normal post-production timelines due to the need for visual effects and editing professionals to work remotely.

In all cases, producers have incurred costs that would normally be eligible for the tax credit. We are asking the Province to ensure that productions in all of the above situations be eligible for tax credit support where eligible costs have been incurred, whether or not they are able to resume production. A complete list of these eligibility changes can be found in Appendix 2: Eligibility Changes for Productions That Needed to Shut Down.

Over the past few years, Ontario Creates has been working on improving the turnaround times for issuing film and television tax credit Certificates of Eligibility, shortening the amount of time it takes for producers to receive their tax credits. This work has been accelerated during COVID-19, with impressive results, and we would like to thank them for this success.

However, the current crisis has amplified the importance of cash flow for production companies, and the faster they can get their tax credits the better. We therefore request that the province accelerate tax credit milestones, and allow tax credit claims to be paid out sooner. For productions that span more than one taxation year, we propose that 100% of the first-year claim be paid out as soon as a tax return is filed; for all other productions, the pay-out should be 80%. This is a no-cost recommendation, as it simply accelerates the current payment schedule, but it will effectively allow producers to access financing up to a year sooner than they are currently.

In addition, FilmOntario has been working with our government and industry partners on suggestions to reduce red tape in the film and television tax credits. A complete list of these suggestions, which have previously been shared with government, can be found in Appendix 3: FilmOntario Red Tape Reduction Suggestions for the Film and TV Tax Credits. However, there are three suggestions which have become even more important due to the effects of COVID-19:

1. Simplify residency requirements across all the film and television tax credits so that the remuneration paid to individuals who are residing in the province during the year of the production is eligible labour for the credit. This is an important measure to ensure

projects can quickly resume visual effects and live action work with the best available resources, and improve Ontario's competitive position compared to British Columbia and Quebec.

2. Update broadcast triggers in the Ontario Film and Television Tax Credit (OFTTC) and the Ontario Production Services Tax Credit (OPSTC) to reflect current licensing and business realities, so that all professional productions are eligible for the credits. Distribution models have changed rapidly during the pandemic to reach audiences wherever they are; the provincial tax credits should be available to a production no matter what platform it ends up on. This would be in line with changes that have already been made at the federal level.

3. Expand OPSTC eligibility to incorporate all location fees paid to taxable Ontario individuals and companies and to government-owned properties (which we have requested to be made available as filming locations). This was already needed to make Ontario as competitive as other jurisdictions with this type of credit; now it is even more important in order to build capacity in the sector through access to additional filming spaces.

In normal times, the film and television tax credits return $1.20 to the government through provincial and municipal taxes and fees for every dollar that is paid out. We hope that, with the support of the government through the changes requested above, our industry will return stronger than ever and poised to re-take our position as one of the world's leading film and television production jurisdictions.

4. Support for Domestic Producers

In our 2020 Budget submission, we noted that support for domestic content creation is key to growing our screen-based ecosystem. One of Ontario's biggest strengths as a production jurisdiction is its almost even split between foreign-based productions that choose to shoot here and productions by Ontario-based companies who create and exploit their own, original intellectual property (IP). The demand for screen-based content has only intensified over the past few months, presenting many opportunities for these Ontario companies. At the same time, these companies are more challenged than ever by cash flow and other issues as a result of the global health and economic crisis.

Ontario's domestic content creators can be supported in two key ways:

1. Reinstate the $10 million IP Development Fund, which provided support on a company basis for early stage development activities. This would increase Ontario companies' ability to create and retain their rights to their original IP, to exploit that IP in the global marketplace, and to re-invest in their companies right here at home, all of which are crucial elements of building a sustainable industry in the province.

2. Triple the size of the Ontario Creates Film Fund (to at least $15 million / year) to provide greater support to Ontario's feature film producers. Tripling the Film Fund would allow Ontario Creates to consider different types of investment, build upon the current successes, and bring a greater return to the province of Ontario.

