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**Thursday 8 October 2015**

**Journal  
des débats  
(Hansard)**

**Jeudi 8 octobre 2015**

**Standing Committee on  
Justice Policy**

Protection of Public  
Participation Act, 2015

**Comité permanent  
de la justice**

Loi de 2015 sur la protection  
du droit à la participation  
aux affaires publiques

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 8 October 2015

Jeudi 8 octobre 2015

*The committee met at 0900 in committee room 1.*PROTECTION OF PUBLIC  
PARTICIPATION ACT, 2015  
LOI DE 2015 SUR LA PROTECTION  
DU DROIT À LA PARTICIPATION  
AUX AFFAIRES PUBLIQUES

Consideration of the following bill:

Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest / Projet de loi 52, Loi modifiant la Loi sur les tribunaux judiciaires, la Loi sur la diffamation et la Loi sur l'exercice des compétences légales afin de protéger l'expression sur les affaires d'intérêt public.

**The Chair (Mr. Shafiq Qaadri):** Welcome, colleagues. As you know, we're here for clause-by-clause consideration of Bill 52, An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act in order to protect expression on matters of public interest.

Premièrement, je voudrais accueillir nos traducteurs et coordinateurs de français.

Welcome to colleagues from the French legislative services branch.

The floor, I believe, is now open for presentation of motions. We have PC motion number 1—

**The Clerk of the Committee (Ms. Tonia Grannum):** Actually, we have to start with the section, because that doesn't happen until section 3—

**The Chair (Mr. Shafiq Qaadri):** Fair enough.

Incidentally, I should also welcome Tonia Grannum, who is pinch-hitting for us until we acquire a more qualified candidate.

*Laughter.*

**The Chair (Mr. Shafiq Qaadri):** Après.

We have section 1. We've received no amendments to date for that. Are there any comments on section 1 before I proceed to a vote? Seeing none, shall section 1 carry? Carried.

Similarly for section 2, we've received no amendments to date. Are there any comments before we proceed to the vote? Seeing none, shall section 2 carry? Carried.

The six amendments that we have received so far are all to do with section 3. They're all PC motions.

The floor is now yours, Mr. Miller.

**Mr. Norm Miller:** I move that subsection 137.1(3) of the Courts of Justice Act, as enacted by section 3 of the bill, be struck out and the following substituted:

“Order to dismiss

“(3) On motion by a person against whom a proceeding is brought, a judge may dismiss the proceeding if the moving party satisfies the judge that the responding party brought the proceeding in bad faith for the improper purpose of discouraging a person from engaging in expression.”

**The Chair (Mr. Shafiq Qaadri):** The floor is yours if you would like to offer comments.

**Mr. Norm Miller:** Yes, I will make a comment. The key part of this is the term “in bad faith.” Essentially, it's replacing “in the public interest” with “in bad faith.” We heard from a number of people coming before the committee that the term “bad faith” is something that's understood in law and much more specific and clearer than the term “public interest.” This was supported by the Ontario Forest Industries Association. When Mr. Hillier, our lead on this, was questioning Brian Gover of the Advocates' Society—he agreed with MPP Hillier in committee, when Mr. Hillier suggested replacing the public interest concept with the concept of bad faith. Mr. Gover agrees that “bad faith” has abundant meaning in Ontario's legal traditions. A number of the northern mayors—Peter Politis, mayor of Cochrane—also supported this change. I think it just makes this bill a lot more specific.

We've seen in some other legislation, in particular the Endangered Species Act, which I believe passed in 2007—the term “overall benefit” was used in that, and it was similarly vague and not understood in legal terms. From what I understand, that is causing all kinds of problems in the courts. In fact, in the minority Parliament last year, your government made efforts to try to change that.

So it would be better, I would suggest, to change it before the law is passed than to pass the law with vague language that will be problematic.

