



BECOMING A TUTOR IN THE BEST INTEREST OF THE CHILD

*What Do You Need to Know About Tutorship
Under the Youth Protection Act?*

THIS BROCHURE WAS CREATED UNDER THE SUPERVISION OF THE YOUTH AND FAMILY DEPARTMENT OF THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX.

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THE CHILDREN APPEARING IN THIS BROCHURE ARE ACTORS.

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GROWING UP IN SAFE AND STABLE SURROUNDINGS

ALL CHILDREN HAVE THE RIGHT TO GROW UP IN SAFE AND STABLE SURROUNDINGS, USUALLY WITH THEIR PARENTS.

BUT SOMETIMES PARENTS ARE UNABLE TO PROPERLY MEET THEIR CHILD'S NEEDS FOR VARIOUS REASONS. IN SOME CASES A CHILD MUST BE REMOVED FROM HIS FAMILY ENVIRONMENT. THE DIRECTOR OF YOUTH PROTECTION (DYP) THEN BECOMES RESPONSIBLE FOR PROVIDING ASSISTANCE TO HELP PARENTS SO THEIR CHILD IS ABLE TO RETURN TO THEM.

WHEN IT IS NOT POSSIBLE FOR A CHILD TO RETURN TO HIS FAMILY, THE DYP MUST SEE TO IT THAT HE IS PLACED IN ANOTHER STABLE ENVIRONMENT. IN THIS WAY, SOMEONE SIGNIFICANT TO THE CHILD MAY BE RECOMMENDED BY THE DYP TO BECOME A TUTOR IN THE BEST INTEREST OF THE CHILD

THIS BROCHURE IS FOR THOSE WHO ARE APPOINTED TUTORS UNDER THE YOUTH PROTECTION ACT (YPA), FOSTER FAMILIES, AND ANYONE INVOLVED IN THE TUTORSHIP OF A CHILD.

IT DOES NOT APPLY TO TUTORS APPOINTED BY THE SUPERIOR COURT UNDER THE CIVIL CODE OF QUÉBEC.

IT COVERS TUTORSHIP AND THE TUTOR'S RESPONSIBILITIES, THE EFFECTS OF TUTORSHIP, VARIOUS ASPECTS ASSOCIATED WITH MANAGEMENT OF CHILD'S PROPERTY, AND FINANCIAL ASSISTANCE AVAILABLE TO THE TUTOR.

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This brochure reflects amendments to the YPA and the Regulation respecting financial assistance to facilitate tutorship to a child that came into force on July 7, 2008.



TABLE OF CONTENTS

TUTORSHIP AND THE ROLE OF THE TUTOR	7
WHAT IS TUTORSHIP AND WHAT ARE THE TUTOR'S RESPONSIBILITIES?	7
ARE ALL CHILDREN ELIGIBLE FOR TUTORSHIP UNDER THE YPA?	8
HOW IS THE TUTOR SELECTED?	8
WHAT IS THE PROCESS FOR COURT APPOINTMENT OF THE TUTOR?	8
HOW MANY TUTORS MAY THE COURT APPOINT?	9
CAN THE TUTOR BE REPLACED?	10
CAN PARENTS REGAIN THEIR RESPONSIBILITIES AS TUTORS?	10
WHEN DOES TUTORSHIP END?	10
EFFECTS OF TUTORSHIP	11
DOES DYP'S INTERVENTION END WHEN A TUTOR IS APPOINTED?	11
WHAT HAPPENS IF THE CHILD'S OR THE TUTOR'S NEED FOR CERTAIN SERVICES OUTLASTS DYP'S INTERVENTION?	11
IS THE FILIATION BETWEEN THE CHILD AND HIS PARENTS SEVERED?	11
CAN THE CHILD REMAIN IN CONTACT WITH HIS FAMILY?	11
MANAGEMENT OF THE CHILD'S PROPERTY	13
WHO LOOKS AFTER THE CHILD'S PROPERTY?.....	13
IS COURT AUTHORIZATION NECESSARY FOR MANAGEMENT OF THE CHILD'S PROPERTY?.....	13
WHAT ARE THE OBLIGATIONS OF THE TUTOR TO PROPERTY?	13
WHAT IS THE ROLE OF THE CURATEUR PUBLIC DU QUÉBEC REGARDING THE MANAGEMENT OF THE CHILD'S PROPERTY?.....	15