Implementing the re-invigorated IP Fund and the increases to the Film Fund would require consultation with Ontario Creates and the industry to create or update guidelines to ensure decision-making in the programs continues to be efficient, reliable and effective. We would also like to see the guidelines revised to allow for more participation by Black, Indigenous and People of Colour (BIPOC) content creators. Given the Agency's successful track record in program delivery, we are confident this can be achieved in order to deliver excellent results for the province and the industry. In addition, ongoing and stable support for Ontario Creates will be necessary in order to implement these changes.

We would also like to note the importance of Northern Ontario Heritage Corporation (NOHFC) investments in supporting the growth of the film and television industry in northern Ontario. The success of the program is evident in the increased levels of production and the increasing levels of private industry investment in infrastructure and training across Northern Ontario. Film and television companies are creating opportunities for young people and re-training workers to develop good careers in the north. Maintaining this funding will be important in ensuring the industry returns to business all across the province.

As we have noted above, certainty in the industry is a key element in maintaining Ontario's competitiveness as a filming jurisdiction. We would like to work with the government on ways to ensure that NOHFC support remains effective and provides certainty as the industry continues to grow all across the province.

5. Looking to the Future

The growth the industry was experiencing prior to the pandemic was creating a need for a diverse and well-trained workforce that would ensure we could continue to build our domestic industry while at the same time accommodating the foreign productions coming here. Since many of the jobs in the film and television industry fall into this category, the government's recent and continued highlighting of the skilled trades as career options has been much appreciated.

It is, however, important that government training programs consider the needs of our sector. The film and television industry is unique in that a large portion of our workers do not have typical employer / employee relationships and a great deal of training is provided by unions, rather than employers. We hope that as the government continues to improve the training available to the skilled trades, they keep these important differences in mind and ensures that our industry can access those initiatives.

In addition, different incentives may be needed to develop other parts of the industry and improve our track record when it comes to making sure what is on our screens reflects the society we live in. We would therefore like to ask that the government work with the industry to develop incentives that will:

- encourage hiring of diverse talent in front of and behind the camera;
- support the growth of companies led by BIPOC content creators; and

- encourage foreign productions to make better use of local talent when they film here.

We look forward to working with all our government partners to make sure existing programs and any new programs work for our sector.

Conclusion

The growth of Ontario's film and television sector over the past twenty years is something we can all be proud of. Like all parts of the economy and of society, the past few months have been difficult as we have all lived under the uncertainty of a global economic and health crisis. However, as a creative and innovative industry, we are committed to bringing this business back in Ontario and once again taking our place as a leading jurisdiction for film and television production. The suggestions outlined here will ensure that we have the tools we need to bring our sector back, and grow into a $5 billion industry.

Thank you very much for your consideration and support. Please do not hesitate to be in touch with any questions or concerns.

Sincerely,

Jennifer Jonas
Co-Chair, FilmOntario

Sue Milling
Co-Chair, FilmOntario

Cynthia Lynch
Managing Director and
Counsel, FilmOntario

cc: The Honourable Lisa MacLeod
Minister of Heritage, Sport, Tourism and Culture Industries
Minister.MacLeod@ontario.ca

The Honourable Rod Phillips
Minister of Finance
minister.fin@ontario.ca

Appendix 1: Health and Safety Costs for Tax Credit Eligibility

There are different eligible costs for each of the three film and television tax credits. Outlined below is a proposal for which additional costs should be eligible for additional tax credits, to assist producers in covering the budget shortfall they will now face due to increased health and safety costs.

Eligible Labour

The Ontario Film and Television Tax Credit (OFTTC), Ontario Production Services Tax Credit (OPSTC), and the Ontario Computer Animation and Special Effects Tax Credit (OCASE) all provide a rebate on eligible labour for their productions.

FilmOntario is assuming that new positions on set created because of new health and safety requirements, such as a COVID-19 Compliance Officer, specialized cleaning staff, or medical personnel, would be considered eligible labour for all credits. We are asking that (1) the government confirm that these positions are tax credit eligible, and (2) the tax credit rate for these positions be 100% instead of the applicable rate for each credit.

