



Forest Appeals Commission

**Annual Report
2021**



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Minister of Forests, Lands, Natural Resource Operations and Rural Development
Parliament Buildings
Victoria, British Columbia
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Dear Ministers:

Please find enclosed the 2021 Annual Report for the Forest Appeals Commission.

Yours truly,

A handwritten signature in green ink that reads "D. Le Houillier". The signature is written in a cursive style.

Darrell Le Houillier, Chair
Forest Appeals Commission

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Message from the Chair

I am pleased to present the Forest Appeals Commission's 2021 Annual Report.

The Commission's membership was more stable in 2021 than in recent years. We welcomed two new members: James Carwana and Dr. Diana Valiela. These were the best candidates of an outstanding pool of applicants and I am excited to have both as members.

After introducing new electronic resources to allow improved case management and the ability to offer electronic hearings with live webcasting capability, the Commission has integrated those technologies into its operations. The Commission has also increased its electronic data security and effectively transitioned to allow a greater percentage of staff to work from home. This has increased work satisfaction and allowed staff the flexibility to meet personal challenges arising from the COVID-19 epidemic and other concerns, while offering reliable service to the public, through the Commission.

Also on the technological front, the Commission is working to enhance access to justice by moving its catalogue of decisions to CanLII, allowing free, searchable access of its decisions to the public. This project is expected to conclude in 2022.

The Commission has also continued its work on a service delivery realignment project. After receiving input from stakeholders and considering a survey of historical system-users, the Commission is working to provide a cover-to-cover redesign of its appeal processes, emphasizing user-focus, fairness, responsiveness, efficiency, and timeliness in decision-making.

The Commission has also recruited and begun work with a Reconciliation Advisory Committee comprised of Indigenous leaders and experts in law and natural resources from across the province, to ensure the service delivery realignment is a step toward fulfilling our obligations as described in the Truth and Reconciliation Commission's 94 Calls to Action. The Committee may also provide recommendations on a wide range of topics, including recruitment and other procedures, and the Commission looks forward to reviewing those recommendations as a further step toward reconciliation and harmonization with the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

In 2021, the Commission also continued to process appeals. Eleven new appeals related to ten separate decisions were filed with the Commission, nearly double the intake from each of the previous two years. Thirteen appeals relating to twelve different decisions were closed, resulting in a reduction of the Commission's appeal inventory. Most appeals that were closed were decided on the merits by the Commission, while a minority were withdrawn or settled by consent between the parties. The Commission emphasized resolving longstanding appeals, and reduced the total age of appeals in its inventory, from 8,414 days to 3,751 days. The Commission is hoping to further reduce its appeal inventory in 2022.

The appeal process took, on average, 610 days to complete. This was a reduction from the average last year (836 days) but an increase from the historical averages (443 days in 2019 and 292 between 2016 and 2018). Appeals involving a hearing and decision on the merits took an average of 644 days (down from 1,015 days in 2020, but up from 540 days in 2019 and 431 days from 2016 to 2018). Appeals resolved without a decision on the merits

took an average of 556 days (up from 237 days in 2020, 249 days in 2019, and 193 days from 2016 to 2018). The longer timeframes mostly related to hearings that had to be delayed because of the COVID-19 public health crisis. Most of the appeals impacted by the health crisis have now been completed.

The Commission's expenditures in the 2020-2021 fiscal year totalled \$156,366, within \$3,200 of the five-year average of fiscal years 2017-2021. Expenditures from April 1 to December 31, 2021 totalled \$115,047, indicating that the Commission will likely exceed its expenditures in recent years. The increased expenditures reflect a higher number of appeals than in recent years and increased staffing and information technology to improve the delivery of services to the public.



Darrell Le Houillier
Chair





Introduction

The Forest Appeals Commission was established in 1995 under the *Forest Practices Code of British Columbia*, and operates today under the *Forest and Range Practices Act*. The Commission provides an independent level of appeal from some decisions made by government officials under the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act*, and the *Wildfire Act*.

The Commission, through its annual reports, also provides the Lieutenant Governor in Council (Cabinet) with an evaluation of appeal and review processes. The Commission may also recommend amendments to forest legislation and regulations respecting reviews and appeals.