FINANCIAL ASPECTS OF TUTORSHIP 17

- CAN THE TUTOR RECEIVE FINANCIAL ASSISTANCE? 17
- WHEN IS THE INITIAL APPLICATION FOR FINANCIAL ASSISTANCE MADE? 17
- HOW IS FINANCIAL ASSISTANCE APPLIED FOR? 18
- WHEN IS FINANCIAL ASSISTANCE GRANTED? 19
- WHAT ARE THE SPECIAL CIRCUMSTANCES THAT ALLOW A TUTOR RESIDING OUTSIDE CANADA TO RECEIVE FINANCIAL ASSISTANCE? 19
- HOW IS FINANCIAL ASSISTANCE CALCULATED? 20
- CAN THE AMOUNT OF FINANCIAL ASSISTANCE BE REVIEWED? 20
- IS FINANCIAL ASSISTANCE INDEXED? 20
- WHEN DOES FINANCIAL ASSISTANCE END? 21
- DOES THE FINANCIAL ASSISTANCE APPLICATION HAVE TO BE RENEWED? 21
- CAN FINANCIAL ASSISTANCE BE SUSPENDED? 22
- CAN A TUTOR WHO IS RECEIVING FINANCIAL ASSISTANCE CLAIM THE CHILD ON HIS TAX RETURN? . . . 23
- IS THE AMOUNT OF FINANCIAL ASSISTANCE TAXABLE? . 23
- IS THE CHILD COVERED BY THE TUTOR'S INSURANCE? . 23

*All children have the right to grow up
in safe and stable surroundings,
usually with their parents.*

TUTORSHIP AND THE ROLE OF THE TUTOR

WHAT IS TUTORSHIP AND WHAT ARE THE TUTOR'S RESPONSIBILITIES?

Tutorship is a long term commitment of a person significant to the child for whom a return home to his parents is not possible.

If a strong emotional bond exists between a child and another person, that person can be said to occupy a significant place in the child's life. For example, a significant person might be a member of a child's extended family who has been involved in his life.

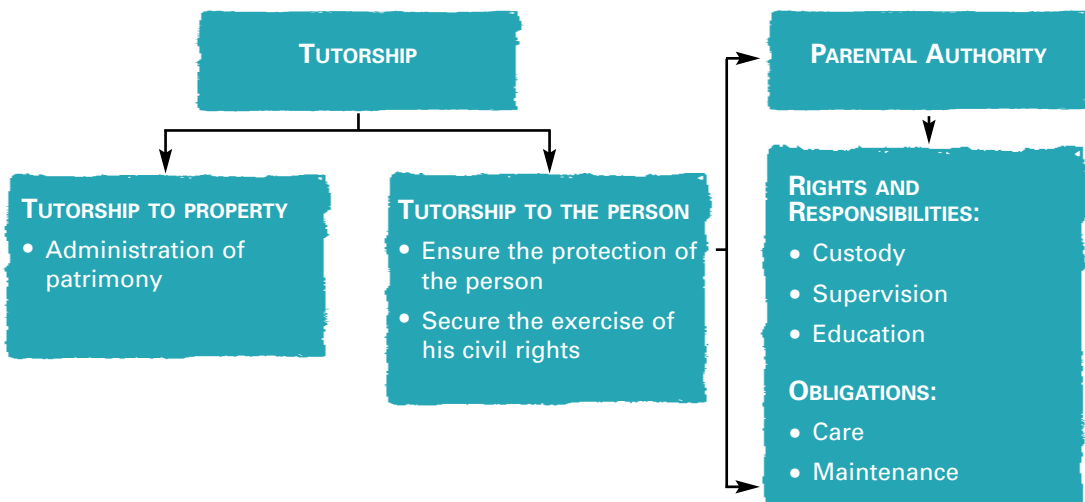
Usually the child is able to attest to the quality of the relationship, either through words or through attitude or actions if he is too young or has limited speech capabilities.

From a legal perspective, tutorship is intended to ensure the protection of the person, the administration of his patrimony and to secure the exercise of his civil rights. Usually the tutor appointed under the YPA acts as tutor to the person as well as tutor to property.

