



WAGE COMMISSION

Recommendations for A Minimum Wage in Bermuda

April 2021

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Executive Summary

When the work of the Commission began, only a handful of countries were dealing with the coronavirus. A year later, countries around the world are still being impacted by Covid-19. In an article in the Economist Magazine in March of 2021, one of the lessons that had to be learned during the pandemic was the need to top-up the wages of the lowest-paid workers in a community. In Bermuda, where the establishment of a minimum and livable wage is the Commission's remit, an opportunity presents itself to not have to learn the lessons of other countries, but to benefit from them.

In the establishing of a minimum wage, it is important to determine its role. While some jurisdictions view it as a vehicle to take the lowest paid out of poverty, others view it as a wage floor, below which employers are not permitted to pay. As the Commission is also embarking on a livable wage, the thought process was to establish a wage floor first. While the Commission used several source materials, including the Low Income Thresholds' report conducted by the Department of Statistics and the Joint Select Report of Parliament, it relied heavily on reports produced by the International Labour Organisation, particularly its report on Minimum Wage Systems (2014).

Much of the foundational work of the Commission had been carried in the aforementioned reports. The Commission was guided by the ILO report where it recommended simplicity in deriving minimum wages. While the Low Income Thresholds' report recommended methodologies for calculating wage levels, they were more suitable, in our view, for establishing a living wage. The Joint Select report recommended, like some of the ILO member states use, a fixed percentage of the median income. The median income, as opposed to the average, is frequently used in economic calculations as it is not distorted by extremely high or low incomes.

The Commission recommends three options for a minimum wage, depending on what is expected to be achieved by its implementation:

- Option 1 - A minimum wage of \$13.20, which is 42% of the median hourly wage.
- Option 2 - A minimum wage of \$15.75, which is 50% of the median hourly wage.
- Option 3 - A minimum wage of \$17.30, which is 55% of the median hourly wage.

The Commission largely received feedback from its members based on the constituencies that they represented, and from unsolicited feedback from members of the public. As the Commission continues the work for a livable wage, wider consultations will be made. Likewise, feedback will continue to be sought on the minimum wage, for the purpose of reviewing and making recommendations.

Introduction

The Employment (Wage Commission) Act was passed in 2019, after several years of discussion and research by the non-partisan Joint Select Committee. In January 2020, the Wage Commission was presented to the Bermuda public. Members of the Commission included: Philip Barnett, Martha Dismont, Hasan Durham (Ex-Officio member); Chris Furbert, Cordell Riley (Chairman), Craig Simmons, and Robert Stubbs. Members were drawn from academia, business, civil society, and trade unionism. The role of the Commission was to recommend a minimum hourly wage, and a living wage for Bermuda.

In the March 6th, 2021 electronic edition of the Economist Magazine, there was an article titled *Bouncing back: a safety net for a post-covid world*. The article posited the following:

“The social safety net in many rich countries was creaking before Covid-19 struck. Modelled on the ideas of Otto von Bismarck and William Beveridge, it had often failed to cushion workers from globalisation and technological and social change...A dwindling share of middle-income jobs and the growth of the gig economy fuelled fears that labour markets were changing faster than flat-footed governments could...Tight budgets, not milk and honey, will define the 2020s...Social spending must flow quickly and automatically to those who need it — not, as in America, only during crises when a panicked government passes emergency legislation. And governments need to find mechanisms that cushion people more effectively against income shocks and joblessness without discouraging work or crushing economic dynamism. The first step towards satisfying these goals is to use technology to make ancient bureaucracies more efficient [and]...Part of the solution is to top up the wages of low-paid workers.”

The foregoing excerpt aptly describes the challenges being faced even before the onslaught of a pandemic, and possible ways to guard against future shocks, particularly for vulnerable workers. In Bermuda, the situation is no different. While total employment has steadily increased from 2015, the percentage of Bermudians in the workforce has slowly, but steadily

declined¹. While overall Bermudian unemployment stood at 4.4% in 2019, an improvement on the 4.8% recorded in 2018, youth unemployment (16-24 year-olds) stood at 18.1%². Compared to the G7 nations, using data up to September 2019, that places Bermuda behind Italy (28.7%) and France (19.3%)³. The economy overall, since 2017, had been in recovery mode. It plunged nearly 16% in constant prices in 2020⁴ and the pandemic is still ongoing. Like many other countries, the economic road ahead is undeniably a difficult one.

