

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

**JUDICIAL COMMITTEE OF THE HIGHWOOD CONGREGATION OF
JEHOVAH'S WITNESSES (VAUGHN LEE - CHAIRMAN AND ELDERS
JAMES SCOTT LANG AND JOE GURNEY) AND HIGHWOOD
CONGREGATION OF JEHOVAH'S WITNESSES**

Appellants

- and -

RANDY WALL

Respondent

- and -

**THE EVANGELICAL FELLOWSHIP OF CANADA and CATHOLIC CIVIL
RIGHTS LEAGUE, CANADIAN COUNCIL OF CHRISTIAN CHARITIES,
ASSOCIATION FOR REFORMED POLITICAL ACTION, CANADIAN
CONSTITUTION FOUNDATION, CHRISTIAN LEGAL FELLOWSHIP,
WORLD SIKH ORGANIZATION OF CANADA, SEVENTH-DAY ADVENTIST
CHURCH IN CANADA and CHURCH OF JESUS CHRIST OF LATTER-DAY
SAINTS IN CANADA, JUSTICE CENTRE FOR CONSTITUTIONAL
FREEDOMS, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION,
CANADIAN MUSLIM LAWYERS ASSOCIATION**

Interveners

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THE EVANGELICAL FELLOWSHIP OF CANADA AND
CATHOLIC CIVIL RIGHTS LEAGUE**

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PART I – OVERVIEW AND FACTS

1. The Evangelical Fellowship of Canada¹ (“EFC”) and Catholic Civil Rights League² (“CCRL”) (collectively “These Interveners”) were granted leave to intervene in this appeal by the Order of the Honourable Moldaver J. on September 1, 2017. The EFC and CCRL take no position on the facts.

PART II: ISSUES

2. The EFC and CCRL will make submissions on the following issues:
 - a. Section 2(a) of the *Canadian Charter of Rights and Freedoms*³ (the “Charter”) includes protection for the communal dimensions of religious freedom.
 - b. Ecclesiastical decisions of religious communities, including decisions related to membership and discipline ought not be interfered with by the State.

PART III: ARGUMENT

a) Section 2(a) includes protection for the communal dimensions of religious freedom

3. There is no meaningful difference between the religious freedom of the individuals that establish and join a religious or congregational community and the community or congregation itself.
4. Congregational communities are, by their very nature, religious. They are founded on religious, theological and/or doctrinal principles by religious individuals for expressly religious purposes.
5. Religion is by definition and in practice, a personal commitment manifest in and through community. In the Christian tradition, for example, this communal dimension of belief is

¹ The Evangelical Fellowship of Canada (“EFC”) is a national association of churches, church-related organizations and educational institutions. The EFC is an interdenominational association of Protestant denominations and represents a constituency of 40 denominations, approximately 125 other organizations and colleges in addition to individual churches. There are approximately 4 million Protestant Evangelicals in Canada of which approximately 2.1 million are members or adherents of EFC affiliated organizations.

² The Catholic Civil Rights League (“CCRL”) is a national lay Catholic organization committed to, *inter alia*, engaging the interests of Roman Catholics from across Canada with governmental bodies, and intervening in court challenges in support of law and policy compatible with a Catholic understanding of human nature and the common good.

³ *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11* [“Charter”].

manifest in the very concepts of being members of the body of Christ, being brothers and sisters, one with another, and the concept of church. Other world religions also manifest their beliefs in and through communal ways of life.

6. This Court's jurisprudence is clear that freedom of religion has individual as well as collective aspects to it. In *R. v. Edwards Books and Art Limited*,⁴ Dickson C.J., stated:

In this context, I note that freedom of religion, perhaps unlike freedom of conscience, has both individual and collective aspects. Legislatures are justified in being conscious of the effects of legislation on religious groups as a whole, as well as on individuals.⁵

7. In *Edwards Books*, Wilson J. argued that an interpretation of s. 2a) that protects the religious freedoms of individuals but not the groups they belong to is precluded by s. 27:

Yet it seems to me that when the *Charter* protects group rights such as freedom of religion, it protects the rights of all members of the group. It does not make fish of some and fowl of the others. For, quite apart from considerations of equality, to do so is to introduce an invidious distinction into the group and sever the religious and cultural tie that binds them together. It is, in my opinion, an interpretation of the *Charter* expressly precluded by s. 27 which requires the *Charter* to be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."⁶

8. In *Alberta v. Hutterian Brethren of Wilson Colony*,⁷ this Court further recognized that freedom of religion has collective aspects.⁸ In his dissenting reasons (though not on this point) Justice Lebel put it this way:

Religion is about religious beliefs, but also about religious relationships. The present appeal signals the importance of this aspect. It raises issues about belief, but also about the maintenance of communities of faith. We are discussing the fate not only of a group of farmers, but of a community that shares a common faith and a way of life that is viewed by its members as a way of living that faith and of passing it on to future generations. As Justice Abella points out, the regulatory measures have an impact not only on the respondents' belief system, but also on the life of the community.⁹

⁴ *R. v. Edwards Books and Art Limited*, [1986] 2 S.C.R. 713, at 781 ["*Edwards Books*"].

