



## NATIONAL CITIZENS INQUIRY

Regina, SK

Day 3

June 1, 2024

### EVIDENCE

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**Witness 12: Lex Acker**

**Full Day 3 Timestamp: 10:06:15–10:48:21**

**Source URL:** <https://rumble.com/v4yvzz9-regina-hearings-day-3.html>

**Shawn Buckley**

So our next witness is Mr. Lex Acker. Lex, are you able to hear me?

**Lex Acker**

Yes I am.

**Shawn Buckley**

And we can hear you. Lex, can you state your full name for the record, spelling your first name and spelling your last name.

**Lex Acker**

My name is Lex Acker. L-E-X A-C-K-E-R

**Shawn Buckley**

And Lex, do you promise to tell the truth, the whole truth, and nothing but the truth?

**Lex Acker**

Yes.

**Shawn Buckley**

Now by way of introduction to the commissioners, you are a chartered financial analyst, and you have been so since 2017.

**Lex Acker**

Correct.

**Shawn Buckley**

Okay. And you've got over ten years of experience going through SEC filings of publicly listed companies?

**Lex Acker**

Yep. Financial statements of all kinds.

**Shawn Buckley**

Right. You've worked for hedge funds as a research analyst and as a compliance officer of an investment firm. You studied Certified Fraud Examiner, U.S. version, which is a 2000-page curriculum on financial fraud.

**Lex Acker**

Correct.

**Shawn Buckley**

And you basically specialized in rigorous due diligence of financial statements.

**Lex Acker**

Yes.

**Shawn Buckley**

And I just bring out that background so that there's an understanding that you can approach financial matters with a fair amount of rigour. So we'll switch to a different gear, but that introduction will become important a little later. You're here to talk about EI and EI issues and your experience. So perhaps you wanted to share with us what your experience with EI is, and how that then led you to do an analysis that you're going to share with us.

**Lex Acker**

So during the previous testimonies of many witnesses this year and last year, lots of people got fired. They applied for EI and everybody was denied. And I'm here to present to the public why and how they did it. So a little bit of backstory. My wife was a nurse in British Columbia, and she was fired for not taking the shot. I told her not to take the shot because I calculated excess mortality from Canadian obituaries. So I had figured that out around October 2021. The mandates were being talked about in the media in summer 2021. And that's when I got busy, because she was supposed to get the shot in April 2021. She had an appointment. She had a headache that day. She didn't go. And then meanwhile, during the summer of 2021, adverse information came across. And then I started poking and I came to my conclusion that these shots were harmful. And then she was fired.

She's not an activist. She's kind of a meek person. She doesn't want to raise trouble. She doesn't ask too much question. You know, she just wants to be a nurse. I'm the troublemaker here. I'm the one who's pushing things here. So she got fired. And I said, "Well, you're going to apply for EI." She said, "Well you know, they said on the news that, you know, we're not eligible." I said, "Well you're going to apply anyway." So I wrote up the

application and, you know, she looked at what I wrote and said, “Yeah, that’s fair.” So we sent it to EI, and it was denied.

So we applied for something called the Reconsideration. So that’s like another agent looking at the case, and it was denied too. So I kind of expected that. So I filed an ATIP [Access to Information and Privacy] for my wife’s file, EI file. And ATIP stands for Access to Information and Privacy. So if you want to know what is all the data that the federal government has on you with a particular ministry or department, well, you file a ATIP and you ask them, “Please send me everything you’ve got on me.” So I obtain an ATIP to get my wife’s entire EI file.

When we received it, I received 1200 pages of stuff. So I went through it. I’m very good at going through, like, large amounts of text. And I have all the EI agents’ notes, everything that they wrote, all their reasoning and thinking, and whatever they were following, I have it. And in those notes, they make reference to something called the BE memo 2021-10, or October 2021. And the BE memo, the title of it is *EI Eligibility and Refusal to Comply With a Mandatory Vaccination Policy*. So I actually got my hands on the internal EI policy that they were using to adjudicate the EI claims of unvaccinated working Canadians. I’ve got their playbook. It’s about ten pages. And I’ve assembled a few slide decks that I’m going to turn on pretty soon. And I’m going to show snippets of that BE memo, that EI policy.