Bermuda is late arriving at the minimum/living wage roundtable. Often described as a country with one of the world's highest standards of living, and also the highest cost of living,⁵ prior to the Covid-19 relief given to furloughed workers, there was no government social safety net for wages to suffer from creaking, with the exception of Financial Assistance. The Wage Commission was established to be part of the solution - to establish a minimum and livable wage for Bermuda.

¹ Employment Briefs 2020, Department of Statistics

² Labour Force Survey 2019, Department of Statistics

³ <https://data.oecd.org/unemp/unemployment-rate-by-age-group.htm#indicator-chart>

⁴ Quarterly Gross Domestic Product by Expenditure, Q2 2020, Department of Statistics

⁵ www.numbeo.com

The Scope and Intent of a Minimum Wage

Given that Bermuda has never established either a minimum or a livable wage, it must be made clear what the creation of the same is intended to bring about. In the case of the livable wage, it may be assumed that it is to pay persons a wage that they can live off. That is the basic concept but the process of creating one can be far more complex. This report will focus on the minimum wage as the creation of a living wage will be the subject of a separate report – Phase 2 of this work.

The International Labour Organization defines a minimum wage as:

“The minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract.”⁶

It goes on to say that:

“Minimum wage systems should not be seen or used in isolation, but should be designed in a way to supplement and reinforce other social and employment policies. Several types of measures can be used to tackle income and labour market inequality, including pro-employment policies, social transfers, and creating an enabling environment for sustainable enterprises.”⁷

One of the key functions of a minimum wage is to establish a wage floor - a mechanism to prevent unduly low pay. Without which, and with the relative free movement of labour, there can be a wage “race-to-the-bottom” resulting in the exploitation of workers and increasing the number that find themselves in poverty. Essentially, a minimum wage is a “line-in-the-sand,” below which employers are legally prevented from paying.

⁶https://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439072/lang--en/index.htm

⁷https://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439072/lang--en/index.htm

Jurisdictions may take into account a multitude of factors in determining a minimum wage, the chief among them being the cost of living. From another perspective, there is also the dignity at work philosophy, which places emphasis on the worker, thus considering collective factors, such as the family, in the calculation of a minimum wage. Put another way, is the unit of analysis the individual worker or the worker and their household? Livable wage calculations are more likely to include the latter which is what makes that exercise more complex. With the establishment of a living wage, the minimum wage, as a dignity at work policy, could be used as a steppingstone to that end.

There are countries that have mandated a minimum wage and have set a living wage, with annual increments in the minimum wage to close the gap between the two. This Commission will look at the cost of living in more detail in establishing a living wage. As such, we will be establishing a minimum wage using the wage floor philosophy. We will also consider the dignity at work philosophy.

The ILO, while recognising that there is no universal formula for setting a minimum wage, recommends caution in creating one. Setting it too low is to have nil effect on the targeted workers. Setting it too high could lead to unemployment levels rising, particularly among the target groups. The ILO, therefore, recommends a balanced, guided approach to the establishment of a minimum wage.

An issue that has perplexed jurisdictions in establishing a minimum wage is how to treat different sectors within the target groups. In Bermuda, one such sector is the Hospitality Industry (hotels, restaurants, bars and cafes) which in 2019 employed some 4,700 workers, or 14% of the total workforce. These workers rely on gratuities for a substantial part of their wages. For the purposes of this discussion, gratuities will refer to a service charge added to the bill of a customer, by the business, usually in the range of 10% to 20%. A tip refers to a sum of money given directly to a worker which has not been previously added to the customer's bill as presented by the business. There are three schools of thought highlighted by the ILO in assessing the wages of these workers.

The first school of thought allows for no concessions to workers who receive gratuities - employers must pay workers the statutory minimum wage in addition to gratuities. The United Kingdom and the Bahamas Islands use this method. The second school of thought utilises a hybrid method. Gratuities and tips can be included in the minimum wage. However, when gratuities and tips are included in the calculation, and the total wage of the employee falls below the statutory minimum wage, the employer must make up the difference. This is a method used by France and is more complex. For the third school of thought, there is a statutory minimum wage but for workers who receive gratuities, the statutory rate, minus a set percentage, applies. In Canada, that rate is approximately 15% less than the statutory minimum wage⁸.