**The Chair (Mr. Shafiq Qaadri):** Signor Berardinetti.

**Mr. Lorenzo Berardinetti:** We'll not be supporting the amendment. The bad-faith test, if it has to be applied at a point in the proceedings, requires a higher evidentiary standard. The party would have to actually present more evidence in order to create the bad-faith test. The expert panel was against creating “bad faith” as a test because they see it as being too—I mean, not necessarily at this point in the lawsuit. It's basically an anti-SLAPP

bill, and you don't want to be using a bad faith test. There are other tests as we go along and throughout the bill that will protect public expression and, at the same time, protect the person who is being subjected to a SLAPP suit.

**The Chair (Mr. Shafiq Qaadri):** Further comments before we move—Madame Gélinas? Anyone? Thank you. We'll now—

**Mr. Norm Miller:** Recorded vote, please.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote, as requested.

### Ayes

Fedeli, Norm Miller.

### Nays

Berardinetti, Delaney, Gélinas, Martins, Naidoo-Harris, Potts.

**The Chair (Mr. Shafiq Qaadri):** Motion 1 falls.

PC motion 2: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you. This is a motion to be moved in committee.

I move that section 137.1 of the Courts of Justice Act, as enacted by section 3 of the bill, be amended by adding the following subsection:

“Exception

“(3.1) A judge shall not dismiss a proceeding under subsection (3) if it arises from an expression made by a corporation or non-profit corporation with annual revenues that exceed \$100,000 or a person who made the expression in his or her capacity as an employee or independent contractor of such a corporation.”

**The Chair (Mr. Shafiq Qaadri):** Thank you. The floor is yours for comments if you'd like, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. We've heard over and over how this bill is to protect the average citizen in Ontario. Some referred to it once in a while through the proceedings as “the little guy,” just the average, everyday person. But we've also heard testimony that this will give—I quote the testimony of the former mayor of Timmins—professional environmental groups the right to defame. Of course, what they were referring to was the Greenpeace versus Best Buy campaign.

We've heard over and over the—it's called a cyber-activist request by Greenpeace Canada. They've sent out an email to all of their subscribers and they've given them five cyber-activist tasks. One is to write a false product review on Best Buy's website: “Be creative and make sure to weave in the campaign issues!”

This was a cyber-activist move by Greenpeace to thwart Resolute Forest Products from selling newsprint to Best Buy. Bill 52 would allow this type of cyber activity to continue to happen unchecked.

Here's the result of what happened: Best Buy threw the towel in. They gave in to Greenpeace. They could not

handle the boycotts, they could not handle the cyber-attack, they could not handle the false product reviews that came in. So they contacted Resolute and they cancelled the newsprint.

As a direct result of Best Buy's cancellation, Resolute shuttered their plant in Iroquois Falls. That's where the newsprint for Best Buy was made. That plant now is gone.

At one time in its heyday, it employed thousands of people. It's a huge industry. MPP Norm Miller and I are heading up there next week. We're heading up to the Cochrane area, the Iroquois Falls area. I'm hoping to take a message of hope to the forestry sector in Iroquois Falls, in northern Ontario, that we've struck a law that will protect the everyday citizen, but not give free rein to professional environmental groups, give them the right to defame.

In addition to the plant in Iroquois Falls, when many of us—some of us in this room, if my memory serves me correctly—travelled on the pre-budget consultations last July, we were in Fort Frances the week that Resolute shuttered that plant as well. A thousand people were put out of work that day, in one day. That town is struggling now. A thousand people in tiny little Fort Frances—they're gone; the jobs are gone. The plant is shuttered. Iroquois Falls Resolute is silent.

### 0910

Norm and I will likely have no trouble finding a breakfast nook in the morning. We're both familiar with Iroquois Falls, Cochrane and all of the communities that survive only because of the forestry sector. We won't have trouble finding a place to stay, because 63 of the mills in northern Ontario are closed today, most never to open again. Eight out of every 10 logging/lumber-mill operations are closed in northern Ontario, likely never to open again.