In deciding appeals, the Commission weighs evidence and makes findings of fact. It interprets the legislation and common law and applies those sources of law to its factual findings. The Commission may compel the production of evidence and must ensure that its processes are procedurally fair to those involved in appeals.

The Minister and/or any party to an appeal, has a further right of appeal from a decision of the Commission to the Supreme Court of British Columbia, on questions of law or jurisdiction.

All decisions made by the Commission, as well as its Rules, its Practice and Procedure Manual, and information to assist the public through the appeals process, can be found on its website (fac.gov.bc.ca, until replaced at an as-yet unspecified date in 2022, by bcfac.ca).

Review of Commission Operations

The principal work of the Commission is to process appeals from certain statutorily-authorized decisions made under the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act*, and the *Wildfire Act*.

The Commission also must provide the Minister with an annual evaluation of the manner in which reviews and appeals under those Acts are functioning, and to identify any problems that have arisen under the provisions of those Acts. Furthermore, the Commission must make recommendations to the Minister concerning any need to amend those Acts and related regulations respecting reviews and appeals. These functions are all addressed within this annual report.

Appeal Procedures

An appeal begins when a notice of appeal is filed in response to a decision made by a statutory decision-maker. The Commission assesses whether the appeal seems to meet threshold requirements:

- the legislation allows the appellant to appeal the decision;
- the decision is appealable;
- the appeal was filed within the statutory timeframe allowed; and,
- whether the Commission has the authority to grant the requested outcome of the appeal.

Which decisions can be appealed and who can appeal those decisions depends on the statute under which the decision was made, as discussed below.

For appeals of decisions made under the *Forest and Range Practices Act* and the *Wildfire Act*, the Commission will invite the Forest Practices Board to be a party to the appeal, if it is not the appellant. The Commission may also invite interveners to participate in an appeal.

The Commission may conduct appeals in writing or orally. Oral hearings may be conducted in person or by videoconference. The type of hearing depends on the needs of the parties and the principles of procedural fairness in administrative law.

As part of the legislative scheme governing the Commission, parties who disagree with a decision of the Commission have the right to appeal to the British Columbia Supreme Court, on questions of jurisdiction and law.


Forest Act

The *Forest Act* governs the allocation and administration of Crown-owned timber in British Columbia. Under the *Forest Act*, determinations, orders, and decisions may be appealed to the Commission, either directly or following a review of that determination, order, or decision, by someone appointed by the Minister to do so.

Matters that may be appealed directly to the Commission are categorized as decisions related to:

- general tenure provisions, including:
 - compensation for tree farm licence holders where allowable cuts in tree farm licence areas are reduced;
 - allowances for third parties to cut timber on unused land within a tree farm licence area; and
 - reducing annual allowable cuts because of soil disturbance; and
- payments to government, including:
 - rent payable in respect of a tree farm licence, woodlot licence, community forest agreement, or first nations woodland licence;
 - stumpage rates; and
 - ministerial orders to define the volume of timber harvested under certain licences.





Matters that may be appealed to the Commission following reviews are categorized as decisions related to:

- general tenure provisions, including:
 - suspension and cancellation of a person's registration as a BC timber sales enterprise or of a BC timber sales agreement;
 - changes to the allowable cut within a timber supply area for a variety of reasons;
 - suspension, cancellation, or reduction of an agreement to allow a person to carry out innovative forestry practices;
 - the ability of the government to use Crown land for a purpose compatible with timber harvesting; and
 - the suspension of, reinstatement of, or cancellation of rights under an agreement due to failure to comply with obligations under the agreement or legislation; and
- payments to government, including:
 - rent payable in respect of woodlot licences and community forest agreements; and
 - ministerial orders limiting harvested volumes in certain circumstances.