**Shawn Buckley**

And I’ll advise you, Mr. Acker, that the entire policy that you’ve sent us will enter as Exhibit R-143.

**Lex Acker**

It’s very important that every lawyer in Canada have their eyes on that policy. So with my slide decks, I’m going to show various parts of the EI policy on how to adjudicate claims from non-compliant workers, and I’m going to connect it and relate it to agents’ notes. So let’s start this. How do I share screen? And I’m going to share this one. Can you see the screen?

**Shawn Buckley**

Yes we can. So we see the screen, and the top line is EI Online Reference Tool.

**Lex Acker**

Correct. So that’s a twelve-page document, and that’s what the top part looks like. And I’m going to bring up the first slide deck. So that’s the first slide. And EI agents, they were directed to adjudicate EI claims using the BE memo, so they were not following normal adjudication procedures. So we have right from the start a two-tier system. The first snippet I took, that’s the top one and says, “The memorandum is not linked to any legislative or regulatory amendments.” It has no footing in law, doesn’t apply the EI Act, doesn’t apply EI Regulations, and it does not apply the Digest of Benefit Entitlement that EI agents use to adjudicate any normal EI claim.

**Shawn Buckley**

And I’ll just interject. When you said earlier it basically created a two-tier system, so the EI Act and the EI Regulation set out a specific procedure for how to adjudicate claims,

including when you ask for a reconsideration. This is just a policy, but it doesn't have the force of law. But if it's followed, it deviates from the normal EI Act and Regulations. So that's what you mean that basically there's a two-tier system. So people that lost their job because they wouldn't take the COVID-19 vaccine were treated differently.

### **Lex Acker**

So the reason why all the unvaccinated Canadians who were fired for not complying with a COVID vaccination mandate, and the reason why they didn't get EI, it's because of that text that I'm showing. That's the cause, that's the mechanism that was employed.

The next slide is the bottom. That's the last page of the text from the policy. And basically what I'm saying is: When an EI agent, they have questions with respect to this internal memo, they do contact the EI Operational Policy Service Desk. So it's not just a memo to just inform EI agents, it's actually, like, it's really the policy because if they have questions about it, they go to the Policy Service Desk.

The next slide is, well, I knew what I was facing and I recorded every phone call with every EI agent that we dealt with. And I transcribed the parts that were important. And I also recorded a bunch of other phone calls since the pandemic started, because, you know, I'm awake. I know what's going on here. So I'm going to read. And the purpose of these excerpts from a transcript, it's to show the public that EI agents were directed by upper management to apply the BE memo and deviate from the normal procedures.

So during one phone call with an EI agent, his name was Agent Mitchell. He was a nice guy, Mitchell Wells. You know, he was very sympathetic. He was not happy about the decision that he had to give. He was definitely not comfortable with what he was doing, but he was instructed to do that. And I asked him during the call, you know, "Is there a policy to automatically deny claims from unvaccinated?" And, he kind of didn't really answer that question affirmatively.

But if you pay attention to the language that he used throughout the call, you know, at 52 seconds, he says, "That's how 'they' want us to approach the situation." At minute 1:33, "They took it to the consultant level because you made a very convincing argument in your application. You got everyone's attention." What he's referring here to, is that in the application, I made reference to a Supreme Court ruling that medical coercion was assault. So that's a court case that I got from Police For Freedom. They wrote a letter, and in the footnote I found it. I thought, "Well this is very useful." So that's how I got their attention at the highest level.

Then, "They're not thinking about the constitution." That's one thing that Mitchell Wells said. Minute 2:16, he's telling us, "Nobody was forced to get the vaccine. You were given the ultimatum." That's ridiculous. "This is the new policy. Adhere to it or risk suspension or dismissal." These are the words of an EI agent giving us an explanation as to why the application is going to be denied.

At the five-minute mark, he's saying, "I deal with situations like this four or five times a day. Everybody makes very solid, logical arguments." So he's dealing with lots of EI claims from unvaccinated workers. And then, "The policy they have today, like I said, this case is taken very, very seriously. This is what we have to do. And ultimately, this comes from leadership of the country, like legislators. This is the direction we're given."

You know, Mitchell Wells, during that call he admitted receiving instructions from above, right? So it's a policy-based decision lacking any type of official jurisprudence. Oh, and of course, this is an admission that there's no law behind what he's doing. What else do we have here. So, like, he says, "These mandates were put in effect by provincial governments, supported by federal direction."

