Submission by the Canadian Labour Congress

to the

House of Commons Standing Committee on Finance Regarding Bill C-377 An Act to Amend the *Income Tax Act* (Labour Organizations)

October 2012

Canadian Labour Congress
Congrès du travail du Canada

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The Canadian Labour Congress (CLC) is the national voice of 3.3 million workers in Canada. The CLC brings together Canada's national and international unions along with the provincial and territorial federations of labour and 130 district labour councils whose members work in virtually all sectors of the Canadian economy, in all occupations, and in all parts of Canada.

Introduction

When Bill C-377 was introduced, the bill's sponsor, the Member for South Surrey-White Rock-Cloverdale said in the House of Commons on February 26, 2012, "[l]abour organizations play a valuable role in Canadian society, representing and defending the rights of workers."

The bill he introduced is an attack on those very same labour organizations that have for the past 130 years in Canada, defended the rights of workers and fought for good working conditions, fair pay and benefits, a healthy and safe workplace, an end to discrimination and for the legitimate role of Canadian workers and their families in our society. Justice Ivan Rand wrote in his influential 1946 award that "as the history of the past century has demonstrated, the power of organized labour, the necessary co-partner of capital, must be available to redress the balance of what is called social justice: the just protection of all

interests in an activity which the social order approves and encourages."[1]

Unions in Canada operate under many different pieces of legislation that grant important rights to represent workers in collective bargaining but also mandate significant responsibilities and obligations. Labour laws across the country require that strike votes be by secret ballot, collective agreements need to be ratified by members, union members have a right to financial information and the union owes a "duty of fair representation" to everyone in the bargaining unit, whether or not they are a union member.

Unlike the private sector and the crown corporation sectors with their appointed "bosses," union presidents and executive officers are elected by the memberships they represent and are accountable to those members. This accountability exists for local unions in the community, and provincial organizations, as well as national and international union levels.

Beginning with the unions that represent workers at the workplace level, and including parent unions and federations of labour, the labour movement is the largest member-based organization that is democratic, accountable and transparent with its members. Bill C-377 is based on a faulty understanding of how unions operate and is an unwarranted intrusion into their autonomy.

An alternative approach to this was outlined by Nicholas Stern, Chief Economics and Senior Vice-President for Development Economics, World Bank, in 2000, when he suggested that cooperation with unions is better policy:

1 Arbitration award of Mr. Justice Rand, Ottawa, January 29, 1946, Ford Motor Company of Canada Ltd. and the International Union United Automobile, Aircraft, and Agricultural Implement Workers of America (U.A.W.-C.I.O.)

"… with sound labor policies in place, governments, employers, an organized labor can work together in many ways to foster higher productivity growth and lower unemployment, while securing for workers a greater share in the benefits of growth."[2]

What the government should be doing is working with employers and unions in a cooperative environment to develop strong economic and human resource strategies rather than using private members' bills to weaken the labour movement.

The sponsor of the bill justifies his bill by saying that unions are subsidized by the taxpayers since union members are able to deduct their dues from their taxable income. He suggests this is a unique benefit for unions. This is incorrect. The same section of the *Income Tax Act* that permits deduction of dues also allows any taxpaying Canadian citizen who is a member of a professional organization such as medical associations, bar associations, and professional engineer societies to deduct their professional fees. Both union dues and professional fees are considered an employment expense. It is the individual union members, doctors, lawyers and other professionals who receive this benefit, not the organizations to which they belong. By singling out unions for special treatment, and excluding professional organizations, the bill does not meet the basic test of fairness.

Since labour organizations have no profits upon which to pay income tax, they are not required to file income tax returns notwithstanding that the bill's sponsor says they do. The suggestion that unions do not pay tax is false and misleading. They do pay all required taxes, including municipal taxes, the appropriate sales tax (HST, GST or PST) and any capital taxes required by provincial governments. In justifying the bill, the sponsor also said that he based his "requirements for public

2 Unions and Collective Bargaining: Economic effects in a global environment (Washington, DC: World Bank, 2002).

disclosure for labour organizations on the existing provisions for charities in the *Income Tax Act*." Again, another false and misleading statement. The information required of charities is much less detailed and more highly aggregated with significant protection for the privacy of individuals and contractors. This bill would require unions to provide even more detail than current legislation requires either charities or publicly traded companies to file with the Canada Revenue Agency (CRA).

Compared to registered charities, Bill C-377 imposes significantly more onerous and costly obligations on labour organizations. Charities have a threshold for simplified reporting, whereas even the smallest labour organization is expected to meet the extensive reporting requirement contemplated by Bill C-377. Certain information disclosed by registered charities is not made publicly available; for example, information about non-resident donors in Canada is reported, but not made public, as are transfers to qualified recipients. Bill C-377 requires that all information contained in the annual information return be disclosed.

Bill C-377 Imposes Significant Costs to Government

The sponsor of the bill has said "[the] government's document production cost will be minimal once the electronic production system, the database and the website are in place."