As **tutor to the person**, the tutor provides care for the child. The tutor acts as a person having parental authority, that is, he takes on the roles and duties of parents. The tutor assumes the custody, care, education, maintenance, and supervision of the child. The tutor makes all decisions that affect the child and signs any authorizations that fall within the exercise of parental authority. For example, the tutor approves of the child's relationships and outings, signs passport application, and decides which school he will attend. The tutor also secures the exercise of the child's civil rights, for example by undertaking legal action.

As a **tutor to property**, the tutor is responsible for managing the child's possessions. (For further details, see Management of the Child's Property below.)

So, tutorship entails many responsibilities that can be illustrated this way:



ARE ALL CHILDREN ELIGIBLE FOR TUTORSHIP UNDER THE YPA?

Only those children whose situation has been taken in charge by DYP may qualify for tutorship under the YPA.

In order to be eligible for tutorship, the child must also be in one of the following three situations as set forth in the Civil code of Québec:

- he is an orphan and he has no tutor;
- his parents both fail to assume his care, maintenance or education;
- he would, in all likelihood, be in danger if he returned to his parents.

HOW IS THE TUTOR SELECTED?

The tutor is selected on the basis of his ability to meet the child's needs. The DYP conducts, an assessment of the prospective tutor, examining in particular:

- the quality of the bond he has developed with the child;
- his willingness to make a long term commitment to the child;
- his ability to raise the child and oversee his development;
- his ability to deal with the child's parents and extended family, if relationships are maintained with them.

When the situation permits, the child and his parents are consulted regarding the selection of the tutor.

8 /

WHAT IS THE PROCESS FOR COURT APPOINTMENT OF THE TUTOR?

The process of appointing a tutor begins when the DYP makes a recommendation to the court, in order to have a tutor appointed to the child. In order to do so, the DYP prepares and files a petition.

The Court of Québec, Youth Division, is the court that the DYP should petition when seeking to have a tutor appointed to a child.

A copy of the petition is transmitted to the following persons:

- the prospective tutor;
- the child 14 years of age or more;
- the parents;
- the Curateur public du Québec.

The prospective tutor must appear before the court on the day of the hearing so as to testify that he accepts to be appointed tutor for the child. The child 14 years of age or over and parents may also be present in court and testify.

The court appoints the person recommended by the DYP as the child's tutor after verifying that:

- the child is eligible for tutorship;
- the tutorship decision is made in the child's interest and ensures the respect of his rights.

A copy of the judgment is transmitted to those who received the petition.

HOW MANY TUTORS MAY THE COURT APPOINT?

In general, the DYP recommends that the court appoint one person to fill the role of tutor to the person and tutor to property.

The court can appoint **only one tutor to the person**. For example, only the father or mother of a foster family may be appointed as a child's tutor.

The court may, however, appoint **more than one tutor to property** for a child.

In addition, two different persons may serve as tutor to the person and tutor to property. For example, a child's uncle may be appointed tutor to the person, and the grandfather tutor to property.

CAN THE TUTOR BE REPLACED?

Either the tutor to the person or the tutor to property may petition the court to be replaced if:

- he has serious reasons to give up his responsibilities;
- he is no longer able to perform his responsibilities.

In addition, any interested person may ask the court to replace the tutor in the interest of the child. Replacement may also occur because the tutor has died.

Before handing down its decision, the court asks the DYP for an assessment of the social situation of the child and a recommendation concerning the appointment of a new tutor.

CAN PARENTS REGAIN THEIR RESPONSIBILITIES AS TUTORS?

Parents are usually their children's tutors.

If following the DYP's recommendation, a tutor has been appointed by the court, the parents may be able to regain their responsibilities if they can demonstrate to the court that:

- it is in the best interest of the child to once again live with them;
- the child will not be endangered when in their care;
- they are once again able to take on the responsibilities of parenting.

To do so, the parents must present a petition to the court.

Before handing down its decision, the court asks the DYP for an assessment of the child's social situation.

WHEN DOES TUTORSHIP END?

Tutorship generally ends when the child reaches 18 years of age.

It may also end when:

- the child dies;
- the child reaches full emancipation;
- the court reinstates the parent as tutor.