What else do we have on that topic. Then I'm asking him, because I'm kind of speaking for my wife here on that call, "So as time passes, when the policy becomes unreasonable, you know, this can be reversed?" Question mark. That's me asking. And he says "Yes, there's a door for interpretation on that third point." And then the last quote I thought was making the case that they're receiving directions. "This is fully how they, behind the scenes, want us to look at these files."

So this is to introduce the BE memo. That's the internal policy of the EI Commission to systematically and automatically deny all claims from unvaccinated workers non-compliant with the vax mandate. And agents were directed to use that memo and put aside the law and the normal system.

That was the first slide deck. I'm going to move to the next slide deck. The next slide deck is about how the BE memo is gaming, defeating, the adjudication process. Let's get into this one. Fact-finding. Well the EI commission, they have something called the Digest of Benefit Entitlement, and this is a very large manual on how to adjudicate a claim.

So when they receive a claim, they look at what the claim says, they take the side of the employer, they will reach out to the employer, they will reach out to the claimant, and they balance the facts. They gather the facts. And then if on balance of probability, one side is more compelling than the other, then it wins. So the BE memo introduces its own fact-finding process that is very different than what the Digest of Benefit Entitlement says.

And it reads like this, like the way I underlined it is, "The decision-maker is responsible for ensuring that fact-finding is complete before making a decision." And then they define what complete means: "'Complete' means that all facts necessary to make a sound decision have been obtained and are included in the claim file." And then a little bit below this, they are like, "However, if the answer is—" And then they have four questions below. And if the agent is capable of answering yes to all these questions, then his fact-finding is good enough for the case. So, "Have all interested parties been contacted?" That's one question. The next one is, "Was the policy"—that is like the employer vax mandate policy—"was it communicated to the worker?" Yes.

### **Shawn Buckley**

Now Lex, we've got about ten minutes.

### **Lex Acker**

Oh geez, I've got so much more material.

### **Shawn Buckley**

Yeah. So I think, you know, reading the specific questions, is you're going to be missing the forest for the trees.

**Lex Acker**

I get it. So the next slide is that this is more where the normal process goes. So when an EI agent adjudicates a claim, they normally have to get the contract, the work contract, the collective agreements. In the case of the BE memo, they don't get the collective agreement. So they cannot see if it was within the employee-employer relationship, if it was correct within that context.

I'm going to move faster now. So I find that the way they fact-find, it's very unfair and it's very narrow fact-finding, and it's designed to exclude any information that would invalidate the reasonableness of the vax mandate as an employer.

**Shawn Buckley**

And I'll just jump in. Clearly, they do not have to get the employment contract. So literally, it could be a term of the employment contract that the employer cannot force a medical treatment on the employee. So the employer would be violating the contract with their mandate, but the EI agent doesn't even need to get the contract under this policy.

**Lex Acker**

No, he doesn't.

**Shawn Buckley**

Okay, thanks. I just wanted that emphasized.

**Lex Acker**

Okay. So here I've got notes from the EI agent. So the second EI agent, her name was Crystal Asselstine. And what she says here is, "I acknowledged their arguments, sources cited, scientific documents submitted in support of [the claimant's] belief around the safety and efficacy of the vaccine and the legalities/reasonableness around vaccine mandates and policy implementation. I advised them that these are not issues that the Commission can address," like, it's beyond the authority of the Commission. And she says, like, the Commission doesn't have jurisdiction to weigh on the efficacy of the vaccine. It cannot determine if the government acted legally. And this is kind of very disturbing. She says, "We also have no jurisdiction when it comes to Charter Right violation arguments." Wow, that is disturbing.

**Shawn Buckley**

Yeah. Except I'll just let you know. Legally, you have to be a court to be able to adjudicate on those issues. So if you raised a charter issue to an adjudicator in a tribunal like that, they'll say, "Well, we don't have jurisdiction, because the courts say they don't." So, it doesn't mean they don't have to follow the Charter, but they can't make a ruling on it.

