

CITATION: Hilderley v. His Majesty The King, 2026 ONSC 3212
COURT FILE NO.: CV 24-00029692-0000
DATE: 2026/06/02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

RUSSELL HILDERLEY and CATHERINE
BONIN-HILDERLEY

Plaintiffs

– and –

HIS MAJESTY THE KING,
REPRESENTED BY THE MINISTER OF
TRANSPORTATION FOR THE
PROVINCE OF ONTARIO AND THE
GOULAIS MISSION LOCAL ROADS
BOARD

Defendants

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) *B. Hollingsworth*, for the Plaintiffs
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) *Timothy Gindi*, for the Defendant His
) Majesty the King
)

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) *Rose Muscolino*, for the Defendant The
) Goulais Mission Local Roads Board
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)
) **HEARD:** April 27, 2026

REASONS FOR DECISION ON MOTION

TYSICK, J.

OVERVIEW

- [1] The plaintiffs have brought an action relating to damage to their property caused by the replacement of a culvert under Goulais Mission Road. They allege that the defendants replaced a 12-inch culvert with a 24-inch culvert increasing waterflow into the plaintiffs' ditch and causing erosion of the plaintiffs' property.
- [2] Both defendants bring a Rule 21 motion to strike the plaintiffs' statement of claim on the basis that it discloses no reasonable cause of action by virtue of statutory immunity

provisions contained in the *Local Roads Board Act*, R.S.O. 1990, c. L.27, s.18 (*LRBA*) and the *Public Lands Act*, R.S.O. 1990, c. P.43, s.50 (*PLA*). Alternatively, they argue that the claim is barred by the *Limitations Act*, 2002, S.O., c.24 (*Limitations Act*).

- [3] For the following reasons, I find that the plaintiffs' claim is struck for not disclosing a reasonable cause of action due to the immunity provision in the *LRBA*. The replacement of the culvert by the defendants constitutes maintenance of a local road, and any damage alleged to have resulted from that work is not recoverable. In light of this finding, I need not consider the immunity provision in the *PLA* or the limitation defence.

BACKGROUND

- [4] On October 16, 2024, the plaintiffs commenced an action against the defendants seeking general damages in the amount of \$150,000.00, punitive damages in the amount of \$50,000 and an order requiring the defendants to remove or seal the culvert in issue.

- [5] The statement of claim asserts these facts:

- a) The plaintiffs are spouses who own property located at 1943 Goulais Mission Road, Goulais River, Ontario.
- b) The Ministry of Transportation (MTO) is responsible for building, construction and maintenance of roads and highways in Ontario.
- c) The Goulais Mission Local Roads Board (GMLRB) is a local roads board servicing the Goulais River area. It inspects local roads and works in conjunction with the MTO to construct and maintain roadways in the Goulais River area.
- d) The defendants installed or caused to be installed culverts at issue in the claim.
- e) Prior to 2015, the plaintiffs were able to manage heavy rains and snow melts with a private ditch extending across their property and draining into Goulais Bay.
- f) Prior to 2015, a 12-inch culvert crossed underneath Goulais Mission Road and opened near the plaintiffs' property but did not interfere with the plaintiffs' property or private ditch.
- g) During 2015, structural repair and replacement work was undertaken by the Defendants to replace the existing culverts on or around the plaintiffs' property with new, larger culverts. Specifically, the defendants replaced the 12-inch culvert under Goulais Mission Road with a 24-inch culvert.
- h) Commencing in the spring of 2015 and each season thereafter, the plaintiffs experienced significant annual flooding at the north side of their property after heavy rains and snowmelt. The flooding water overflowed the plaintiffs' ditch, eventually receding and taking with it a substantial amount of soil. This caused erosion of the plaintiffs' property including the foundation of a large workshop and destabilized trees and a large propane tank.