⁵ *Edwards Books*, *supra*, at 781.

⁶ *Edwards Books*, *supra*, at 808 and 809.

⁷ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567 ["*Hutterian Brethren*"].

⁸ *Hutterian Brethren*, *supra*, at paras. 31, 32, 130, 131, 182.

⁹ *Hutterian Brethren*, *supra*, at para.182.

9. *Charter* rights do not exist in isolation or independent from each other. Some *Charter* rights are related to others and in some instances, are required in order for the *Charter* right in question to actually be benefitted from. It is important that the *Charter* right being examined be properly considered to ensure a proper appreciation of its scope.¹⁰

10. Indeed, this approach has been recognized by this Court:

Thus, the wording of the provision, its structure, the context in which it is found, the relationship there may be between it and the other provisions, as well as the historical context in which the *Charter* was adopted, are all factors that must be taken into consideration in seeking to identify the purpose of a protected right or freedom, in order to preserve the coherence of the entire constitutional text and maintain the integrity of the intention of Parliament. A proper and prudent interpretation of the *Charter* is especially necessary because it is a constitutional document of great import that cannot be altered by a mere statutory amendment if this Court were to misunderstand or err as to the scope of the rights and freedoms to which exceptional protection is afforded.¹¹

11. One example of how *Charter* rights are related is found in the right to protest. In order for the right to protest to have any strength, it must include the section 2(b) right to freedom of expression and the section 2(c) right to freedom of assembly.

12. So is the case with freedom of religion.

13. For freedom of religion to have any value, it must also include:

- a) the section 2(a) right to freedom of conscience;
- b) the section 2(b) right to freedom of expression;
- c) the section 2(d) right to freedom of association; and,
- d) the section 15(1) right to equal treatment under the law on the basis of religion.

14. Interference with any aspect of the freedom of expression, freedom of association or right to equal treatment under the law of religious individuals or communities results in an interference with the freedom of religion of those individuals or communities.

¹⁰ *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, para. 147.

¹¹ *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para. 17.

15. Indeed, Bastarache J., recognized the need for communities (or in this case, religious congregations), to permit individuals to exercise their fundamental freedoms:

In interpreting *Charter* provisions, this Court has firmly endorsed a purposive approach. [...] there is no contradiction between protecting individual liberty and personal dignity and the wider objective of recognizing the rights of official language communities. The objective of protecting official language minorities, as set out in s. 2 of the *Official Languages Act*, is realized by the possibility for all members of the minority to exercise independent, individual rights which are justified by the existence of the community. Language rights are not negative rights, or passive rights; they can only be enjoyed if the means are provided. This is consistent with the notion favoured in the area of international law that the freedom to choose is meaningless in the absence of a duty of the State to take positive steps to implement language guarantees;¹²

16. Freedom of religion is no different.

17. For a Christian, and indeed for many religious individuals, the congregational community and communal worship are necessary components of practicing one's faith. The congregational community then, is the vehicle through which Christian individuals carry-out their faith and benefit from their section 2(a) *Charter* right to freedom of religion.

18. Religious belief, practice and worship are not merely personal or private engagements. Co-religionists associate and congregate together in order to *inter alia*, teach, study, learn, pray, serve, evangelize, live, volunteer and worship.

19. Given the communal dimension of religion which is manifest in religious communities, organizations, congregations and orders, it is important for this Court to recognize how essential community is to freedom of religion. In the case at hand, the individual members of the Highwood Congregation manifest their religious faith and practice through the Highwood Congregation. Any threat to the Highwood Congregation and its religious integrity then, is a direct threat to the individual religious freedom of each of its members.

20. On an individual basis, the Highwood Congregation (or any church, congregation, order, religious community or association) is the necessary vehicle through which the individual members of the Highwood Congregation practice their faith.

¹² [R. v. Beaulac](#), [1999] 1 S.C.R. 768, at paras. 16, 20.