It is misleading and incorrect to minimize the cost in staff time and financial resources to implement this bill. The CLC in discussion with experts in the field estimates that it will require at least two years of work by CRA staff and contractors to develop the necessary regulations, forms, training and information manuals, and a new comprehensive, searchable database with cross-referencing capacity on a web-based portal for the general public to access the information. There are then the significant additional costs of monitoring, auditing and enforcement.

As an example of how much information must be filed, every transaction over $5,000 from each labour organization, pension plan, health and welfare trust funds and the education, training and apprenticeship trust funds under this bill, will require a separate entry to provide "the name and address of the payer and the payee, the purpose and description of the transaction and the specific amount that has been paid or received, or that is to be paid or received."

The amendments proposed by the mover of the bill are inadequate for the protection of the privacy of individuals. These amendments make it clear that the government will collect from individual Canadians payments made from a life and health trust, a group sickness or accident plan, a private health plan, a life insurance policy, a death benefit or payments for counselling services as well as payments made from pension plans.

There is absolutely no reason for the government of Canada to collect information from any health plan, let alone a private one, on payments to an individual for mental health counselling services or for marital counselling as an example.

We cannot think of any reason why the government needs to know what life insurance payment a widow receives upon the death of her husband or if someone receives a death benefit.

The collection of such information is an unwarranted intrusion into the private lives of Canadian citizens.

The CLC is comprised of 55 national and international organizations, with over 25,000 local unions, branches and lodges, 12 provincial and territorial federations of labour and 130 district labour councils. Most of these organizations will annually issue a number of cheques over $5,000. The Canadian Labour Congress

averages 400 plus transactions over $5,000 annually. Many of our affiliated organizations and their provincial and territorial bodies advise us that they also process at least that many transactions over $5,000 annually.

We estimate that this will result in a minimum 250,000 transactions annually on this one section alone. Filing reports on this many transactions imposes a significant cost to labour organizations. Monitoring and enforcing compliance will add significantly to government costs. In addition, the requirement for pension plans and trust funds to track and report all transactions over $5,000 will not only greatly increase the cost to these organizations, but will add many transactions to the data that needs to be processed by the government.

This is only one example of the bill's onerous reporting requirements. There are many other sections of the bill requiring additional information which will increase the cost to the filing organizations and to the government itself.

The bill requires that the information "shall be made publicly available by the Minister, including publication on the departmental Internet site in a format that allows for word searches to be performed and for cross-referencing of data." These requirements (searching and cross-referencing) make this database even more complex than the database developed for the *Long-Gun Registry Act*. Accordingly, notwithstanding the statements of the bill's sponsor that there is minimal cost to implementation and administration of the bill, we submit the cost will be in the hundreds of millions of dollars.

Simply put, the cost to government (both start-up and ongoing) will not be minimal as stated by the sponsor of the bill, but will be very costly.

As noted previously the burden on unions is significant. There is not a single organization in Canada – not a single publicly traded company, not one of the 85,917 charities registered with CRA, nor one of the estimated 100,000 non-profit organizations, with the exception of labour organizations, that will be required to make confidential detailed information publicly available in the way this bill demands of unions.

In fact, of all the organizations which have members that are entitled to deduct their union dues or professional fees (such as bar associations, medical associations, licensing bodies for teachers, engineers, accountants, and health care professionals for example) only labour organizations are being singled out.

Much of the information required by Section 1, 149.01(3)(b) of the bill is not maintained in the format specified and would require significant use of financial and staff resources for labour organizations to provide. As one example, an analysis prepared by the comptroller at the Canadian Labour Congress estimates costs of up to $450,000 to develop and implement the reporting mechanisms and the software and database needed to meet the requirement of the proposed legislation. In addition, we estimate that it will cost 2% of our revenue annually to maintain the systems to collect, identify and categorize the information required. Many of our affiliated organizations advise us that at the national and provincial level, they will face similar costs.

These are very onerous costs for non-profit organizations to absorb without expenditures in other areas being affected. In addition to the obvious impact on the ability of unions to fulfill their functions in collective bargaining, it will be much more difficult for unions to continue much of their participation in community activities such as the United Way, community sports teams and other charitable organizations or fulfilling their

obligations under statutes such as Occupational Health and Safety.

The bill also runs counter to the principles espoused by the government as part of the reviews conducted by the Red Tape Commission. This bill forces on unions the same increase in red tape and duplication of filings that the Commission addressed in terms of the impact on business. There is no reason to impose such requirements on labour organizations while eliminating similar duplication and red tape for businesses.

Opposition to the Role of Unions

Unions have an important role in a democratic society. The important social, political and economic role of unions has been recognized on a number of occasions by many influential commentators as well as the Supreme Court of Canada.