**Lex Acker**

Good point. Next slide. Another thing that I've noted from the BE memo, it appears that it is shifting the burden of proof against the unvaxxed EI claimant. And in different sections, like when the BE memo talks about voluntary leaving, they require exceptional circumstances. We see that language coming up in the section under Voluntary Leaving. We see it under Exemptions, and we see it when the BE memo gives instruction on how to handle religious



reasons. So there is, there is a shift of burden of proof against the claimant that is introduced by using the BE memo.

I'm trying to move fast because we have so little time here. So the fact-finding of the BE memo is designed to be very narrow. It prevents facts from countering the reasonability of an employer vax mandate, and it's prejudiced against the claimant.

This last slide here, this is where it gets a little bit more perverse. If you have a medical exemption, they will use that and they will say, "Well, you're unavailable now for work because you have a medical exemption. And very few employers, you know, can hire you because they all have a vax policy." So if they don't ding you with misconduct, then they will exclude you on being unavailable if you have a medical exemption.

**Shawn Buckley**

Right. So basically we're clarifying that: Somebody who for legitimate reasons has a medical exemption—so they could literally be taking chemotherapy, which is contraindicated with the vaccine—so they have a valid exemption, but be healthy enough they could work. There's no problem them working. They're actually disqualified from EI because other employers will have a vaccine mandate, and so—

**Lex Acker**

—it puts a restriction on them.

**Shawn Buckley**

Yeah, that's quite fascinating. That's quite fascinating.

**Lex Acker**

Yeah. And the way they wrote that BE memo is quite evil, too. The next part I'm going to move on to is Misconduct. Many witnesses here, they mentioned that they applied for EI and they were denied because of misconduct. So I'd like to cover that a little bit, how they go about it. This is the normal EI adjudication. This is from the Digest. And when they consider if there was misconduct, then one of the first things is: Was there a breach of the employer-employee relationship, right? Well, that goes directly to the contract. And of course, they don't ask that. We just saw the way that they gained fact-finding is that the EI agents will not look at the employment contract, right?

Normally, the misconduct, did it have a material adverse effect on the employer? That's one question that an EI agent normally has to ask. And well, in the case of the BE memo, when it's applied they're not going to consider, "Well, okay, if you're unvaccinated, can the employer demonstrate how adversely it affects the workplace?" Well, no employer can demonstrate that an unvaccinated is causing harm.

So that's the normal adjudication process with respect to determining if there's misconduct. The BE memo, they've got these three points to determine whether there was misconduct. So there was a policy, and was it communicated to the employee? Were the employees aware of the consequence of the policy? And was the policy reasonable? And these are the only three criteria that they go by. So the—

**Shawn Buckley**

Right, but I'll just break in because they said earlier that they're not there to determine the reasonableness of the policies.

**Lex Acker**

Well, in the normal EI adjudication process, EI agents do have to assess if the employer policy is reasonable.

**Shawn Buckley**

Right. But if it's provincial mandates that are adopted, basically the employees adopt them and they're not supposed to look into whether they're reasonable, as I interpreted your earlier slides.

**Lex Acker**

Yeah. When EI agents follow the BE memo, they will not make a determination if the employer policy is reasonable or not. And they will use this double-speak language. They say, like, "the 'application' of the policy" as opposed to the policy itself. And what I did, being a research analyst, is I went into the database of the Social Security Tribunal, which is the next level to appeal this, and whether you've got all historical decisions. And I looked for the language, like "application of policy" or "application of employer policy," and there's nothing that comes before 2021. So when you look at the language like "application of the policy," that is double-speak.

And then this is a snippet from the EI agents' notes from my wife's file. And we see the same three points that I showed in this slide. So this is clearly to demonstrate that the BE memo exists. Agents were directed to use it. And we see that they simply cut and pasted their own BE memo policy in my wife's EI file. So it was used.

What do we have here? Well, okay, this is about what is the Commission normally? What would it do normally when it comes to misconduct? Well misconduct has many reasons: It could be tardiness; it could be, you know, you broke equipment, you've been negligent, things like that. One of the reasons is to keep refusal to carry out an order and instruction—which is like, well, the order and instructions to be vaccinated.

Well, the normal procedure is, "The officer must try to determine whether the order or instruction was reasonable and whether it contributed to any legal statute or provision of the collective agreement." Now we see why they don't want to ask for the collective agreement, because there's no collective agreement out there that has a vax policy.

**Shawn Buckley**

Lex, I need you to speed up so we can get to the calculation.