21. Recently, in *Congregation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine*,¹³ Justice Lebel, in dissent (though not on this point), confirmed that the section 2(a) *Charter* right to freedom of religion must include the right to possess or maintain certain vehicles which are necessary to certain individuals' or communities' practice of religion and/or worship through teaching:¹⁴

Freedom of religion includes the right to have a place of worship. Generally speaking, the establishment of a place of worship is necessary to the practice of a religion. Such facilities allow individuals to declare their religious beliefs, to manifest them and, quite simply, to practise their religion by worship, as well as to teach or disseminate it. In short, the construction of a place of worship is an integral part of the freedom of religion protected by s. 2 (a) of the *Charter*.¹⁵

22. Similarly, the EFC and the CCRL submit that the existence of a congregational community (and the preservation of its religious integrity) is a necessary vehicle through which religious individuals carry-out their faith and worship God by worshipping in community.

Congregational and religious communities have the right to determine and maintain their religious identity

23. A congregational or religious community's identity is central to preserving its associational integrity. Although the congregational community is made up of individuals, it is not the associating of those individuals that makes the community, but rather the fact that those individuals associate around a shared set of beliefs and a common purpose. Professor Víctor M. Muñiz-Fraticelli puts it this way:

[...] a community is more than an individual but it is not an organization. In the broadest sense, it is what John Searle calls a "social fact". Yet, once imbued with the joint intentions of its members, it goes beyond that broad category and becomes a "plural subject", what Margaret Gilbert has named a group of people in which all members "are jointly committed to doing something as a body — in the broad sense of 'do'". In this sense, a community is irreducible to its individual agents. Although it exists because of the beliefs and attitudes of these individuals, a mere aggregation of people does not produce community; rather, it is their communication to each other of being engaged in a joint enterprise.¹⁶

¹³ *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine*, [2004] 2 SCR 650 ["Lafontaine"].

¹⁴ *Lafontaine*, *supra*, at para. 73.

¹⁵ *Lafontaine*, *supra*, at para. 73.

¹⁶ Iain T Benson and Barry W. Bussey, Foreword in *Religion, Liberty and the Jurisdictional Limits of Law*, (Lexis Nexis Canada, 2017), at p. 133.

24. The Ontario Human Rights Tribunal recently confirmed that freedom of religion permits religious communities to self-define and associate together:

The issue, however, is that while the parents may not object to their child learning about a view of marriage different from their own, those parents who choose to send their children to the school do so because they share a set of sincerely-held subjective beliefs rooted in their faith. To obligate the school to admit a child whose parents do not share those beliefs is to encroach on the rights of the parents served by the school to practice the creed and religion they sincerely believe in.¹⁷

25. In the Catholic tradition, this self-definition is codified through Canon Law, the Catechism and other Magisterial teaching. For example, Catholic communities, including all Catholic parishes, are bound by canonical principles and must adhere to Canon Law.¹⁸

26. In the Protestant tradition, communal self-definition is grounded in Scripture, shaped by widely adopted Creeds (e.g., Apostles' or Nicene Creed) or Confessions of faith (such as the Westminster, Heidelberg, Augsburg, or Schleithem Confessions), and/or bound by communally adopted forms of polity and practices, liturgies, written and unwritten codes of conduct, doctrinal statements, and/or denominational policies.

27. This interpretation of religious freedom is consistent with this Court's jurisprudence which has consistently recognized the right of a religious or congregational community to determine their own religious, doctrinal and moral identities and to give these identities corporate expression. Indeed, in *Caldwell v. Stuart*,¹⁹ this Court recognized that faith-based institutions (in that case a Catholic school), have the right to insist that their employees (in that case a teacher), adhere to the religious teachings and principles of the institution.

¹⁷ *H.S. v. The Private Academy*, 2017 HRT0 791, at para. 78.

¹⁸ Father Francis Morrissey, "Implications of Canon Law for Catholic Leaders and Organizations", presentation at Villa Madonna Retreat House as part of the Catholic Leadership Program for Catholic health care professionals, Rothesay, New Brunswick, February 17, 2011, at page 10.

¹⁹ *Caldwell v. Stuart*, [1984] 2 SCR 603.

28. In *Trinity Western v. British Columbia College of Teachers*,²⁰ this Court recognized that religious communities and institutions have the right to set behavioural standards of for its members (in that case, students, staff and faculty of a university).²¹
29. More recently, in *Loyola High School v. Quebec*,²² this Court confirmed that any interference with the character of a religious community and institution is a profound violation of section 2(a).