- i) After flooding in 2023, the plaintiffs realized that the damage had rendered about 30% of their property unusable and that efforts to resolve the issue were not fruitful.
- j) The plaintiff, Russell Hilderley, sent 10 emails to various individuals including the defendants, MPPs, and the Ombudsman between November 3, 2020 and September 13, 2022. The only replies received were emails from the Ontario Ministry of Agriculture, Food and Rural Affairs dated August 12, 2022 and the MTO dated September 22, 2022. The plaintiffs state that the MTO and the GMLRB disregarded their concerns despite their repeated attempts to resolve these issues.
- k) The plaintiffs plead that the flooding and resulting damage was caused by the negligence of the defendants in installing the larger culvert. They also plead that the defendants violated s.15 of the *Drainage Act*, R.S.O. 1990, c. D. 17 in failing to ensure that the drainage system was continued to a sufficient outlet.
- l) Alternatively, the plaintiffs plead under the heading “Nuisance” that the redesign, repair, and/or replacement of the culverts is a non-natural use that leaves the defendants strictly liable under the principle of *Rylands and Fletcher*, (1868), L.R. 3 H.L. 330.

[6] The defendant, His Majesty the King, filed a statement of defence dated September 2, 2025.

[7] The defendant, GMLRB, filed a statement of defence dated December 10, 2025.

[8] The plaintiffs did not file a reply.

[9] The defendants filed separate motions to dismiss the plaintiffs’ statement of claim but relied on the same grounds. During argument, the submissions were advanced by Mr. Gindi on behalf of both defendants.

ISSUES

[10] There are three identified issues on the motion:

- i) Should the plaintiffs’ statement of claim be struck without leave to amend because it is plain and obvious that it discloses no reasonable cause of action due to statutory immunity under the *LRBA*?
- ii) Should the plaintiffs’ statement of claim be struck without leave to amend because it is plain and obvious that it discloses no reasonable cause of action due to statutory immunity under the *PLA*?
- iii) Should the plaintiffs’ statement of claim be struck because it is plain and obvious that it is statute barred pursuant to the *Limitations Act*?

ANALYSIS

Rule 21 Motions to Strike

[11] I will start by setting out the general principles applying to all Rule 21.01(1)(b) motions.

[12] Rule 21.01(1)(b) states:

21.01 (1) A party may move before a judge,

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

[13] The Ontario Court of Appeal in *Hartman v. Canada (Attorney General)*, 2026 ONCA 270, at para. 28 very recently outlined the following relevant principles governing motions to strike pursuant to Rule 21.01(1)(b):

- (i) The test for striking a pleading is whether, assuming the facts pleaded are true, it is plain and obvious that it does not disclose a reasonable cause of action and cannot possibly succeed. This is a stringent test, and the moving party must satisfy a very high threshold to succeed.
- (ii) The claim should be read as generously as possible erring on the side of permitting an arguable claim to proceed to trial, since cases should, if possible, be disposed of on their merits.
- (iii) The facts set out in the claim must be accepted as true unless they are manifestly incapable of being proven.
- (iv) Bare conclusory statements of fact and allegations of legal conclusions unsupported by material facts are not assumed to be true for purposes of a motion to strike
- (v) The court should always consider whether a deficiency in the pleadings can be addressed through an amendment and leave to amend should only be denied in the clearest of cases where the deficiencies in the pleading cannot be cured. However, although the general rule is that amendments are presumptively approved, there is no absolute right to amend pleadings, and the court has a residual right to deny amendments where appropriate.

[14] Crown immunity defences (both statutory and at common law) can be addressed on Rule 21 motions where it is plain and obvious that a claim cannot succeed because it is barred by immunity going to the root of the action: see *Nelles Smith v. Ontario (Attorney General)*, 2019 ONCA 651 at paras. 91-92, *Manoharan v. Taylor*, 2025 ONSC 7013, at para. 120.

[15] Determining the viability in law of a claim early on in a pleadings motion when that viability turns exclusively on a question of law and the only material facts relevant to the question are those pled by the plaintiffs serves judicial efficiency, enhances access to justice and promotes certainty in the law: see *Owsianik v. Equifax Canada Co.*, 2022 ONCA 813 at para. 46, *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at paras. 19-21.