**Lex Acker**

So maybe I should move to the next deck. So let's move to the next deck which was religious exemption. Religious Considerations. Well, there was a supreme court case in Canada in 2004 and it states, you know, "The state is in no position to be, nor should it become the arbiter of religious dogma." That's important. The BE memo says, "the interpretation of sacred texts by the client themselves must not be seen as a particular



practice required by their faith. It is important to ensure that the exceptional circumstances provided by the client are actually of a religious nature and not of a personal or political nature.”

Essentially, what the EI Commission will do in the case of an unvax EI claim is that they will decide if your religious practice is legit or not. That’s it. They become the arbiter of your religion. So, for example, in the case of my wife, she’s a Buddhist. I’m a Buddhist. And what the agent did is that they went on the BBC website and they found that the Dalai Lama—

**Shawn Buckley**

Lex, you’re giving us too much detail. We’re going to have to jump, actually, to the financial stuff.

**Lex Acker**

The financial stuff? Okay. Yeah, so let’s go to the financial stuff. That one is very interesting too.

**Shawn Buckley**

And I am sorry to rush you, but we’ve got a hard stop at the venue and we’ve got one other witness following you. But I mean, the point you’re making is that they basically went through the different ways that people could get around getting fired, such as voluntary leaving, availability, suspension and dismissal, leave of absence, exemptions, religious or medical—and they basically worked around that with the memo.

**Lex Acker**

Exactly. Every possible legal path that would lead to approving regular EI benefit, they gained it. That’s in a nutshell what the BE memo does. Let’s move to the motives.

**Shawn Buckley**

And we may have a virtual hearing in a couple of months. We do have the option of having you flesh this out further. And we will enter the EI memo which, I don’t know, I read it and it’s pretty clear that they’re doing a workaround. But this next part, I had not heard this from anyone before, and I want the commissioners and those watching to hear your theory, because I found it fairly compelling. So if you could launch into that, please.

**Lex Acker**

Very well. So vaccine mandates were not required to reopen the economy in 2021. In terms of, like, economic data, unemployment and employment rates, and GDP levels—everything had practically recovered by the time of the mandates. And by Q1, first quarter of 2022, it was better than pre-pandemic levels. I’m going to show three slides rapidly.

So here we’ve got the Canadian Employment Rate. What do we see here? Well, we see a big dip in April 2020. And before the pandemic, it was like at 62.1%. By Q3, 2021, the employment rate was back at 60.9%. That’s nearly pre-pandemic levels. And by February 2022—that’s the trucker event—it was back at pre-pandemic and better than pre-pandemic levels.

Next slide, the Canadian Unemployment Rate. So we see like a big spike on the declaration of the pandemic. And then by the time of the mandates, it had decreased to 6.6%-6.2% the unemployment rate—which is, you know, very reasonable, very well manageable. We didn't need lockdowns and mandates to reopen the economy.

Another slide is the Employment Levels, in terms of millions of people. Pre-pandemic, we had like 19.2 million people employed full time. And then by October 2021, we had like 19.1—pretty much like same level. There was no need for the mandates. So why did they do this? There was a need to override the moral compass in the common sense of EI agents, so that's why they came up with the BE memo. They needed the agents not to apply the EI Act—the Act, the Regulations, or the Digest.

Let's dig into the numbers here. So the average dollar value of a regular EI claim is about \$26,000. I calculated it. And this can be derived from the expenditures of regular EI benefits and the monthly statistics on active EI claims. I went through these numbers and I computed it's about \$26,000 per EI claim. So we can make a very easy, quick argument. For every 40,000 EI claims from unvaxed workers, that's \$1 billion that the government would have to pay. So this is a strong financial incentive to exclude, remove the eligibility of unvaxed Canadians.

Next slide. The next question is, how many working unvaxed Canadians were there? What is the total liability of letting them get EI? What does it look like? So in October 2021, we had like 5.7 million unvaxed working Canadians, right? Thirteen per cent were self-employed. So that leaves about 87% of them were employed and eligible to EI. So that's about 4.96 million. So, out of these 4.96 million unvaccinated eligible working Canadians that could lose their job and claim EI—? Although the real question is, you know, what percentage of that would be willing to lose their job. So that's equivalent to figuring out a vax mandate non-compliance termination rate. And this is a topic that came up. Like, it's a question that came up many times during the other testimonies. You know, people are asking, "How many people didn't comply and were fired?" I have an answer for this. Next slide.