Ultimately, measures which undermine the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom.²³

30. This case is no different than *Caldwell*, *Trinity Western* and *Loyola* in that at its core, it is about whether religious individuals can congregate in community with like-minded individuals for the purpose of exercising their religious freedom.
31. Included in a congregational community's exercise of their religious freedom is the exercise of self-defining, prescribing moral behaviour and determining the parameters and means by which to admit or expel members. The act of disciplining and/or expelling a member from a religious or congregational community is a religious act that is protected from state interference.²⁴
32. This is not unique to religious or congregational communities. Indeed, all communities or associations self-define and do so in order to protect and preserve its identity and associational integrity.
33. In the political realm, we see this play out in a variety of ways. It is not uncommon for a member of one political party to "cross the aisle" and join a different party or to declare themselves as an independent. This may occur for a variety of reasons, but no matter what the reason, it occurs because the individual either no longer wishes to associate with the political

²⁰ *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 SCR 772, [*Trinity Western*].

²¹ *Trinity Western*, *supra*, at paras. 33-35.

²² *Loyola High School v. Attorney General of Quebec*, [2015] 1 SCR 613 [*"Loyola"*].

²³ *Loyola*, *supra*, at para. 67.

²⁴ *Hart v. Roman Catholic Episcopal Corporation of the Diocese of Kingston, in Canada*, 2011 ONCA 728, at paras. 18, 20.

party they were once a member of, or, they no longer meet the criteria and are unable to support that party's platform or policy proposals.

34. The only way for a political party to protect and preserve its identity and integrity is for it to be able to restrict its member to those who identify with and support its platform and policies. Anything else would result in chaos.

35. The same is true for religious or congregational communities.

b) Ecclesiastical decisions of religious communities, including decisions related to membership and discipline ought not be interfered with by the State

36. The decision to admit, expel or discipline a member in a religious or congregational community is an ecclesiastical decision based on theology and doctrine²⁵ and is a decision that can only be made by the community or congregation itself.²⁶

37. The only role this or any Court ought to play in the adjudication of ecclesiastical disputes is to ensure respect for religious freedom:

The courts have long refused to intervene in the manner proposed by the appellant. The courts' role in matters of religion is neutral. It is limited to ensuring that laws are constitutional and, in the case of a private dispute, to identifying the point at which rights converge so as to ensure respect for freedom of religion.²⁷

38. The issues of church discipline, church membership and expulsion are all centered on the religious and congregational community's shared theological and doctrinal beliefs. These issues are ecclesiastical in nature and this Court has recognized that such issues are "left to religious authorities" and that "secular law has no effect in matters of religious law."²⁸

39. In order for this Court, or any court for that matter, to examine, review or adjudicate a religious or congregational community's decision to discipline or expel a member, the Court would not only have to examine the facts leading up to the discipline or expulsion, but also

²⁵ *Hofer et al. v. Hofer et al.*, [1970] SCR 958, at pp. 970-971 [*Hofer*].

²⁶ *Hofer, supra*, at p. 974.

²⁷ *Bruker v. Marcovitz*, 2007 SCC 54, at para. 126 [*Bruker*].

²⁸ *Bruker, supra*, at para. 132.

the theological or doctrinal underpinning of the decision. Such an examination would be highly inappropriate.²⁹

40. Indeed, this Court recognized the danger of doing such an inquiry:

In my view, state-sponsored inquiries into any person's religion should be avoided wherever reasonably possible, since they expose an individual's most personal and private beliefs to public airing and testing in a judicial or quasi-judicial setting.³⁰

41. In the context of a dispute arising over the discipline or expulsion of an unrepentant member in a religious or congregational community, the Courts would be required to consider whether the individual's conduct warranted the discipline or expulsion under review. On what basis would the Court determine if the conduct warranted the action under review?

42. Certainly in such a case, there would be a dispute over the interpretation of scripture, theology and/or doctrine. In such a context, would the Courts be expected to provide a judicial interpretation of scripture? Or of moral theology? Or doctrine?

43. The Courts are simply not qualified to do conduct such an inquiry and to do so would be a grave violation of (1) freedom of religion; (2) freedom of association; and, (3) the State's obligation to remain religiously neutral.

44. Some religious or congregational community's exist as a result of theological or doctrinal disputes. For example, the Seventh Day Adventist Church believes that the Sabbath is on Saturday as opposed to many Christian denominations who celebrate the Sabbath on Sunday. Churches within the Baptist tradition belief in credo-baptism through full immersion, as opposed to some Christian denominations who subscribe to paedobaptism through sprinkling of water. Recently, we have seen churches and denominations split over issues related to marriage. If the Courts are now tasked with examining theological and doctrinal issues, each of these religious associations that have developed specifically due to theological and doctrinal disputes, will be vulnerable to infiltration and challenge.

²⁹ *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at para. 50.