Exemptions to a Statutory Minimum Wage

While it can be argued that the whole philosophy surrounding a minimum wage is to guard against a “race-to-the-bottom,” with respect to wages, as mentioned previously, there is no universal approach in establishing one. As such, while some countries apply many carve-outs to its minimum wage, others keep them to a minimum. Therefore, exemptions to the minimum wage cannot be avoided. The following are among the exemptions found in member states and affiliates of the ILO.

- The non-industrial sector (non-manufacturing sector)
- Small enterprises
- Live-in domestic workers and care givers
- Youth workers (typically those under 18)
- Workers in family businesses
- Elderly workers (typically those 65 and older)
- Workers on probation
- Apprentices and trainees

⁸ Minimum Wage Systems, ILO 2014

In establishing a minimum wage for Bermuda, there will be some exemptions. While an exemption for apprentices and trainees and youth workers may be perhaps the most obvious consideration for Bermuda, grocery packers of any age, among others, are also considered.

Methodological Considerations

The Need for Simplicity

While some countries have taken a sophisticated and complex approach to establishing a minimum wage, the ILO makes the case for a basic model.

“While a system based on a single minimum wage may have the disadvantage of not reflecting the payment capacities of all employers across the country, it has the advantage of simplicity, which makes it easier for employers and workers to know the minimum wage rate applicable to a particular employment relationship, and for the labour inspection services to enforce the relevant provisions. On the contrary, the more complex a minimum wage system is, and the more sectoral, occupational and geographical rates it involves, the more difficult it is to monitor, particularly in countries where the labour administration services have very limited resources⁹.”

A Disincentive to Work?

Some have argued that the setting of a minimum wage could be a disincentive to working, thus reducing productivity rates. This could be the case if the rate is set very high. The experience of many countries, particularly those in the West, is that rates are set at a percentage of the median wage, which is at or below the poverty level, making it less likely to be a disincentive to work.

One of the working definitions of poverty as it relates to wages is that a person is in poverty if they are earning less than half the median wage rate. Economist Timothy Smeeding has pioneered much work on poverty. In a paper written with two others he states:

“For purposes of international comparisons, poverty is almost always a relative concept. A majority of cross-national studies define the poverty threshold as one-half of national median income. In this study, we use both 40 and 50 percent of median income to establish our national poverty lines. We select 40

⁹ Minimum Wage Systems, ILO 2014

percent of national median income as our relative poverty threshold because it is closest to the ratio of the official United States poverty line to median United States household (pre-tax) cash income (42 to 43 percent in 1998 and 1994)¹⁰.

The Low Income Thresholds' report, 2008, produced by the Bermuda Department of Statistics, identified three measures that could be used to determine poverty levels which then could be used as a basis for determining a minimum wage. These were:

1. Relative Low Income Threshold (RLIT)
2. Low Income Cut-Off (LICO) and
3. Low Income Threshold (LIT).

While both the RLIT and LICO methodologies used gross income to develop the poverty level, which included taxes, fees, and other payments, the LIT method used net income which excluded taxes and the like. The Statistics Department calculated hourly wages at these levels, based on the different formulas. Applying the different methodologies, and using 2020 dollars, the hourly income for a single adult was calculated as follows:

- | | | |
|------------------|------------------|-----------------|
| 1. \$23.18, RLIT | 2. \$20.36, LICO | 3. \$16.37, LIT |
|------------------|------------------|-----------------|

The Statistics Department recommended the LIT methodology for the following reason:

“...the RLIT and LICO measures are “relative” indicators of low income. Therefore any movement in household income by a small amount may shift the household from just below to just above the defined thresholds; but not necessarily from a position of not being in need.”

On the other hand, the LIT basket methodology is a “goods and services” indicator of low income. This means that the cost of the goods and services required by the household determines the income needed

¹⁰ Luxembourg Income Study Working Paper No. 24 “United States Poverty in a Cross-National Context, Timothy M. Smeeding et al, September 2000

to meet the cost. This is the primary reason for recommending the LIT methodology for the Bermuda model.¹¹”

Other reasons for selecting the LIT model were that it was easier to understand conceptually and that since it was based on a basket of goods methodology, it could be updated annually.