A child may become fully emancipated by obtaining a court order to that effect or by getting married. A child who is fully emancipated has the ability to exercise his civil rights as if he had reached the age of majority.

EFFECTS OF TUTORSHIP

DOES DYP'S INTERVENTION END WHEN A TUTOR IS APPOINTED?

DYP's intervention ends once a tutor is appointed **and** the child is entrusted to the tutor.

WHAT HAPPENS IF THE CHILD'S OR THE TUTOR'S NEED FOR CERTAIN SERVICES OUTLASTS DYP'S INTERVENTION?

If the child or the tutor is still in need of certain services, the DYP must provide the child and the tutor with information on the resources available in their community and how to access them. These resources may include a health and social services centre (CSSS), a community organization, or other type of support.

If the child and tutor are in agreement, the DYP must also:

- direct them to the resources best suited to assist them, in other words, make the initial contact;
- forward the relevant information on the situation to the service provider.

IS THE FILIATION BETWEEN THE CHILD AND HIS PARENTS SEVERED?

The filiation between the parents and child **is not** severed once the court appoints a tutor for the child: the father and mother remain the parents of the child.

The child retains his given names and family name.

However, the tutor acts as the person having parental authority, that is he takes on the custody, care, education, maintenance, and supervision of the child.

CAN THE CHILD REMAIN IN CONTACT WITH HIS FAMILY?

The child **may** continue to have contact with his family. This decision is generally made by the tutor, since he acts as the person having parental authority.

However, a court decision is necessary in certain situations, for example if the tutor and child's parents cannot agree on the frequency of contact.

This decision may be rendered:

- when the tutor is appointed, as part of the DYP's petition;
- after the tutorship decision, further to a petition by the tutor, parents, or any other person who wishes to remain in contact with the child.

In all such cases, each party is responsible for its costs, including attorney fees.

Tutorship is a long term commitment of a person significant to the child for whom a return home to his parents is not possible.

MANAGEMENT OF THE CHILD'S PROPERTY

WHO LOOKS AFTER THE CHILD'S PROPERTY?

In general, the tutor appointed in accordance with the YPA acts as both tutor to the person and tutor to property.

However, the court may decide to appoint a different person, including the Curateur public du Québec, to serve as tutor to property.

When the value of the child's property exceeds \$ 25 000, the Curateur public du Québec is appointed as tutor to property.

IS COURT AUTHORIZATION NECESSARY FOR MANAGEMENT OF THE CHILD'S PROPERTY?

The tutor to property, in managing the child's property, may act alone on certain occasions. For example, the tutor can have the child's computer repaired or deposit the child's money in a financial institution.

At other times he must obtain prior court authorization, for example if he wishes to allow a child to renounce an inheritance.

WHAT ARE THE OBLIGATIONS OF THE TUTOR TO PROPERTY?

The tutor to property must produce certain reports.

Within 60 days of his appointment, the tutor to property must:

- prepare an inventory of the child's property;
- transmit a copy of the inventory to:
 - the Curateur public du Québec;
 - the child, if 14 years of age or over;
 - the tutor to the person, where applicable.

The tutor may use the form for an Inventory by private will available from the Curateur public du Québec. This inventory must include a general description of the child's personal belongings. Any property valued at more than \$ 100, however, must be described in detail.

Each year after his appointment, the tutor to property must:

- produce an annual report on the management of the child's property, regardless of its value;
- transmit a copy of the report to:
 - the Curateur public du Québec;
 - the child, if 14 years of age or over;
 - the tutor to the person, where applicable.

The tutor fills out the Annual Report form received from the Curateur public du Québec.

When the tutorship ends, the tutor to property must:

- submit a final report on the management of the property:
 - to the child, if he has reached majority;
 - to the tutor who is replacing him and to the child, if 14 years of age or over, where applicable.
- transmit a copy of the report to the Curateur public du Québec.

The tutor fills out the Final account form received from the Curateur public du Québec.

The tutor may obtain information about tutorship to property by contacting the Curateur public du Québec or visiting the website:

www.curateur.gouv.qc.ca

WHAT IS THE ROLE OF THE CURATEUR PUBLIC DU QUÉBEC REGARDING THE MANAGEMENT OF THE CHILD'S PROPERTY?