This cyber-attack on Best Buy was not alone. We saw the cyber-attack on Rite Aid as well. That was evidenced here in this committee. Our amendment will protect, as we've called them here many times, the little guy, the average consumer, the average person who speaks out. They will be protected by this bill; that's why this bill is here. But this also protects the \$300-million corporations, like Greenpeace and others, who have free rein to tell people to write a false product review. This will give them the reins.

Our amendment is meant to stop that from happening. It's to continue to allow the small non-profits who are doing such great work—it gives them a free hand. But if you're a company with millions in annual revenue, with the resources to know what to do about defamation, know how to handle it and have the horsepower to protect yourself in a lawsuit, you shouldn't be covered under this act. This is for the little guy.

That, Chair, is why we are bringing this amendment to the floor.

**The Chair (Mr. Shafiq Qaadri):** Comments? Madame Gélinas, and then to the government side.

**M<sup>me</sup> France Gélinas:** I would say that I support a lot of what MPP Fedeli had to say. I mean, I represent

northern Ontario as well. It's not 63 mills that have closed now; it's 65, and the chances of those mills coming back to northern Ontario are, as you said, pretty slim to nil. It's the same thing with the logging operations. We all thought that forestry was going to rebound, but it has not happened.

If I believed that the amendment was going to change this, I would vote for it 16 times over. I want forestry to come back. Most of the riding that I represent has made its living in forestry, and now millions of dollars of equipment, equipment that people own—you walk through the backyards of the people I represent and you see that huge forestry equipment, tarped and collecting rust because there is no more work for those people, who still have to make payments on that equipment. The story goes on and on.

I support all of what he said, but I don't see how putting it at \$100,000 is going to achieve this. I can think of Big Brothers Big Sisters in my riding; they do take in revenue of more than \$100,000. It's a very, very solid organization. They help thousands of kids—maybe not thousands, but hundreds of kids in Sudbury and Nickel Belt, and they are the little guy. They raise every one of those \$120,000 that make up their budget, one dollar at a time, and yet they wouldn't be covered anymore.

So I don't think that because you have annual revenues of over \$100,000 as a not-for-profit corporation, you are not the little guy anymore. Certainly, if you look at the meagre resources of Big Brothers Big Sisters, they are the little guys; they don't have any paid staff. They take all of their revenue to support basically little guys and little girls who need the protection of Big Brothers.

I could name you many more organizations like this that take in more than \$100,000 in revenue but they have no staff. All of the charitable donations that are made to them are to help the people who are in their mandate to help. I want them to be covered in the act.

When he talks about multi-million dollars, I get it. The story that he told about Resolute is absolutely true. But setting the bar at \$100,000 is not going to bring back the mills in Nickel Belt, it's not going to bring back the logging in Nickel Belt, yet they are going to take out of the bill people who still need the protection of this bill. So the direction is right; the spirit of it is right. I think the amount is wrong.

**The Chair (Mr. Shafiq Qadri):** Merci, Madame Gélinas. Mr. Potts and then Mr. Berardinetti.

**Mr. Arthur Potts:** I'd like to pick up on the comments of Ms. Gélinas. The reality is that Greenpeace did not have the protection of this legislation when all these events transpired. It's certainly not the intention of this legislation to protect fraudulent and harmful, slanderous opportunities. There's a whole other dynamic going on here which is affecting the industry.

I know Mr. Fedeli would like to make this about us not supporting forestry because we won't be supporting this motion, but the reality is, our government has done tremendous work in trying to promote this industry. It is a growing industry. We've put almost \$1.3 billion since

2005 into the industry. We've created OntarioWood. We've just recently done new building code changes so that we can do six storeys of wood. These are all good things which are encouraging the industry and developing the industry.

We've also heard very clearly from professionals—lawyers, the Advocates' Society, I think, Mr. Klippenstein—that this amendment would create two tiers of legislation, those who can access and those who cannot, which would be unprecedented. The reality is, even a large corporation should be protected against another large corporation that is making frivolous, slanderous accusations that don't have a chance of success.

It's not just the little guy; it's protecting against abuse of the court system, using slander as a tool to reduce public participation. This amendment would not advance the purpose of this bill in any way, so I certainly will be voting against it.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Potts. Mr. Berardinetti?