- [16] In summary, the Court on a Rule 21 motion should assess whether it is plain and obvious that the plaintiffs' claim is bound to fail, assuming all facts pleaded to be true. Amendments to a pleading should be permitted when the claim could proceed with such amendments. Amendments can be denied when the deficiencies in the pleading cannot be cured. Arguable claims should be permitted to proceed. But, when a claim can be determined on a question of law, such as the applicability of immunity defences, judicial efficiency is enhanced when such questions are determined early on.

Should the plaintiffs' statement of claim be struck without leave to amend because it is plain and obvious that it discloses no reasonable cause of action due to statutory immunity under s.18 of the LRBA?

(i) The immunity provision

- [17] Section 18 of the *LRBA* states:

No action shall be brought against the Crown, a board or any trustee elected or appointed under this Act for damage caused by any default in the maintenance of a local road in a local roads area, and neither the Crown nor a board nor any such trustee is liable for any damage sustained by any person using such local road.

- [18] The parties agree that Goulais Mission Road is in the local roads area serviced by the GMLRB. They also agree that the words "no action" are sufficiently broad to cover any action pleaded in the statement of claim. Therefore, if the provision applies, this action is statute barred.
- [19] The parties disagree on the application of the provision to the facts pled. They would assign different meanings to the terms "default in the maintenance" and "road".
- [20] The parties were only able to provide one decision considering s.18 of the *LRBA*: *Laforet v. French River (Municipality)*, 2004 CarswellOnt 5946 (Ont SC). The analysis in that case focused primarily on whether a motor vehicle accident occurred within the jurisdiction of the local roads board. After concluding that it did, the court found that s.18 acted as a complete bar to the plaintiff's claim relating to injuries sustained from the accident. The immunity analysis focused on the second part of s.18, in which immunity is granted for any damage sustained by any person using a local road. The case at bar pertains to the first part of the s.18 provision relating to damage caused by a default in the maintenance of a local road. Therefore, the *Laforet* decision is of limited, if any, assistance.

(ii) The Defendants' Position

- [21] The defendants argue that since the Goulais Mission Road falls within the jurisdiction of the Goulais Mission Local Road Board, the claim is barred by the immunity provision found in s.18 of the *LRBA*.
- [22] They submit that the immunity provision prevents any action being brought against the Crown or a local roads board for damage caused by any failure to maintain the road properly. They ask that the terms "damage" and "maintenance" in the *LRBA* be read in their broadest and most ordinary sense. The defendants also favour a broad definition of the word "road" submitting that a road includes a culvert within the road. By taking this

approach, they state that the replacement of the culvert is maintenance of a road, and any damage therefrom is not claimable by virtue of s.18 of the *LRBA*.

(iii) The plaintiffs' position

[23] The plaintiffs state that s.18 only bars claims arising from “non-feasance or misfeasance”. They say they do not allege a failure to repair a road surface or maintain a roadway. Instead, they allege that through “affirmative redesign and reconstruction of culverts”, the defendants altered historical water flow and created a new and dangerous drainage pattern leading to flooding. Interpreting statutory immunity narrowly, they argue that positive acts of construction causing damage fall outside the immunity provision.

[24] The plaintiffs also offer a more restrictive interpretation of the word “road”, arguing that a culvert is not part of a roadway.

(iv) Did the work on the culvert amount to maintenance on a local “road” under s.18 of the *LRBA*?

[25] If the culvert system installed in 2015 does not amount to maintenance of a local “road” under the *LRBA*, the statutory immunity provision will not apply to this action.

[26] The words of a statute should be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament; see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 154 D.L.R. (4th) 193, at para. 21. This modern approach favours statutory interpretation that: a) is plausible and in compliance with the legislative text; b) promotes the legislative intent; and c) leads to an outcome that complies with accepted legal norms and is reasonable and just.¹

[27] Section 10 of the *Interpretation Act*, R.S.O. 1990, c. I.11 also provides that an Act is deemed to be remedial and should receive such fair, large and liberal construction and interpretation that will best ensure the object of the Act according to its true intent, meaning and spirit.

[28] Adopting this approach to the language of the *LRBA*, the Court should consider the plain meaning of the words used in s.18 while ensuring that such meaning is harmonious to the legislative intent of the section while also complying with accepted legal norms leading to a reasonable and just outcome.