The Curateur public du Québec is charged with overseeing the administration of the tutorship to property of all children involved in tutorship decisions.

The office of the curator receives copies of the various reports that the tutor to property must produce, namely:

- the **inventory** of the child's property;
- the **annual report** on the management of the child's property;
- the **final account** on the management of the child's property.

The Curateur public du Québec may also, of its own volition or upon request, carry out an investigation of the management of property belonging to a child under tutorship. Based on the results of this investigation, the curator's office may ask the tutor to take or refrain from taking certain actions, or petition the court to replace the tutor in the best interest of the child.

When the Curateur public du Québec is appointed as tutor to property, it undertakes to manage the property of the child.

When the value of the child's property exceeds \$ 25 000, the Curateur public du Québec is appointed as tutor to property.

If a strong emotional bond exists between a child and another person, that person can be said to occupy a significant place in the child's life.

FINANCIAL ASPECTS OF TUTORSHIP

CAN THE TUTOR RECEIVE FINANCIAL ASSISTANCE?

The tutor can receive financial assistance to help provide for the child's needs. This assistance is awarded only to the tutor appointed under the YPA when the child is entrusted to that person. The tutor must apply for financial assistance at a youth centre.

The terms and conditions of this assistance can be found in the Regulation respecting financial assistance to facilitate tutorship to a child and are outlined below.

WHEN IS THE INITIAL APPLICATION FOR FINANCIAL ASSISTANCE MADE?

Within 60 days of the judgment granting tutorship, the tutor must submit an application to the youth centre in order to receive financial assistance for the child under tutorship.

If an application is received after the deadline, financial assistance may be awarded retroactively **for a period of up to six months**.

For more information, consult the Regulation respecting financial assistance to facilitate tutorship to a child at:

www.publicationsduquebec.gouv.qc.ca

HOW IS FINANCIAL ASSISTANCE APPLIED FOR?

Initial application for financial assistance is made using the Financial Assistance Application form available from the youth centre. This application must include the following information:

- the tutor's name, address, date of birth, and social insurance number;
- the name of the child under tutorship.

The application must also include the following documents:

- the child's birth certificate;
- the tutorship judgment or copy of the minutes of the judgment;
- a sworn statement by the tutor certifying that:
 - he is providing for the child;
 - he ordinarily resides in Canada or, if residing outside Canada, does so under circumstances covered by the regulation (see page 19);
- a sworn statement by a third party not related to the tutor attesting to the same facts as the tutor's statement;
- if the tutor lives outside Canada and is in a situation described in the Regulation, supporting documentation of this fact.

The youth centre must ensure that assistance is provided to the tutor wishing to make an application for financial assistance and inform the tutor of his rights and obligations. The Financial Assistance Application form is provided to the tutor by the youth centre.

WHEN IS FINANCIAL ASSISTANCE GRANTED?

Financial assistance is granted from **the first day of the month following the tutorship decision**. For example, if the date of the decision is October 15, financial assistance is granted as of November 1.

WHAT ARE THE SPECIAL CIRCUMSTANCES THAT ALLOW A TUTOR RESIDING OUTSIDE CANADA TO RECEIVE FINANCIAL ASSISTANCE?

Financial assistance ends if a tutor leaves Canada to establish his residence in another country.

However, under special circumstances provided for under section 10 of the Regulation, financial assistance is maintained. There are six situations:

- 1 the tutor is registered as a student at a teaching establishment in Québec or Canada while pursuing a program of study outside Canada;
- 2 the tutor is a trainee outside Canada at a university, an institution affiliated with a university, a research institute, a government or international body, or an enterprise or agency affiliated with such an institute or organization;
- 3 the tutor is employed by the Government of Québec, the government of another province in Canada, or the Government of Canada and is posted outside Canada;
- 4 the tutor holds employment outside Canada on behalf of a legal person, a partnership or an organization having its head office or a place of business in Québec or Canada to which the tutor is directly accountable;
- 5 the tutor works abroad as an employee of a non-profit organization having its head office in Canada, under an international aid or cooperation program;
- 6 the tutor is a member of the Royal Canadian Mounted Police or the Canadian Forces and is posted outside Canada.