We are also assuming that traditional positions that require longer hours or more individuals to fill that role because of new scheduling requirements that facilitate physical distancing (e.g., additional drivers, hair and makeup, etc.) would be eligible for all credits, as they are reasonable in the circumstances that we are all working under and directly attributable to the production. However, we are also asking that the tax credit rate for these additional positions be 100% instead of the applicable rate for each credit.

In addition, if a production is required to hire an extra cleaning crew for after-hours cleaning, that crew should also be considered eligible labour. A studio or other facility that hires a similar crew should also be eligible to pass those costs on to the production, provided they can demonstrate the costs are directly attributable to that production and are over and above regular cleaning practices.

Cost of Supplies and Services

The additional cost of supplies and services for productions include but are not limited to:

- personal protective equipment (PPE)
- testing that may become available for private businesses
- cleaning and sanitation supplies for use throughout the day (wipes, hand sanitizer, etc.)
- disposable makeup applicators
- rental of additional hand-washing stations
- specialized cleaning products for cameras and other sensitive equipment
- extra trailers to allow for more physical distancing on set

FilmOntario is assuming that these costs would normally be eligible for the OPSTC. However, we are asking that these types of costs be eligible for all three credits, at a rate of 100%.

Accommodations

As ours is a global industry, it is quite common to have film and television professionals travel to Ontario for the purposes of working on a production. For those coming from outside Canada, this currently means they are required to be in quarantine for fourteen days. We ask that the accommodation and other costs associated with such quarantines be eligible for all three credits at a rate of 100%.

Appendix 2: Eligibility Changes for Productions That Needed to Shut Down

As noted, the tax credit proposals outlined here are based on the principle that companies who have spent money and created jobs in the province of Ontario may not be able to meet all the tax credit requirements on those productions due to the public health situation. We were very pleased to see Minister MacLeod's April 2020 comments in the press that these companies should still be eligible for the film and television tax credits. We believe the solutions outlined below will meet that goal.

We would also like to note that these proposals do not represent any additional cost to the province beyond what would have been owing in tax credits had the public health emergency not occurred and business had carried on as usual.

Cost Recovery for All Productions

As the extent of the global pandemic and the physical distancing measures needed to contain it became known, the business environment changed very rapidly and productions at all stages of the production process shut down suddenly. While this was initially a voluntary measure, for those involved in physical production it soon became required by law through municipal and provincial emergency orders. As we do not know how quickly all productions will be able to start up again, we are asking that the Province consider some changes to eligibility requirements, on a temporary basis, that will alleviate some of the risk for producers who create jobs and bring investment to Ontario.

We have been working with industry stakeholders and Ontario Creates to identify eligibility criteria that would need to be waived or adjusted in order to ensure these productions are eligible. We are asking the government to consider the following regulatory and legislative changes, on a temporary basis, for productions that found themselves in one of the situations described above:

- waiving the requirement for principal photography to commence within the taxation year for the Ontario Production Services Tax Credit (OPSTC) (O. Reg. 37/09, s. 31(1));
- waiving the requirement that a production be completed and/or aired within a specific time period for the Ontario Film and Television Tax Credit (OFTTC) (O. Reg. 37/09 s. 27(2)(b), (d) and (e));
- waiving or extending application deadlines for the OFTTC (O. Reg. 37/09 s. 27(2) and (4)) and extending timelines when determining the Production Commencement Time (PCT) date (O. Reg. 37/09 s.30);
- expanding the definition of "at a permanent establishment in Ontario" for the Ontario Computer Animation and Special Effects Tax Credit (OCASE) to include employees / contractors of studios who are working from home (*Taxation Act, 2007,* s. 90(1), definition of "qualifying corporation" and O. Reg. s. 25(6)(4));
- waiving the following requirements related to the portion of activities and costs spent in Ontario for the OFTTC: 85% shot in Ontario, 95% post-production activities in Ontario, 75% production costs in Ontario (O. Reg. 37/09 s. 27(6) and (7));