³⁰ *Edwards Books*, *supra*, at para. 142.

45. Such a result would fly in the face of what the *Charter* was meant to protect. This Court noted in *Big M*: “One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint.”³¹
46. The judiciary, as learned as it may be, is simply not qualified or equipped to engage in such examinations.
47. The courts have recognized the importance ecclesiastical law plays to the existence of religious communities, so much so, that the courts have deferred to ecclesiastical law in the adjudication of civil disputes.³²
48. In the Roman Catholic tradition, there is a long history of codified canon law. Indeed, ecclesiastical legal systems like those of Canon law and Talmudic law predate our common law³³ and in fact heavily influenced our common law.³⁴
49. Interfering in private, ecclesiastical issues would unduly diminish the protection afforded by section 2(a) of the *Charter*.

PART IV: COSTS

50. The EFC and CCRL do not seek costs, and asks that no costs be awarded against them.

PART V: ORDER SOUGHT

51. The EFC and CCRL take no position on the disposition of the within appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 4th day of October, 2017.



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³¹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, at para. 95.

³² *Bentley v. Anglican Synod of the Diocese of New Westminster*, 2010 BCCA 506, at para. 23;
Synod of the Diocese of Huron v. Delicata et al, 2011 ONSC 4403, at para. 65.

³³ *R. v. D.L.W.*, 2016 SCC 22, at para. 132.

³⁴ *R. v. Big M. Drug Mart Ltd.*, 1983 ABCA 268, at para. 112.

PART VI – TABLE OF AUTHORITIES

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<i>H.S. v. The Private Academy</i> , 2017 HRTO 791	26
<i>Caldwell v. Stuart</i> , [1984] 2 SCR 603	29
<i>Trinity Western University v. British Columbia College of Teachers</i> , [2001] 1 SCR 772	30
<i>Loyola High School v. Attorney General of Quebec</i> , [2015] 1 SCR 613	31
<i>Hart v. Roman Catholic Episcopal Corporation of the Diocese of Kingston, in Canada</i> , 2011 ONCA 728	31
<i>Hofer et al. v. Hofer et al.</i> , [1970] SCR 958	35

<i>Bruker v. Marcovitz</i> , 2007 SCC 54	36, 37
<i>Syndicat Northcrest v. Amselem</i> , 2004 SCC 47	39
<i>R. v. Big M Drug Mart Ltd.</i> , [1985] 1 SCR 295	44
<i>Bentley v. Anglican Synod of the Diocese of New Westminster</i> , 2010 BCCA 506	46
<i>Synod of the Diocese of Huron v. Delicata et al</i> , 2011 ONSC 4403	46
<i>R. v. D.L.W.</i> , 2016 SCC 22	47
<i>R. v. Big M. Drug Mart Ltd.</i> , 1983 ABCA 268	47

Other References

SOURCE	PARA. IN FACTUM
Iain T Benson and Barry W. Bussey, Foreword in <i>Religion, Liberty and the Jurisdictional Limits of Law</i> , (Lexis Nexis Canada, 2017)	23
Father Francis Morrisey, “ <i>Implications of Canon Law for Catholic Leaders and Organizations</i> ,” presentation at Villa Madonna Retreat House as part of the Catholic Leadership Program for Catholic health care professionals, Rothesay, New Brunswick, February 17, 2011	25

Legislative Provisions

<i>Canadian Charter of Rights and Freedoms, Part I of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11</i>	
<p>Fundamental freedoms</p> <p>2. Everyone has the following fundamental freedoms:</p> <ul style="list-style-type: none">(a) freedom of conscience and religion;(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;(c) freedom of peaceful assembly; and(d) freedom of association. <p>[...]</p> <p>15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p>Libertés fondamentales</p> <p>2. Chacun a les libertés fondamentales suivantes :</p> <ul style="list-style-type: none">a) liberté de conscience et de religion;b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;c) liberté de réunion pacifique;d) liberté d'association. <p>[...]</p> <p>15(1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.</p>

**JUDICIAL COMMITTEE OF THE HIGHWOOD CONGREGATION
OF JEHOVAH'S WITNESSES (VAUGHN LEE - CHAIRMAN AND
ELDERS JAMES SCOTT LANG AND JOE GURNEY) AND
HIGHWOOD CONGREGATION OF JEHOVAH'S WITNESSES**

and

RANDY WALL

Appellants

Respondent

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE
ALBERTA COURT OF APPEAL)**

**INTERVENER FACTUM OF THE
EVANGELICAL FELLOWSHIP OF CANADA
AND THE CATHOLIC CIVIL RIGHTS LEAGUE**

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