Forest and Range Practices Act

The *Forest and Range Practices Act* regulates: operational planning; forestry practices, such as road building, logging, and reforestation; requirements for range use planning; range stewardship and grazing schedules; protection of forests and ranges; compliance; enforcement; and monitoring. Under the *Forest and Range Practices Act*, appealable decisions are categorized as decisions related to:

- approvals, denials, and amendments to forest stewardship, site, and woodlot licence plans;
- forest practices requiring, in certain circumstances, plan-holders to submit plans to prevent, contain, control, limit the spread of, or dispose of threats to forested areas, including insects, diseases, and animals;
- approvals, orders, and determinations regarding range use plans, range stewardship plans, or amendments to either;
- the protection of resources, including orders related to unauthorized uses of Crown land for:
 - the storage of hay;
 - range development;
 - the construction or occupation of buildings;
 - the construction, rehabilitation, or maintenance of trails or recreational facilities;
- compliance and enforcement, including:
 - stop work orders;
 - remediation orders;
 - the imposition or non-imposition of administrative penalties;
 - orders related to the general intervention power of the Minister;
 - the suspension or cancellation of forest stewardship plans, woodlot licence plans, range use plans, range stewardship plans, and permits in certain circumstances;

- general provisions, including:
 - declarations limiting certain persons' liability to government and/or relieving persons from obligations under the *Forest and Range Practices Act* or an operational plan; and
 - imposing conditions in respect of an order, exemption, consent, approval, or authorization given or granted under the *Forest and Range Practices Act*; and
- regulations and standards, where the Minister exempts a person from regulations related to the construction, maintenance, use, or deactivation of certain roads, or the use of certain vehicles on forest service roads and rights of way.

Sometimes, decision-makers (or other Ministry staff authorized by the Minister) might first review an appealable determination. Those reviews may also be appealed to the Commission; however, only the determination or a review of that determination—not both—may be appealed to the Commission.

Lastly, the Commission may, at the request of the Forest Practices Board, order the Minister or an official to make determinations related to administrative penalties or remediation orders.

Private Managed Forest Land Act

The *Private Managed Forest Land Act* encourages private landowners to manage their forests for long-term forest production by offering property tax incentives. The legislation establishes objectives with respect to soil conservation, water quality, fish habitat, critical wildlife habitat, and reforestation. The legislation also establishes the Private Managed Forest Land Council, which administers the managed forest program.

A person who is subject to certain orders, decisions, or determinations of the Council may appeal those to the Commission. Those matters, which are found within the Compliance and Enforcement provisions of the *Private Managed Forest Land Act*, include:


- determinations that a person has contravened the Act or its regulations;
- stop work orders and remediation orders;
- notifications to the government-appointed assessor that a person has contravened or is contravening the Act or its regulations; and
- variations of orders, decisions, and determinations.

Range Act

The *Range Act* governs management of Crown-owned range land, including by creating various forage tenures, addressing tenure management, and establishes the regulatory framework for grazing and hay-cutting licences and permits. The *Range Act* also includes compliance and enforcement tools.

People who are the subject of, or whose licences or permits are affected by, certain orders, decisions, or amendments made by certain government officials may appeal those to the Commission. Decisions that may be appealed to the Commission are categorized as decisions related to:

- licences and permits, including:
 - suspension and reinstatement of rights under a licence or permit for non-compliance or due to weather or natural events; and

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- reduction of allowable grazing or hay harvesting under a licence or permit for a variety of reasons; and
 - compliance and enforcement, by cancelling rights under a licence or permit for non-compliance.

The Commission also decides appeals from review decisions by government officials, of determinations that could themselves have been appealed to the Commission. Only the determination or a review decision of that determination—not both—may be appealed to the Commission.

Wildfire Act

The *Wildfire Act* is dedicated to wildfire protection in British Columbia. It defines responsibilities and obligations with respect to fire use, prevention, control, and rehabilitation. It allows the Government to recover its fire control costs and money for damages to Crown resources related to wildfires. The *Wildfire Act* also allows the government to make orders, issue determinations, and impose administrative penalties for non-compliance with the legislation.

Certain orders under the *Wildfire Act* may be appealed to the Commission, either by a person named in the order or by the Forest Practices Board. Those orders can be categorized as related to:

- forest and range protection, through orders for the abatement of fire hazards;
- fire prevention and fire control, by reducing compensation to those carrying out fire control because of their role in causing or contributing to a fire or its spread; and
- cost recovery and penalties, through:
 - orders for the recovery of fire control costs, damages, and costs recoveries;
 - contravention orders and associated administrative penalties and recovery of damages and costs;
 - remediation orders and administrative penalties for noncompliance with those orders; and
 - stop work orders.