- for OPSTC, waiving the production spend threshold and the requirement that the threshold be met within 24 months of beginning principal photography (O. Reg. 37/09 s. 31(2) and (3));
- waiving the OCASE requirement that eligible activities are for a production that has received an OFTTC / OPSTC certificate (*Taxation Act, 2007*, s. 90(11) definition of “eligible production”);
- for inter-provincial co-productions, allowing the Ontario portion of the costs to fall below the 20% threshold (O. Reg. 37/09, s. 27(1)(8) and (9)); and
- for regional Ontario productions, allowing flexibility in the number of location days allowed in the GTA, for productions that may be unable to return to their locations due to post-COVID-19 restrictions (*Taxation Act, 2007*, s. 91(19) definition of “regional Ontario production”.

In addition, costs have been and continue to be incurred as a result of the current shutdown that are directly related to the cost of production but would not normally be included in a production’s expenses. We ask that the Province confirm that these costs will be allowed as qualifying expenditures for the OPSTC and/or OFTTC:

- suspension or severance payments, paid to production workers, which were required pursuant to a collective agreement;
- suspension or relief payments, paid to production workers, which were not required by a collective agreement;
- “hold fee” or “retention fee” payments made to performers and/or key crew which are being paid as an inducement to stay with the project until it returns;
- above the line “pay or play” payments made if the production is terminated and never completes;
- “studio hold” payments made to studio owners, during the suspension period, either (a) to hold on to studio space for recurring television series that were about to start pre-production on the next season, or (b) for productions that were required to shut down and now must pay fees to retain studio facilities until it is safe to return to work;
- advances and/or deposits paid to qualified VFX and other vendors which were forfeited for various reasons, due to a change with the service provider (e.g. unable to complete work, vendor is no longer a going concern, etc.)

As noted, these costs are directly related to the cost of production and are being paid to Ontario workers and businesses. They are a result of production being halted due to circumstances beyond anyone’s control, and therefore should be considered eligible costs for the tax credits.

Appendix 3: FilmOntario Red Tape Reduction Suggestions for the Film and TV Tax Credits

FilmOntario has been working with its members to identify elements of the film and television tax credits that could be modernized and streamlined to reduce red tape for business owners. What follows is a list of legislative, regulatory and administrative items that could be modified in order to lighten the administrative burden for tax credit applicants and, hopefully, improve processing times so that producers can receive their tax credits more quickly, meaning they can allocate more of the money they receive through the tax credit program to making the on-screen product the best it can possibly be.

Proposal #1:

Simplify residency requirements so that individuals who are residing in the province during the year of the production are eligible labour for the credit.

Currently, the definition of an Ontario resident for the purposes of determining eligible labour for the credit is an individual who was resident in Ontario at the end of the calendar year the year before the calendar year that principal photography starts, or in the case of the OCASE tax credit, the year before the eligible activities took place. This limits ability to attract talent from other jurisdictions and makes establishing an individual's residency status more complicated for applicants, as they must establish their residency status for not only the year they are working, but also the previous year.

For purposes of simplicity, we are proposing that residency requirements be updated, so that individuals who are resident in Ontario for tax purposes in the year principal photography takes place or they undertake the animation or visual effects activity. This can be accomplished by making the following legislative and regulatory changes:

1. Amend the definition of "Ontario-based individual" in s. 23 of the *Taxation Act, 2007*, Ontario Regulation 37/09 to mean those individuals who are resident in Ontario for the year in which principal photography commences;

2. Amend the requirement in s. 25(6), paragraph 2 of the *Taxation Act, 2007*, Ontario Regulation 37/09, to require that in order to qualify as a wage amount, the expenditure is incurred by an individual who was resident during the year the activity took place (related to the OCASE credit); and

3. Amend the definition of "Ontario-based individual" in s. 92(13) of the *Taxation Act, 2007*, to mean those individuals who are resident in Ontario for the year in which principal photography commences (for the OPSTC).