While the Statistics Department felt that LIT methodology was the best instrument to gauge poverty in Bermuda, all three methods are more suitable for the development of a living wage. Since the focus of this initial report is a minimum wage, other methods may be more suitable.

In the Joint Select Committee’s Report¹² it recommended a minimum wage of \$12.25 per hour. This was based on taking 40% of the median income, \$63,712 in 2016, over 52 weeks and based on a 40-hour work week. Many countries use a set percentage of the median wage to determine the minimum wage, as referenced earlier. In 2020 dollars, that worked out to be \$13.23. The Committee also recommended a living wage of \$18.23 per hour based on the RLIT method, which worked out to be 59.5% of the median wage. In 2020 dollars that equated to \$19.69.

Minimum Wages of Other Jurisdictions

The Commission reviewed a sample of areas to understand the range of minimum wages applied. In Table 1 below, Switzerland had the highest minimum wage at \$24.76 in Bermuda dollars. The Turks and Caicos had the lowest at \$6.25. To put these wages in perspective, the cost of living in those countries, in comparison to Bermuda, was examined. All had a cost of living lower than Bermuda. The last column, “Purchasing Power, BDA,” estimates the amount of money required in Bermuda dollars to purchase the same level of goods that a minimum wage would purchase in the other countries. With the exception of the Turks and Caicos, the

¹¹ Low Income Thresholds, a study of Bermuda Households in need, Department of Statistics, 2008

¹² Report of the Parliamentary Joint Select Committee on the Establishment of a Minimum/Living Wage Regime

estimated funds required to purchase the same level of goods in Bermuda approximate the levels that the Low Income Thresholds' report calculated for a living wage.

Table 1 Minimum Wages in Selected Areas and the Estimated Purchasing Power in Bermuda

Area	Minimum Wage, Local Currency	Exchange Rate	In Bda \$	Cost of Living, % Lower	Purchasing Power, BDA
Switzerland	23.14	1.07	24.76	11.67	\$28.03
Montreal, Canada	13.10	0.79	10.35	53.83	\$22.41
New York City	15.00	1.00	15.00	32.44	\$22.20
United Kingdom	8.72	1.4	12.21	40.71	\$20.59
Turks & Caicos*	6.25	1	6.25	36.22	\$9.80

*Data source: www.numbeo.com; *groceries only and not costs in general*

Recommendations

When the work of the Commission began in earnest in February 2020, the coronavirus, first detected in China in November of 2019, according to some reports, had begun to spread to other countries. On March 11th, 2020, the World Health Organisation declared it to be a pandemic. This set world economies into free-fall as borders were closed and trade among countries was drastically reduced. Pandemic protocols, such as sheltering-in-place and working from home, affected service workers more severely. These tended to be lower-paid, hourly workers. The Hospitality and associated industries were particularly hard hit.

According to the Economist Magazine quote earlier in this report, one of the lessons countries have learned thus far during this pandemic is the need to “top of the wages of low-paid workers.” This represents a unique opportunity for Bermuda, but the challenge is still there - if the minimum wage is too low, it is of nil effect. If it is too high, it may reduce the employment opportunities for the very workers such an initiative is intending to help.

During Commission deliberations, members were able to provide feedback from their various constituencies. From a business perspective, it was suggested that a minimum wage around \$15 per hour could be tolerable. One that was around \$18 per hour or more could have potential negative impacts on the targeted workers, as employers may reduce workers, reduce hours, or close altogether. On the other hand, Bermuda’s high cost of living, as demonstrated in Table 1 above, may necessitate a higher minimum wage. However, there was always caution expressed at setting a high minimum wage due to the potential negative impacts that it could have on employment for the target audiences.

There was consensus around the position that a minimum or living wage would better assist its target audiences if other measures were taken to reduce the overall cost of living and doing business, such as providing payroll tax breaks for both the employer and employee for those at or near the minimum wage level.