[29] Since the word “road” is not defined in the *LRBA*, it is presumed that the ordinary meaning of the word is the meaning intended by the legislature.² However, if the ordinary meaning is ambiguous or vague, a contextual analysis is required to resolve the ambiguity in the ordinary meaning.

[30] Dictionary definitions offer limited assistance in determining the ordinary meaning of a word. Various dictionaries provide differing definitions and are devoid of any contextual analysis. But they can serve as a starting point in developing the ordinary meaning of a

¹ See Ruth Sullivan, *Construction of Statutes*, 6th ed (Toronto: LexisNexis Canada, 2014).

² Ruth Sullivan, *Construction of Statutes*, 6th ed (Toronto: LexisNexis Canada, 2014), para. 3.6 at p. 28.

word. The Oxford English Dictionary defines road as “a wide way between places, especially one surfaced for use by vehicles”.³ This definition does not restrict a road to the road surface and is broad enough to include elements below the surface.

- [31] Culvert is defined as a tunnel carrying a stream or open drain under a road or railway.⁴
- [32] In *Consumers’ Gas Co. v. City of Barrie*⁵, Borins Co. Ct. J. considered whether the replacement of a culvert amounted to “reconstructing, changing, altering or improving a highway” pursuant to s. 2 of the *Public Service Works on Highways Act*, R.S.O. 1970, c.388. He concluded that a culvert was an integral and necessary part of a highway, indeed a component of the highway.
- [33] Rasaiah J. examined a similar issue in the context of a summary judgment motion⁶. The court considered whether the definition of “road” under the *PLA* included a culvert. At that time, the s. 48 definition of “road” under the *PLA* did not specifically include a culvert, as it now does. The court concluded a claim for negligence related to the design, maintenance and installation of culverts constitute claims of negligence in connection with the repair of a road within s. 50 of the *PLA*. As such, the claim was statute barred. The court recognized that water crossings and culverts are tied to, or connected to, road activities including repair and maintenance. This connection protects roads against washouts and inconvenience to road users.
- [34] Logically, the proper construction of a road must include systems that prevent washouts or erosion of the roadway. If a road is to be kept dry and usable by the public, it may require the installation of new culverts or the repair of existing ones. One cannot install or repair a culvert without also impacting the rest of the road, including the surface.
- [35] It is helpful to read s. 18 of the *LRBA* alongside s. 50 of the *PLA*. Section 50 of the *PLA* states that “no civil action shall be brought against the Crown or any person in respect of misfeasance, non-feasance, nuisance or negligence in connection with the construction, maintenance, repair....of a road.” Section 48 of the *PLA* defines “road” as including culverts but does not include a road under the jurisdiction of a local roads board.
- [36] Both s. 18 of the *LRBA* and s. 50 of the *PLA* provide statutory immunity to the Crown for damages relating to road maintenance. However, the immunity protection under s. 50 of the *PLA* specifically does not apply to a road under the jurisdiction of a local roads board. Those roads are governed by the statutory immunity provision of s.18 of the *LRBA*.
- [37] Section 50 of the *PLA* offers statutory immunity to the Crown or any person in relation to specified civil actions connected to the failure to maintain a road, including culverts. The *LRBA* provides even broader immunity to the Crown and the local roads board for road maintenance by using the words “no action shall be brought”. The primary aim of both immunity clauses is to offer legal protection to those tasked with the responsibility of maintaining roads within the jurisdiction of the respective acts. It would not be reasonable

³ *Concise Oxford English Dictionary*, 11th ed (Oxford University Press, 2008).

⁴ *Concise Oxford English Dictionary*, 11th ed (Oxford University Press, 2008).

⁵ (1980) 31 O.R. (2d) 242, at para. 18.

⁶ *CNR v. Weyerhaeuser*, 2018 ONSC 2056.

to hold that the Crown has immunity when installing/replacing culverts in relation to a road not under the jurisdiction of a local roads board but is open to broad liability if the culvert is under a road within the roads board jurisdiction. This cannot be the intent of the legislature.