HOW IS FINANCIAL ASSISTANCE CALCULATED?

The amount of financial assistance is calculated according to the child's age and needs, **regardless of the tutor's income**.

When the application for financial assistance is received, the youth centre establishes the level of services required by the child using a preset grid. The grid is the same as the one used to establish the needs of a child entrusted to a foster family.

The amount of financial assistance is based on criteria similar to those used for children entrusted to a foster family.

Financial assistance is made up of:

- a **basic daily compensation** determined and adjusted later according to the child's age;
- a **daily supplement** based on the services the child needs due to particular difficulties;
- a **lump sum** in addition to the basic daily compensation;
- a **daily allowance** covering the child's personal expenses;
- a **monthly lump sum**.

The youth centre notifies the tutor in writing of the amount awarded and begins making monthly payments.

20 /

CAN THE AMOUNT OF FINANCIAL ASSISTANCE BE REVIEWED?

Upon the tutor's request, the youth centre may review the **daily supplement** provided a physician attests that a significant permanent or chronic change has occurred in the child's condition.

To request such a review, the tutor must obtain the Medical Assessment form from the youth centre and have it completed by the physician.

IS FINANCIAL ASSISTANCE INDEXED?

The **basic daily compensation**, **daily supplement** and the **monthly lump sum** are indexed on an annual basis. The **lump sum** and **daily allowance** are not subject to systematic annual indexing.

WHEN DOES FINANCIAL ASSISTANCE END?

Financial assistance for the upkeep of a child is no longer paid to the tutor under the following circumstances:

- the child has reached 18 years of age;
- the child has reached 21 years of age if he is attending high school or adult education centre providing high school education;
- the child dies.

Financial assistance can also come to an end for other reasons, for example:

- the tutor dies;
- the tutor is replaced;
- the tutor leaves Canada to establish his residence outside Canada, except as specified in the Regulation.

The tutor must inform the youth centre in writing as soon as the tutor is in one of the circumstances or situations putting an end to financial assistance.

DOES THE FINANCIAL ASSISTANCE APPLICATION HAVE TO BE RENEWED?

The tutor must submit a renewal application for financial assistance to the youth centre **not later than November 30 of each year**.

This application must contain the same information as the initial application, except for the child's birth certificate and the judgment of tutorship. It must include new sworn declarations by the tutor and a third party.

If the child has reached 18 years of age and is attending high school or adult education centre providing high school education, the tutor must provide proof to that effect.

CAN FINANCIAL ASSISTANCE BE SUSPENDED?

The youth centre will suspend financial assistance if the renewal application is not received by the November 30 deadline each year, **or** if the child is placed or provided with foster care.

LATE FINANCIAL ASSISTANCE RENEWAL APPLICATIONS

If a renewal application is not received by the prescribed deadline, financial assistance is suspended **in its entirety**.

The youth centre may reinstate financial assistance retroactively upon receipt of the renewal application, for a period of up to six months.

PLACEMENT OF THE CHILD

Financial assistance is **partly** suspended if the child is placed in foster care under a law for a period of over 30 consecutive days. For example, the child is placed in a rehabilitation centre for more than 30 days under the YPA. The tutor continues to receive the basic daily compensation during this placement.

At the end of the placement, financial assistance is once again granted to the tutor in its entirety.

While the child is in foster care, the youth centre may not require financial contribution from the tutor or parents of the child.

CAN A TUTOR WHO IS RECEIVING FINANCIAL ASSISTANCE CLAIM THE CHILD ON HIS TAX RETURN?

The tutor who receives financial assistance for tutorship **may not** claim the child for income tax purposes under the laws of Québec and Canada. Nor is the tutor eligible for family allowances paid by various government programs, since financial assistance is already being paid for the child's maintenance.

IS THE AMOUNT OF FINANCIAL ASSISTANCE TAXABLE?

The amount of financial assistance **is not** taxable, either by the Government of Québec or the Government of Canada.

IS THE CHILD COVERED BY THE TUTOR'S INSURANCE?

The child **is not necessarily** covered by the tutor's insurance. The tutor must examine his insurance policies to find out whether the child is covered, particularly with regard to liability, life insurance, and prescription drugs.



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du Québec

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