**Mr. Lorenzo Berardinetti:** We will not be supporting the amendment. I think it's important to note that we have nothing against—we're not trying to favour a particular group; \$100,000 is an arbitrary amount. Someone else could say it could be \$200,000 or \$150,000. But a number being used as the threshold is really not fair to everyone involved in a SLAPP suit. The proposed motion would restrict the availability of the bill's early dismissal procedure based on resources. If this motion were to pass, the bill's protection would not be available to non-profit corporations with annual revenues of \$100,000-plus.

The expert panel specifically recommended against excluding certain groups from the bill's protection. The panel's view was that the bill should apply to any party to a litigation, since the value of promoting public participation and freedom of expression is shared by all, not just those with limited resources.

This bill does nothing really to harm any group, but we want to be fair. I think it's appropriate that we be fair to both sides. The courts will recognize when a case should be thrown out as being a SLAPP suit. So we're not going to be voting in favour of this amendment.

**The Chair (Mr. Shafiq Qadri):** Thank you. Ms. Naidoo-Harris and then Mr. Miller.

**Ms. Indira Naidoo-Harris:** I just want to point out that, yes, while I understand where the members opposite are coming from, I agree with my colleagues on this side. We have to be really careful what we do here, because public participation and freedom of expression should not be protected only for those with fewer resources. I think there is a more important idea and principle here that we have to look at and think about when we're looking at Bill 52.

**The Chair (Mr. Shafiq Qadri):** Thank you, Ms. Naidoo-Harris. Mr. Miller?

**Mr. Norm Miller:** I just want to remind the committee that it's northern communities that made the long

trip down here to have their five minutes before the committee to make the point that this was an important motion for the committee to protect jobs in northern Ontario. In Ontario, we have the Crown Forest Sustainability Act, which—really we have the gold standard for forestry in Ontario. We have FSC-certified forests.

This change was asked for by the Federation of Northern Ontario Municipalities. They specifically said Bill 52 would be enhanced if it specified that the legislation was intended to cover individuals and groups that are voluntary in nature and have annual operating budgets below a specified threshold, perhaps \$100,000.

We heard that from other northern mayors, who went through great efforts to come to Toronto. The mayor from Atikokan, northwest of Thunder Bay, came down. We had the mayor of Cochrane come down. We had the Federation of Northern Ontario Municipalities. We had First Nations, who were quite strong in their language, supportive of changes to protect jobs in northern Ontario.

That's what this motion is about, standing up for jobs and the people of northern Ontario so they can have a livelihood and make money and support their families.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Are there any further comments before we proceed to the vote on PC motion 2?

**Mr. Norm Miller:** Recorded vote.

**Mr. Victor Fedeli:** I have another comment.

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Fedeli?

**Mr. Victor Fedeli:** I just wanted to comment to Mr. Potts, when he said, "I know you want to try to make this about forestry," and not supporting forestry. Well, as Mr. Miller said, this is about forestry. This is about the north. Mr. Miller talked about the many participants who were here. Every one of them, including Chief Klyne and including the First Nations, asked for this.

This is absolutely and vitally critical to the north and to the forestry sector. A vote against this is a vote against the north and against forestry, plain and simple. That's the evidence we received from every one of the participants who came here speaking on behalf of this amendment and proposing this amendment.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Mr. Berardinetti.

**Mr. Lorenzo Berardinetti:** One key point: Mr. Fedeli, again, I appreciate your remarks that you've made to the Chair. My father worked 35, 40 years in a mill and he wouldn't have been able to have that work if it wasn't for the trees and the forestry that came into the mill in Scarborough way back in the 1960s and 1970s. So there's no issue there.

I just want to quote something from Mr. Pierre Sadik. He is with Ecojustice Canada. He said, "I have never seen legislation that introduces a two-tiered system for access to what is, in essence, the basic right to use all of the procedural tools of the justice system, and it's a slippery slope. What is the basis for the \$100,000 figure? This committee has heard from several SLAPP victims that the legal costs associated with defending themselves can easily run into tens of thousands of dollars per

month, or even over \$100,000 in the context of the entire suit."