This would give producers more flexibility in their ability to attract skilled workers to the province, allowing them to build capacity in their businesses and the industry as well as reduce the administrative burden by streamlining the collection and storage of documents required for the purposes of establishing residency.

CRA has provided clarification on how to establish an individual's residency for income tax purposes. These efforts are much appreciated; however additional work is required at the administrative level to further simplify and standardize the documentation required to establish residency. This work with Ontario Creates and CRA will need to continue in order to find a solution that will not only be simpler for producers, but will also ensure the privacy of individuals working as cast and crew on Ontario productions is protected.

Proposal #2

Update broadcast triggers in the OFTTC and OPSTC to reflect current licensing and business realities.

When the tax credits were initially introduced, video-on-demand services were in their infancy and they operated solely through the traditional broadcasting and distribution system. Services that use the internet for distribution, such as Netflix, Hulu and Crave, were not yet in existence. At the time, the only way to ensure that tax credits were supporting professional productions, intended to be viewed by an Ontario audience, was to include a requirement that eligible productions had an agreement with a Canadian broadcaster or distributor, to air during prime time, and that were of a length suitable to fill at least a 30-minute television timeslot.

Now, with the advent of streaming and on-demand services, it is time to update this requirement. It is still important to ensure that the productions supported by the tax credit are professionally made, for commercial exploitation, and intended to reach an audience. However, now that producers have more options for commercializing their content, the tax credit requirements should be updated to ensure that producers can make the business deal for their shows that makes the most sense for that show.

These changes can be achieved by the following regulatory changes for the OFTTC:

1. Delete s. 27(1), paragraph 2, of the *Taxation Act, 2007*, Regulation 37/09, which requires that productions intended for television broadcast be of a length that is suitable for a standard television time slot of at least 30 minutes; and

2. Delete s. 27(2)(f) of the *Taxation Act, 2007*, Regulation 37/09, which requires that the initial broadcast of a television production air during prime time, defined as the period of four hours beginning at 7 pm.

These deletions would give producers the flexibility they need in terms of the platform their programs are viewed on but would maintain the professional nature of eligible productions by maintaining the requirement that there is an agreement, at fair market value, with a Canadian distributor **or** broadcaster, to have the production shown in Ontario. This is also in line with changes made at the federal level, since in 2017 CAVCO issued a bulletin stating that the "shown in Canada" requirement could be satisfied by productions which are shown on any platform, including on-demand and online services. The province of Quebec also made a similar change in their 2018 provincial budget, making productions "intended solely for dissemination on digital platforms eligible" for their provincial credit.

While there are no similarly restrictive regulatory requirements for the OPSTC, currently, as per the Ontario Creates FAQs, eligibility for online productions is limited to subscription services only. Expanding this definition to include ad-supported services would introduce similar flexibility for that credit while upholding the requirement that the tax credit support professional productions.

Proposal #3

Expand OPSTC eligibility to incorporate all location fees paid to taxable Ontario individuals and companies and government-owned properties.

Currently, location fees paid to Ontario residents and businesses are only eligible expense for the OPSTC if the person or business receiving the fee is in the film and television business. This makes Ontario less competitive than other jurisdictions with a similar credit, which allow all such costs. It is also out of line with standard industry practices, as the purpose of using locations that are outside of a traditional studio is to take advantage of the geography and architecture of a unique location; most such home or business owners are not in the film and television business. Using these kinds of locations also widens the economic impact of a given film production, as individuals and businesses throughout a community are paid for the rental or lease of their property.

This change could be achieved by eliminating s. 92(5.7) 6i and 6iii of the *Taxation Act, 2007*, that requires that the expenditure be paid to a person or partnership "that is ordinarily engaged in the business of selling or leasing tangible property of the type of tangible property acquired or leased by the corporation". The remaining sub-sections of the legislation would continue to ensure that eligible costs are paid to taxable Ontario individuals and companies, as well as the government of Ontario, and that the economic benefit from the tax credit stays with Ontarians. This change would improve Ontario's competitive position and make the OPSTC more effective in attracting jobs and investment to the province.