- [38] Further, an interpretation of road as including the installation or repair of a culvert, leads to an outcome that is reasonable and just. Section 18 of the *LRBA* aims to protect the local roads board from any action for damages resulting from maintenance of the road. It is reasonable to conclude that the maintenance of a culvert running underneath the road surface is equivalent to maintaining the road. Such work is ultimately for the purpose of upholding the structural integrity of the road and avoiding the risk of washouts or surface erosion that could pose a danger to public users.
- [39] In conclusion, I find that a “road” under s. 18 of the *LRBA* includes a culvert located under the road surface. This interpretation is consistent with the ordinary meaning of the word when read in its statutory context, is aligned with the purpose of the immunity provision, and leads to a just and reasonable outcome.

(v) *Is the plaintiffs’ claim based on a “default in the maintenance” of a local road?*

- [40] Section 18 of the *LRBA* only protects the defendants from damage caused by “any default in the maintenance” of a local road. Given my finding that “road” includes a culvert, the section will also provide immunity if damage results from any default in the maintenance of a culvert. The *LRBA* does not define the word “maintenance.”
- [41] In *Canadian Pacific Railway v. Grand Trunk Railway*, (1914) 49 S.C.R. 525 at para. 21, Idington, J. held that “maintenance would, in the ordinary sense, mean “keep in repair”; but it must vary according to the instrument in which it is found and the circumstances in which it has been used”.
- [42] One dictionary definition of the word “maintain” is to keep something in good condition by checking or repairing it regularly.⁷ Section 1 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50, states that “maintenance includes repair”.
- [43] Consider the facts pled in the Crown’s statement of defence. Though not presumed true for the purposes of this motion, these facts help conceptualize how the replacement of a culvert is inter-connected to the maintenance and repair of the road. It states that the defendant Ministry installed the larger replacement culvert at the request of the defendant local roads board. This was after representatives of the roads board observed that the existing pipe collapsed and was not transferring water, resulting in water over the road during spring thaw or heavy rain events. As part of the board’s spring maintenance, they observed the culvert in need of repair. The repair was necessary to properly maintain the road and ensure there was no water on the road.
- [44] Applying the modern approach to statutory interpretation, the only logical interpretation of the word maintenance is one that includes the repair of the culvert. That interpretation is

⁷ *Concise Oxford English Dictionary*, 11th ed (Oxford University Press, 2008).

plausible and complies with the legislative text; a text providing immunity to the Crown and the board for any action for damage caused by any default in maintenance to a local road.

- [45] This interpretation also promotes the legislative intent which is to provide broad immunity for any road maintenance undertaken by the Crown or a local roads board. Broad immunity encourages the regular maintenance of public roads within the jurisdiction of a local roads board. Such boards, run by local property owners, are responsible for maintaining roads in mostly rural areas where there is no municipal organization.⁸ Subject to the approval of the Minister, a local roads board is authorized to determine the work to be performed on local roads in the local roads area and enter into contracts for the performance of such work within the limit of the money available to pay for such work.⁹ It is worth noting that the *LRBA* specifically recognizes potential liability for contracts entered into by the board and allows the board to purchase and maintain insurance against its liability under a contract.¹⁰ Contrast this to s. 18 which shields the board from liability for any default in road maintenance. Clearly, the s.18 immunity is intended to be comprehensive.
- [46] This interpretation also leads to an outcome that is reasonable and just. The statutory immunity provision in the *LRBA* reveals a legislative intent to protect local roads boards (and the Crown) when maintaining roads for the public good. This protection reflects a legislative choice to prioritize the public interest in road maintenance over private claims for damages arising from defaults in such maintenance. Given the more limited funds generally available to local roads boards, this result is reasonable and just.
- [47] In conclusion, I find that maintenance necessarily includes needed repair. In the context of a road, this interpretation is reasonable such that any obligation to repair a road should necessarily be part of maintenance. To maintain a road in good working order, repairs are required. Therefore, any default in maintenance as defined by s.18 in the *LRBA* includes any default in repairing the road, including the culvert running under the road.

(vi) Does this action make a claim for a default in the maintenance of a local road?