To assist in the effort of establishing a minimum and living wage, Bermuda joined the (Global) Living Wage Foundation¹³, an offshoot of the UK-based organisation with members from several countries around the world, including the UK, the United States, Canada, and New Zealand, among others. Their meetings are held quarterly with members providing updates on the living wage in their respective countries. The Foundation is working on a universal standard living wage that could be adapted by countries to their particular set of circumstances.

The Foundation was able to set up a 75-minute meeting with Richard and Martha Anker, a husband-and-wife team who developed the Anker Method for establishing a living wage. This method uses the Consumer Price Index (CPI) to establish a living wage as most countries around the world produce the Index. The method proposed by the Department of Statistics is based on the CPI. Richard Anker worked for 30 years as an economist with the ILO. Martha Anker worked at the World Health Organization, and was a statistician, epidemiologist, with the University of Massachusetts, Amherst. Based on the meeting, they felt that Bermuda was moving in the right direction but cautioned about setting the minimum wage too low if a livable wage regime was also in the works, as it has proved difficult, in their experience, to increase the minimum wage gradually or otherwise to the level of the living wage if there was a wide gap between the two.

The Chairman also reached out to Reverend Nicholas Tweed, a minister in the African Methodist Episcopal Church after he spoke publicly about fairness in the workplace. Reverend Tweed was also of the view that structural changes were needed in the economy to bring the overall cost of living down which would make the implementation of a minimum wage more effective. He further posited that a minimum wage set too highly could have negative impacts on businesses and by extension workers.

The recognisability of the members of the Commission within the community lent itself to unsolicited inputs. One small business owner felt that the minimum wage should be at least

¹³ <https://www.livingwage.org.uk/>

\$20 per hour to prevent the exploitation of workers. The businessman was quick to point out that all of his workers were at that level or above. Another was from a Bermudian chef in a local restaurant. He stated that his hourly wage was \$10 without any gratuities. He further stated that he was only able to accept such a low wage because he had owned his home outright.

Given much deliberation over the past fourteen months, relying heavily on ILO papers on minimum wages, and considering the current economic climate in Bermuda, in addition to the plight of those at the lower end of the wage scale in a country with a very high cost of living, the Commission puts forward three options for the Government to consider.

Options

Option 1

The median hourly wage for 2019 was \$31.41. If the directive of the Joint Select Committee was followed, 40% of that is \$12.57 per hour, the minimum wage. This would suggest a wage floor. However, as there has been a stagnation of wages, this is less than the \$13.23 initially recommended by the Committee, inflation adjusted. The actual recommendation was \$12.25. To be comparable to the original recommendation adjusted for inflation¹⁴, we recommend for Option 1 a minimum wage of \$13.20, which is 42% of the median hourly wage.

Option 2

In this option, the minimum wage is set at 50% of the median hourly wage, thus \$15.75 per hour. This recommendation, set at the poverty threshold, closes the gap between the minimum wage and the eventual living wage. Based on the Low Income Thresholds' report, the living wage could be as low as \$16.37 or as high as \$23.18 if any of the methodologies recommended were used.

¹⁴ Given the current Consumer Price Index, the rate of inflation for 2020 is likely to be zero or negative, meaning that calculations for 2019 apply to 2020.

Option 3

Option 3 sets the minimum wage at \$17.30 per hour which is 55% of the median hourly wage. This wage rate is above the poverty level and is also above the Low Income Thresholds' \$16.37, the lower level for a livable wage. Given that the livable wage is yet to be set, a minimum hourly income at this level would mean that there would be less of a gap to be closed and, at this level, the process of lifting the worker out of poverty, providing a measure of dignity at work, begins.

Carve-Outs and Exemptions

Based on ILO recommendations, those charged with setting minimum and livable wages should take into special consideration sectors of workers. In this regard, we examine workers for which fixed gratuities form part of their wages. This is largely confined to the Hospitality sector. For this sector we cautiously recommend a hybrid method to calculate hourly pay be used – a base pay plus gratuities.

Where gratuities are added by the business for later distribution to gratuity-earning staff with their hourly wage, their total hourly pay, including gratuity, must be equal to or exceed, for the pay period, the recommended minimum wage. What this means is that workers in gratuity systems would at the least be guaranteed the minimum wage plus whatever direct gratuity they may be able to earn. Where gratuities are insufficient to meet the statutory minimum hourly wage, employers would be required to make up the difference. Further, Hospitality Industry workers not part of the gratuity-distribution system must be paid the statutory minimum hourly wage.