If this was implemented and someone appealed or wanted to challenge it at some point in time down the road, it could cause a mess. If it goes to the Supreme Court of Canada or the Court of Appeal of Ontario, if they see that there's something in this legislation that they don't like, they may not support that section. It's just too arbitrary, the \$100,000.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Was there another comment on this side? Thank you.

Any further comments before the PC motion 2 recorded vote, as requested by Mr. Miller? Fair enough; we'll proceed to the vote.

### Ayes

Fedeli, Norm Miller.

### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris, Potts.

**The Chair (Mr. Shafiq Qaadri):** PC motion 2 falls. We now move to PC motion 3. Mr. Miller.

**Mr. Norm Miller:** We'll withdraw motion 3 because it doesn't make any sense, as our motion number 1 did not pass.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Miller. PC motion 3 has now been withdrawn. PC motion 4.

**Mr. Norm Miller:** I move that subsection 137.1(8) of the Courts of Justice Act, as enacted by section 3 of the bill, be struck out and the following substituted:

"Costs if motion to dismiss denied

"(8) If a judge does not dismiss a proceeding under this section, the responding party is entitled to costs on the motion on a partial indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances."

Mr. Chair, this amendment would provide costs on the motion for the plaintiff on a partial indemnity scale in the instance where the case is not dismissed under section 137.1. As written, the bill currently provides full indemnity costs to a party moving a motion under section 137.1, where their motion to dismiss the proceedings is successful. This financial protection should be afforded to both the moving party and the defending party.

According to the Ontario Forest Industries Association, as the bill is currently written, the party moving a motion under section 137.1 is afforded a free bite of the apple. This means that there's no incentive against filing a motion to have the proceedings against them thrown out. The provision of partial indemnity costs may prevent the misuse of the motion to dismiss SLAPP suits.

The original report by the expert panel on SLAPP suits recommended that partial costs be considered for plaintiffs who successfully repel a dismissal under this section. Their recommendation was never realised in the

final text of Bill 52, and that's why we put this motion forward.

**The Chair (Mr. Shafiq Qaadri):** Comments on PC motion 4? Mr. Berardinetti.

**Mr. Lorenzo Berardinetti:** The cost provision in the bill was specifically designed to deter parties from initiating strategic lawsuits as well as to encourage targets of strategic lawsuits to bring motions to dismiss strategic lawsuits. This motion would allow for defendants to be further chilled from bringing forward what they believe to be meritless lawsuits because of potential cost rulings. The expert panel specifically recommended that where a defendant's motion to dismiss is unsuccessful, the plaintiff should not be entitled to costs on the motion for the reasons I just mentioned above.

**The Chair (Mr. Shafiq Qaadri):** Any further comments on PC motion 4? Going once.

**Mr. Norm Miller:** Recorded vote.

**The Chair (Mr. Shafiq Qaadri):** Recorded vote. We'll proceed to that vote.

#### Ayes

Fedeli, Norm Miller.

#### Nays

Berardinetti, Delaney, Martins, Naidoo-Harris, Potts.

**The Chair (Mr. Shafiq Qaadri):** PC motion 4 falls. PC motion 5. Mr. Fedeli.

**Mr. Victor Fedeli:** Chair, considering motion number 1 failed, we'll withdraw this one.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. PC motion 5 has been withdrawn.

We go to the final motion of the day, I understand, PC motion 6. Mr. Fedeli.

**Mr. Victor Fedeli:** I move that section 137.2 of the Courts of Justice Act, as enacted by section 3 of the bill, be amended by adding the following subsection:

"Without reasons"—

**Mr. Norm Miller:** "Written reasons."

**Mr. Victor Fedeli:** Thank you.

"Written reasons

"(6) The judge shall ensure that written reasons are made available to all parties on request within 30 days of making a decision on a motion to dismiss a proceeding under section 137.1."