The Commission also decides appeals from review decisions by government officials, of orders that could themselves have been appealed to the Commission. Only the order or a review decision of that order—not both—may be appealed to the Commission.

Statutory Framework

The statutory framework governing the operation of the Commission is found in Part 8.1 of the *Forest and Range Practices Act*, sections 140.1 to 140.7. Under section 140.2, the following sections of the *Administrative Tribunals Act* apply to the Commission:

- Parts 1, 2, 3, 4 (except sections 22, 25, 33¹, 34(1), and 34(2)), 6 (except sections 47.1 and 47.2), 7, 8, and 10; as well as
- Sections 59.1 and 59.2.

Performance Indicators

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In 2021, the appeal process took, on average, 610 days to complete. This is down from 836 days in 2020, but up from 443 days in 2019. From 2016 to 2018, the average was 292 days.

Where decisions were issued on the merits of an appeal, the process took an average of 644 days (down from 1,015 days in 2020, but up from 540 days in 2019). From 2016 to 2018, the average was 431 days.

Where appeals were resolved without a decision on the merits (for example, by withdrawal or consent order), the average was 556 days (up from 237 days in 2020, and 249 days in 2019). From 2016 to 2018, the average was 193 days.

The lengthened timelines for completing appeals in 2021 relate primarily to the COVID-19 public health crisis in British Columbia. This is as predicted in last year's annual report. Several appeals had to be postponed and electronic hearing processes were developed.

While appeal timeframes may continue to be longer than desired in 2022, the effect seems to have mostly passed. The age of the Commission's appeal inventory has continued to fall, from 14,658 days on January 1, 2020 to 8,414 days on January 1, 2021, to 3,751 days on December 31, 2021. The Commission expects a further reduction in the age of the appeal inventory in 2022, and an improvement in timeliness to resolve appeals in 2022 or 2023.

¹ Generally, section 33 of the *Administrative Tribunals Act* does not apply to the Commission; however, that section does apply to appeals advanced under sections 82 and 83 of the *Forest and Range Practices Act*.





Appeals and Judicial Reviews of Commission Decisions

One judicial review and one appeal, both filed in 2020, remain in progress and await a hearing. These matters both relate to one decision of the Commission: *Canadian National Railway Company v. Government of British Columbia*, Decision No. 2018-WFA-002(a). The Commission's decision denied an appeal from the Canadian National Railway Company. The company sought a reduction in an order to pay the government's costs to control a wildfire, and the value of Crown resources that were damaged or destroyed in the wildfire. The wildfire started from sparks one of the company's employees made while working on a railway track. Some aspects of the company's efforts to detect and suppress the wildfire violated the *Wildfire Act* and the *Wildfire Regulation*. After hearing the appeal, the Commission increased the amount of the cost recovery order to reflect its view of the damage to Crown resources. The effect was an increase in the total amount the company was ordered to pay, from \$15,992,417.97 to \$16,323,527.62.

In addition, one decision of the Commission was appealed in 2021: *Tolko Industries Ltd. v. Government of British Columbia*, Decision No. 2019-WFA-002(b). In that decision, the Commission granted, in part, Tolko Industries Ltd. (Tolko)'s appeal of an administrative penalty and cost recovery order levied under the *Wildfire Act*. Tolko had argued that it did not contravene the requirements of the *Wildfire Act* and its regulations, but the Commission found that it had. The Commission concluded that Tolko's contraventions were not excused by the defences of mistake of fact or due diligence; however, Tolko was exempt from repaying fire control costs under section 29(b) of the *Wildfire Regulation*. This reduced the total amount that Tolko was required to pay, from \$489,655.20 to \$146,160, as the rest of the cost recovery order and the penalty were confirmed. This appeal remains with the courts. There has not been a hearing yet.

Applications and Appeals in 2021

While the Commission is responsible for considering appeals on a broad range of subjects, the appeals that were active in 2021 represent a relatively narrow focus.