- [48] The plaintiffs argue that they are not claiming for default in the maintenance of the culvert but rather positive acts of construction that interfered with private property by altering historical water flow. They can offer no case supporting this argument and, although creative, does not reflect the language used in their statement of claim. If this argument is not clear in their statement of claim, the plaintiffs ask for leave to amend the claim to make it clear.
- [49] The plaintiffs alternatively argue that the issue of whether the claim is for “default in the maintenance” of the local road is a matter for trial and this court should not decide it on a Rule 21 motion to strike.
- [50] The defendants counter by saying that the statement of claim makes it clear that the action is for default in maintenance and that no amendment can change that. They also argue that

⁸ *LRBA*, s. 3

⁹ *LRBA*, s. 10(2)

¹⁰ *LRBA*, s.10.1

a trial will not assist in deciding this issue and that the court can properly rule on it within this motion. I agree with the defendants.

- [51] Paragraph 16 of the statement of claim outlines eight ways in which the defendants' negligence caused damage to the plaintiffs' property. All ways relate to the installation of the new culvert system and the defendants' failure to design, maintain, install, inspect, or repair it properly.
- [52] The plaintiffs' action is based on the defendants' installation of a replacement culvert that caused damage to their property. Whether the culvert was oversized, improperly designed, improperly installed, or improperly maintained does not alter the underlying basis for the action. All the allegations of negligence arise from the defendants' failure to take appropriate action when maintaining the road through the replacement of the culvert.
- [53] In paragraph 25 of the statement of claim, the claim for nuisance/strict liability seeks recovery for "the damage caused by the redesign/and/or repair/replacement of the culverts by the defendants". This too is based on the defendants' positive action of installing a larger culvert when maintaining the local road.
- [54] Although evidence would assist the court in determining whether the defendants committed the acts or omissions alleged in the plaintiffs' claim, it would not assist in determining whether those alleged acts or omissions, if proven, constitute a default of the maintenance of a local road. That is a legal issue which this court can determine within this Rule 21 motion based on the facts pleaded in the statement of claim.
- [55] Finally, I agree with the defendants that granting leave to amend would not change the result. The proposed amendment would state that the defendants "positively constructed a culvert that interfered with private property rights by altering water flow." Aside from adding the word "positively," the plaintiffs have already pleaded this. Paragraph 16 (e) of the claim states that the defendants failed to consider the drainage of water from surrounding areas when it redesigned or repaired/replaced the culvert system. Paragraph 25, dealing with strict liability, also claims that the defendants are strictly liable due to the replacement of the culvert. Any new wording or characterization of the claim does not change its nature; a claim relating to the replacement of a culvert during road repair that allegedly altered water flow causing damage to the plaintiffs' property.
- [56] In conclusion, the plaintiffs' claim is one for damages caused by a default in the maintenance of a local road within the jurisdiction of the local roads board. As such, s.18 of the *LRBA* bars any such action. It is therefore plain and obvious that the statement of claim discloses no reasonable cause of action and there is no amendment that could assist in addressing this legal deficiency. Accordingly, the statement of claim is struck.

Should the plaintiffs' statement of claim be struck without leave to amend because it is plain and obvious that it discloses no reasonable cause of action due to the statutory immunity under the PLA?

- [57] Given my conclusion that the claim is barred by s.18 of the *LRBA*, it is unnecessary for me to consider whether it is also barred by the *PLA*.

Should the plaintiffs' statement of claim be struck because it is plain and obvious that it is statute barred pursuant to the Limitations Act?

[58] Given my conclusion that the claim is barred by s.18 of the *LRBA*, it is unnecessary for me to consider whether the action is also statute barred by the *Limitations Act*.

CONCLUSION

[59] The motions filed by both defendants are granted and the statement of claim is struck as disclosing no reasonable cause of action.

[60] As per costs, it was agreed by the parties that the unsuccessful party would pay \$10,000 inclusive of HST to the successful party. Accordingly, the plaintiffs shall pay the defendants collectively \$10,000 inclusive of HST.

Tysick J.

Released: June 2, 2026

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Plaintiffs

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