Proposal #4

Establish a customer service standard for turnaround times for the issuance of a Certificate of Eligibility by Ontario Creates.

There is currently a two-stage process for receiving a tax credit payment. First, a producer must apply to Ontario Creates for a Certificate of Eligibility (COE); then, the Certificate is filed along with the corporate tax return with the Canada Revenue Agency (CRA) where it moves to the audit processing area, eventually resulting in a tax credit refund cheque being issued. Since a COE application can only be made once principal photography has begun (i.e., the first day of actual filming when cast and crew have been hired, sets have been built, and many expenses have already been incurred), many producers routinely obtain interim financing in the form of bank loans or lines of credit well before their tax credit application is even being considered. The longer it takes to receive their credit, the higher the financing costs.

Staff at Ontario Creates and the Ministry of Heritage, Sport, Tourism and Culture Industries have been working to clear a backlog of applications and improve processing times on the tax credits. According to information provided to the industry by Ontario Creates, COE processing times in the first six months of fiscal 2019-20 were 25 weeks for the Ontario Film and Television Tax Credit (OFTTC), 13 weeks for the Ontario Production Services Tax Credit (OPSTC) and 31 weeks for the Ontario Computer Animation and Special Effects (OCASE) Tax Credit. Since the economic shutdown, Ontario Creates has worked effectively with the Ministry of Finance to assess risk on applications and process them much more quickly, which has been greatly appreciated.

However, we would like to see these efforts remain in place once production levels, and therefore tax credit application numbers, return to normal. We believe that the implementation of a service standard of **12 weeks from time of application to a COE being issued**, for all credits, is a reasonable service standard and will improve predictability for tax credit applicants.

Other jurisdictions have implemented similar (or even shorter) service standards, and we suggest that it is time for Ontario to do the same. The Canadian Audio-Visual Certification Office (CAVCO), which oversees eligibility for the federal film and television tax credits, has a target service standard of 120 days to issue a certificate, and is currently averaging an 89-day turnaround time. The province of British Columbia has a five-week service standard, and the United Kingdom similarly has a four- to five-week turnaround time. We think that a 12-week turnaround time is a reasonable place to start, and when further red-tape reduction measures are implemented, we hope that it can go even lower.

This is an administrative change at Ontario Creates, which they would need to implement in consultation with the Ministry of Tourism, Culture and Sport and the Ministry of Finance, but does not require any legislative or regulatory changes.

<u>Proposal #5</u>

Reduce administrative complexity in the OCASE tax credit by allowing producers making on-set VFX claims to file their OCASE and OFTTC/OPSTC claims at the same time.

Currently, OCASE applications are made on an annual basis (rather than per production), and a COE will not be issued until actual costs are submitted. By contrast, OFTTC and OPSTC applicants can receive a COE based on their budgeted costs. CRA then verifies the final costs that are eligible for a tax credit when the return is filed and before a cheque is written.

Animation studios and visual effects houses, who are often only applying for OCASE, can file one application for all projects during the year. However, producers who also incur OCASE-eligible costs on set during their production must currently file two separate COE applications at two different times. Delaying their OFTTC or OPSTC application until they have final costs for their OCASE claim is not financially sound and therefore not the best option for producers.

We would like to propose that the administrative procedures be adjusted so that a combined application is possible for producers making on-set OCASE claims and an OFTTC or OPSTC claim, or, if that is not possible, that producers making on-set OCASE claims be able to receive an OCASE tax credit COE based on budget costs, as is done for the OPSTC, rather than waiting for final costs to be available. This is an administrative change at Ontario Creates, which they would need to implement in consultation with the Ministry of Tourism, Culture and Sport and the Ministry of Finance, but does not require any legislative or regulatory changes.