Under the *Forest Act*, two appeals were received in 2021. Both related to decisions under Part 4: General Tenure Provisions.

The six appeals received under the *Forest and Range Practices Act* in 2021 included decisions made under Part 6: Compliance and Enforcement. These decisions also concluded that parties had been noncompliant with various requirements under Part 3: Forest Practices (one decision) or Part 5: Protection of Resources (five decisions).

All three appeals brought under the *Wildfire Act* in 2021 were from decisions under Part 3: Administrative Remedies and Cost Recovery. One appeal also included a decision of noncompliance with Part 1: Forest and Range Protection Requirements, while another included a decision of noncompliance with Part 2: Authority of Government for Fire Prevention and Fire Control.

The table below summarizes the number of appeals in the Commission's inventory at the start of 2021, filed in 2021, and completed in 2021. These figures are broken down by the legislation under which each appeal was filed. The number of appeals appears as the first number in each field, while the second number (in parentheses) provides the number of government decision letters that were the subject of appeals (as one decision letter may generate one or more appeals).

	Inventory (Start of 2021)	New Appeals in 2021	Matters Resolved via...				Inventory (End of 2021)
			Rejection	Abandonment or Withdraw	Consent Orders	Final Decisions	
Forest Act							
	1 (1)	2 (1)	0	2 (1)	0	1 (1)	0 (0)
Forest and Range Practices Act							
	4 (4)	6 (6)	0	0	1 (1)	3 (3)	6 (6)
Private Managed Forest Land Act (Part 5: Compliance & Enforcement)							
	0	0	0	0	0	0	0
Range Act							
	0	0	0	0	0	0	0
Wildfire Act							
	10 (10)	3 (3)	0	0	2 (2)	4 (4)	7 (7)
TOTAL	15 (15)	11 (10)	0	2 (1)	3 (3)	8 (8)	13 (13)

The Commission convened oral hearings on the merits of six appeals in 2021: one under the *Forest Act*, one under the *Forest and Range Practices Act*, and four under the *Wildfire Act*. Two sets, each of two appeals, were heard together for the sake of efficiency. These hearings totalled 20 days and were held via videoconference.

The Commission also conducted a mediation on one appeal in 2020, taking one day to do so. The mediation was unsuccessful.



Forecast of Workload

From 2015 to 2021, the Commission received 5 to 19 appeals per year. Appeal volumes were on the lower of the range in 2020 and 2021. The Commission expects there may be some increase in activity due to the more intense wildfire seasons in recent years, but projects receiving between 5 and 15 appeals again in 2022.

Forecast of Trends and Special Problems

The Commission has not observed any trends of note. The Commission is unaware of any systemic problems related to its areas of authority. The Commission is unaware of any indications of special problems or issues related to the process of reviews at the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

Surveys

The Commission did not undertake any surveys in 2021, having completed a survey in 2020 as part of its service delivery realignment project.

Plans for Improving Commission Operations

The Commission's website refresh was delayed by other priorities in 2021; however, the Commission is committed to reworking the website in 2022. It will allow more user-friendly materials to be available to those involved in appeals, and offer a more modern line of contact between the Commission and the public.

In addition to publishing its decisions on its website, the Commission will be making its catalogue of decisions available to the public via CanLII, a free database of tribunal and court decisions. This will improve the public's access to justice and ability to search the Commission's decisions.

Furthermore, the Commission will continue its service delivery realignment in 2022. Based on feedback the Commission has received from stakeholders, and upon review of its 2020 survey of historical system-users, the Commission is reworking its appeal processes to focus on several objectives:

- ensuring better preparation of parties to present evidence and participate in hearings,
- improving the efficiency of hearings,
- ensuring that self-represented and layperson-represented parties receive appropriate levels of assistance throughout the life of their appeals,
- improving the clarity and responsiveness of the Commission's rules and correspondence,
- ensuring that in-person hearings are offered where feasible and appropriate,
- increasing active case management by the Commission throughout appeals,
- training panels in the consistent and fair application of rules and procedures,
- emphasizing clarity and responsiveness in decision-writing, and
- fostering more professional, respectful, and culturally aware oral hearings.