There was considerable discussion surrounding the use of the hybrid method for the Hospitality Industry. While the Commission was made to understand that gratuities make up a substantial proportion of the wages in this sector, concern was expressed that without a carve-out for these workers, such as 15% to 25% lower than the statutory minimum wage,

there could be some employers who may raise their prices and gratuities to meet statutory requirements, escaping the need themselves to pay their workers at a higher level.

There was another concern surrounding this hybrid method. With gratuities currently not subject to payroll tax, at current levels, you could have a worker in the gratuity Hospitality sector earning more than \$48,000 a year, but not subject to tax as a substantial portion of this would be based on gratuities, while someone not in the gratuity system, both in and outside of the sector, could earn more than \$48,000, and their wage is subject to taxation. For these reasons, the Commission recommends that those in the gratuity Hospitality sector must, as items on employees' pay advice, show the following:

- Total hours worked for the pay period
- The amount of wages paid by the employer
- The gratuity component paid to the employee
- The average hourly rate for the pay period in question, combining the employer portion and the gratuity portion.

With regard to the potential of inequality in taxation, this is something the Commission could monitor during the first year of a statutory minimum wage and recommend changes should the need arise.

We recommend the following exemptions to the minimum wage:

- Workers under the age of 18.
- Workers in apprenticeship and training programmes for the first 12 months only of the programme, where the programme is registered with the appropriate Government Ministry.
- Workers in family businesses where the worker is a direct relative of the legal owner or owners.
- Grocery packers aged 18 and over.

The ILO report considers domestic workers. We recommend that live-in domestic workers and caregivers, and live-in workers not covered by a Collective Bargaining Agreement, be paid at the rate of 75% of the statutory minimum wage. All other domestic workers are to be paid at the minimum wage.

The Commission estimates that based on the 2019 workforce of 33,225 workers, some 5,280 or 16% could be below the poverty level.

Updating the Minimum Wage

It has been the case for some jurisdictions, such as the United States, that once a minimum wage has been set, it does not attract frequent review. This is problematic for at least two reasons. The first is that the purchasing power of wages decline over time if not increased. Secondly, if the statutory minimum wage is not reviewed for a number of years, there is resistance from employers to increase it to inflation-adjusted levels. A simplistic method allows for ease of review. As there is an employment census, counting the number of jobs and the rate of pay for those jobs annually, the minimum wage can be reviewed annually. While wages generally increase, there could be occasions, such as what is happening now with a pandemic taking place, that wages actually decline. In such instances, we recommend the minimum wage remaining at the level that is in place at that time.

The CPI should also be taken into consideration. If the inflation-adjusted minimum wage is higher than that derived from a percentage of the median wage, the rate of increase should be at the inflation-adjusted rate. If the reverse is true, then the increase should be based on the percentage method. If both of these measures yield a rate that is less than the one calculated for the previous year, then the statutory minimum wage should remain at the level it was last calculated.

Penalties for Fraud

In the experience of ILO member states, in resisting the new statutory minimum wage, some employers collude with employees to falsify documents to mislead authorities about the true nature of payments made. This is in an attempt to keep wages low. To minimise the potential for this happening, the Commission recommends substantial fines for fraudulent activities for both the employer and employee .

Conclusion

The world has experienced much medical and economic upheaval since February 2020 when the Commission first met. That upheaval continues to this day. Further, it has shown a critical divide between persons in the workplace. The so-called blue-collar workers, those typically at the lower end of the pay scale have, for the most part, been the hardest hit economically. The so-called white-collar workers have been able to work while sheltering-at-home, thus being sheltered from the major economic impacts. There is a view that some blue-collar workers were vital to the country in getting through this pandemic. The world has even labelled them as “essential workers,” such as grocery store workers and gas-station attendants, to name but a few. Our Tourism Industry has been devastated with full recovery a long way off. The Economist Magazine stated, as referenced previously, that one of the lessons that western nations have learned [or should have learned] is the need to top up the wages of such persons. The recommendations that have been made in this report may achieve that goal while being mindful of the needs of businesses.

Respectfully Submitted,
The Wage Commission
April 2021

Signatures

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