**The Chair (Mr. Shafiq Qaadri):** Comments?

**Mr. Victor Fedeli:** Well, the whole concept of the bill is to make it easier for people. This will accomplish that, Chair.

**The Chair (Mr. Shafiq Qaadri):** Any further comments on PC motion 6? Mr. Berardinetti, and then Mr. Potts.

**Mr. Lorenzo Berardinetti:** We will not be supporting this motion. Making written reasons mandatory may prolong the time it takes for a judge to render his or her

decision. The proposed motion has the potential of undermining one of Bill 52's main goals: to establish an expedited process for dismissing abusive lawsuits.

We also need to respect the judiciary with this piece of legislation. Independent judicial decisions are an essential part of our justice system. While the amendment will not have an effect on those independent decisions, it may prolong the decision itself, undermining what this bill is trying to accomplish.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Berardinetti. To Mr. Potts.

**Mr. Arthur Potts:** From personal experience—my father, of course, as you know, was a Supreme Court of Ontario judge. He used to like to render a decision in the course of a hearing on an oral basis because he saw where it happened and justice delayed, he would say, would be justice denied.

So this amendment, to me, strikes that it could delay the proceedings, contrary to the expectations of the member, in restricting the opportunity for a judge to make an oral decision. If they wanted to render a written decision in a week, that would still allow it, but it would mean only a written decision. I wouldn't want to take that flexibility away from the judiciary, so we'll be voting against this amendment.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Potts. Mr. Singh?

**Mr. Jagmeet Singh:** Just to clarify, this is a question to the government on this point: The way the bill stands, the judge still has to provide reasons for the dismissal, so those reasons are still going to be available, and if there's a disagreement, there are avenues that are still available because there's an oral decision. Just because it's an oral decision that's provided doesn't in any way preclude someone from a remedy—simply because it's not a written reason. I'm just wondering if the government could respond to that.

**Mr. Lorenzo Berardinetti:** Again, I think that if a judge hears the motion and dismisses the SLAPP suit, that's the end of it. You know this as well as I do: Telling a judge to provide written reasons within a certain time frame—I don't think the judiciary is too comfortable with that. They can hear a motion, go in the chamber for half an hour or 10 minutes, come back out and say that the lawsuit is dismissed: "It's frivolous, it's vexatious and I'm not going to carry on any further." But to put that the decision has to be written within 30 days—the judge may hold back and decide, "I'll put my reasons in writing," and then notify you.

I think we should let the judiciary, the judges, have the freedom to just come out and say, "This is a SLAPP suit and we're going to dismiss it, and I'll write reasons within the next 10, 20 or 30 days." I think we don't want to hamper the judge and the judiciary system from doing what they do, and we want a decision as soon as possible—maybe the day of the motion.

**The Chair (Mr. Shafiq Qaadri):** Are there any further comments or issues before we move to the vote on PC motion 6?

**Mr. Norm Miller:** Recorded vote.

**The Chair (Mr. Shafiq Qadri):** Recorded vote.  
We'll proceed to that vote.

**Ayes**

Fedeli, Norm Miller.

**Nays**

Berardinetti, Delaney, Gélinas, Martins, Naidoo-Harris, Potts.

**The Chair (Mr. Shafiq Qadri):** PC motion 6 falls.  
Shall section 3 carry, the one we were just dealing with? Carried.  
Shall sections 4, 5 and 6 carry? Carried.

Shall section 7, the short title, carry? Carried.

The title? Carried.

Shall Bill 52 carry? Carried.

Shall I report the bill, as amended, to the House?

Thank you.

Thank you, colleagues. That will take place this afternoon. Are there any further comments before we close the proceedings?

*Interjection.*

**The Chair (Mr. Shafiq Qadri):** The reporting of the bill to the House.

**Mr. Victor Fedeli:** So our committee isn't meeting this afternoon?

**The Chair (Mr. Shafiq Qadri):** No.

Thank you, colleagues.

*The committee adjourned at 0933.*







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