Now, I studied deeply the financial statements of BC and British Columbia Nurses' Union, and I've been able to derive that at least 9.7% of nurses in British Columbia were fired for non-compliance with the vaccination mandate. I've looked also at the annual reports of the British Columbia Municipal Pension Plan, and I looked at the drop in employer contributions between 2021 and 2022. And I've been able to calculate a range of, like, 8.6% to 11.5%.

So I have an educated guess here, coming from two different data sources, that in the general working population, the non-compliance rate to a vax mandate is approximately 10%. So if I take that 10% and I multiply it by 4.96 million of working unvaxed Canadians, that gives us approximately, let's say, 496 [thousand] terminations. That's like 500,000. Now, 596,000 [496,000] unvaccinated Canadians claiming EI times \$26,000 per claim. That's like \$12.9 billion. That's what the government needed to avoid. They needed to avoid this massive liability.

Canada could never afford lawfully, its vax mandate. There was a massive price to pay for it. And that's why they needed to cause the EI agents— They created the BE memo to cause the EI agents to disobey the Employment Interest Act and apply it.

And in 2022, a side note about the employment insurance system. It's a big account. It's called the Employment Insurance Operating Account. It's financed by worker contribution

and employer contribution. And the way it is set up is that on a forward-looking basis for the next seven years, it needs to break even. So it's got this rolling deficit or surplus. Right? And then they will adjust the worker premium and employee premium such that over the next seven years, using forecasts, it breaks even. It's a self-sustaining system.

Well, in 2020, it had a surplus of 3.9 billion. In 2022, it had an accumulated deficit of 25 billion. So you can see that the stress that it would put on the system if they would not exclude the unvaccinated, if they would not prevent the unvaccinated Canadian from collecting EI. That's the motive. That's the financial motive. That's why nobody got EI, no unvaccinated. But, I know a case through my network. I know of a couple who worked for the same government ministry, and they were both fired for non-compliance with the vax mandate. And one of them got EI, the other one didn't get it. But in general, nobody got EI if you weren't vaccinated.

**Shawn Buckley**

Lex, this is a fascinating analysis, and the different things you looked into to verify your numbers and come up with are much appreciated. I can tell you we haven't seen an analysis like this in relation to EI, but we have heard over our now 27 days of hearings, person after person that was denied EI when they lost their job for not taking the vaccine. And you've given us a different look. I'll ask the commissioners if they have any questions and the commissioners don't. And, Lex, I'm behind in my emails. Do we have a copy of all of those slide decks, particularly the one with your numbers?

**Lex Acker**

Yes, I emailed them to you.

**Shawn Buckley**

So I'll make sure that all of those slide decks become an exhibit so that people can look in detail at the work you've done. And we definitely thank you for doing that work. I know, having had previous discussions with you, that you were working quite diligently to make sure your data was robust. So, Lex, on behalf of the National Citizens Inquiry. We sincerely thank you for the work that you've done and for coming and testifying today and sharing this with us.

**Lex Acker**

There's one last thing I wanted to show.

**Shawn Buckley**

Okay. How long are you going to be?

**Lex Acker**

It's going to be 30 seconds.

**Shawn Buckley**

Okay.

**Lex Acker**

Am I still screen sharing?

**Shawn Buckley**

You can.

**Lex Acker**

Okay. All right. So two charts from the British Columbia Centre of Disease Control, the BCCDC. This chart here is the immunization coverage for influenza among healthcare workers in acute settings. And I just want the public to know that healthcare worker confidence in vaccination is plummeting. And you can just see by that chart, in 2023, it dropped at 49%. They're rebelling. There is a rebellion amongst healthcare workers in British Columbia against vaccination in general.

And it gets better. In the long-term care facility, it's 40% only that is vaccinated for influenza. It used to be like above the seventies, and in acute settings it was around 80%. The healthcare system in British Columbia is rebelling against vax immunization in general. That's what these charts are showing, and that's good news.

**Shawn Buckley**

Thank you, Lex. So we'll let you go now. Thanks again. On behalf of the National Citizens Inquiry.

**Lex Acker**

Thank you very much.

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