Lastly, the Commission will work with its Reconciliation Advisory Committee to identify meaningful steps, both within the service delivery realignment project and outside of it, to foster reconciliation with British Columbia's Indigenous population. The Reconciliation Advisory Committee is likely to make recommendations in 2023, and the Commission looks forward to incorporating the Committee's feedback into its processes.



Recommended Legislative and Regulatory Amendments

The Commission has no new recommended legislative or regulatory amendments at this time.

Commission Membership

Members of the Commission are appointed by the Lieutenant Governor in Council under Part 2 of the *Administrative Tribunals Act*. The Commission has diverse, highly qualified members, including professional foresters, biologists, engineers, and agrologists. The Commission also has lawyers with expertise in natural resource and administrative law. Members are appointed from across British Columbia, and the Commission is committed to soliciting applications to ensure its membership reflects the diversity of British Columbians, while ensuring members have the requisite expertise and experience to carry out their responsibilities to the highest standards.

The following tables summarize the membership of the Commission as of December 31, 2021, as well as changes in membership during 2021.

Members of the Forest Appeals Commission with Special Duties as of December 31, 2021

Name	End of Term
Darrell Le Houillier (Chair)	July 29, 2022
David M. Bird (Vice Chair)	December 31, 2023
Robert Wickett, Q.C. (Vice Chair)	December 31, 2021

Members of the Forest Appeals Commission, January 1, 2021 to December 31, 2021

Name	End of Term	Name	End of Term
Maureen Baird, Q.C.	December 31, 2023	Ian Miller	December 31, 2022
Shannon Bentley	December 31, 2022	Susan Ross	December 11, 2022
Daniela Dos Santos	December 31, 2022	Teresa Salamone	December 31, 2022
Brenda L. Edwards	December 31, 2022	Howard M. Saunders	December 31, 2022
Jeffrey Hand	December 31, 2022	Daphne Stancil	December 31, 2023
Cynthia Lu	December 31, 2022	R. Michael Tourigny	December 31, 2023
James Mattison	December 31, 2022	Reid White	December 31, 2022
Linda Michaluk	December 31, 2023	Reginald Whiten	December 31, 2022

New and Former Members of the Forest Appeals Commission

New Members	Start of Term	Former Members	End of Term
James Carwana	December 31, 2023		
Diana Valiela	December 31, 2023		

The Commission Office and Use of Resources

The Commission’s operations are facilitated through resources shared with the Community Care and Assisted Living Appeal Board, the Environmental Appeal Board, the Financial Services Tribunal, the Health Professions Review Board, the Hospital Appeal Board, the Industry Training Appeal Board, and the Oil and Gas Appeal Tribunal. These shared resources include registry services, legal advice, research support, systems support, financial and administrative services, professional development, and communications support.

Many of the expenses associated with the Commission’s operations are shared with the Environmental Appeal Board, which is the principal body in the resource-sharing arrangement described above. As such, providing a separate report on the budget of the Commission does not capture the true use of resources for budgeting purposes. This difficulty is compounded by the fact that the Commission is required, by regulation, to report based on the calendar year, whereas its fiscal year runs from April 1 to March 31. The Environmental Appeal Board’s fiscal year and reporting year also runs from April 1 to March 31.

With that limitation in mind, I have provided a summary of the Commission’s direct expenses in 2021 and historically. The figures below do not account for several heads of expenditure, including some staff salaries and benefits. The following table summarizes the Commission’s expenditures, rounded to the nearest dollar. Figures are provided based on a five-year average, the 2020-2021 fiscal year, and the 2021 portion of the 2021-2022 fiscal year.

Area of Expenditure	Fiscal Years 2017-2021 Average	2020-2021 Fiscal Year	2021-2022 Fiscal Year to December 31, 2021
Staff Salaries and Benefits	\$9,026	\$45,129	\$77,794
Member Fees and Expenses	71,427	84,536	52,188
Staff Travel	214	0	0
Professional Services	18,787	8,834	8,915
Information Systems	5,029	11,428	11,251
Office and Venue Expenses	5,360	4,519	0
Annual Report Publication	5,175	1,920	3,020
Other	29	0	0
TOTAL	\$115,047	\$156,366	\$153,168





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