The 1991 Lavigne decision of the Supreme Court of Canada recognized the importance and legitimacy of trade unions in engaging in political and advocacy activities. Speaking for the majority, Justice La Forest wrote:

> "Unions' decisions to involve themselves in politics by supporting particular causes, candidates or parties, stem from a recognition of the expansive character of the interests of labour and a perception of collective bargaining as a process which is meant to foster more than mere economic gain for workers. From involvement in union locals through to participation in the larger activities of the union movement, the current collective bargaining regime enhances not only the economic interests of labour, but also the interest of working people in preserving some dignity in their working lives... Whether collective bargaining is understood as primarily an economic endeavour or as some more expansive enterprise, it is my opinion that union

> participation in activities and causes beyond the particular workplace does foster collective bargaining. Through such participation, unions are able to demonstrate to their constituencies that their mandate is to earnestly and sincerely advance the interests of working people, to thereby gain worker support, and to thus enable themselves to bargain on a more equal footing with employers. To my mind, the decision to allow unions to build and develop support is absolutely vital to a successful collective bargaining system."[3]

Section 2(d) of the *Charter of Rights and Freedoms* explicitly recognizes the right of the freedom of association as one of Canada's fundamental freedoms. The Supreme Court has held that "[t]he right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work."[4]

Canada's parliament and all the provincial legislatures have recognized the unique and important role played by Canada's labour organizations by implementing legislation that not only provides rights to workers and their unions, but also responsibilities.

So, while the federal and provincial governments and the Supreme Court of Canada have reinforced the right of unions to function as legitimate organizations with the right to participation in a democratic society, Bill C-377 weakens unions and thereby undermines that very legitimacy.

It was a long struggle for working men and women to achieve many of the rights obtained by the latter half of the 20th century

3 Lavigne v. Ontario Public Service Employees Union, [1991] 2 S.C.R. 211
4 Health Services and Support Facilities Sub-Sector Bargaining Association. British Columbia. [2007] 2 S.C.R. 391

and for unions to be recognized as an important part of our society.

However, in the early days of the 21st century we are still witnessing attacks on the organizations that workers built over the decades. While it is a more sophisticated approach than in the past, the aim is still the same – to neutralize unions and render them ineffective. This would eliminate the only voice that workers have to gain rights and a role in the workplace, and a share of the success of their employer and the economy in order to build the middle class that has been the bedrock of our country.

Most local unions will not be able to afford the cost required for the preparation of the information this bill requires to be filed with CRA. As a result, they may also be forced to find ways to recover at the bargaining table the cost of compliance with the provision of the bill if it is made law. By forcing unions to negotiate to recover the significant cost of compliance, the bill seeks to diminish their power at the bargaining table to negotiate improvements to the working conditions of their members.

Legislation Serves Anti-Union Organizations

The past two decades have seen the rise of a number of employer and conservative think-tanks dedicated to attacking and undermining unions.

Anti-union organizations may, within the limits of federal and provincial/territorial law, continue to oppose the formation of unions. What they should not have is an ally in the federal government assisting and supporting their efforts to diminish the power of unions and limit workers rights. Bill C-377 helps these anti-union organizations and employers. Labour rights are human rights. It is not the role of government to adopt laws that will weaken the human rights of Canadians.

The Merit Shop Contractors, an outspoken anti-union organization, is the major public supporter of Bill C-377. Their supposed interest in the democratic rights of workers is a fake concern to mask their real intent to weaken the right of working women and men to form a union.

Their position is consistent with the expressed aims of the proponents of similar financial disclosure requirements imposed on U.S. trade unions under the George W. Bush administration. Then representative Newt Gingrich urged in 1992 the adoption of extensive reporting requirements because it would "weaken our opponents and encourage our allies."[5] Conservative activist Grover Norquist stated explicitly that "every dollar that is spent [by labour unions) on disclosure and reporting is a dollar that can't be spent on other labour union activities." Norquist stated candidly, "We're going to crush labour as a political entity," and eventually, "break unions."[6]

And Bill C-377, supported by this government, will provide to anti-union organizations in Canada an unfair weapon to assist them in their goal.

The bill will, for example, allow an employer in collective bargaining with a union to have access to all the union's financial information such as funds set aside for collective bargaining disputes, what was spent on legal advice and media relations, and provisions for replacing wages of members on strike or lock-out. It will, in fact, encourage employers to be more aggressive, leading to an increased number of disputes.

Mr. Hiebert has claimed that mandatory public disclosure of detailed information pertaining to labour organizations will assist

5 Cited in Scott Lilly, Beyond Justice: Bush Administration's Labor Department Abuses Labor Union Regulatory Authorities, Center for American Progress, December 2007, p. 4.
6 Cited in Lilly, p. 4.

the public in better understanding how tax benefits to unionized members are being utilized. The experience of similar highly-detailed union financial disclosure requirements in the United States has been the opposite. Annual filings are so extensive and so detailed that the reports make it extremely difficult to undertake a comparison or analysis of union spending. John Lund, the current director of the Office of Labor-Management Standards of the United States Department of Labor and the leading academic authority on union financial reporting, has pointed out that members of the public or trade unions seeking information find themselves "awash in paper."[7]

Reflecting on the relative benefit of the U.S. rules, given the significant compliance costs incurred by unions and administration costs incurred by government, Lund writes:

> "The question needs to be asked whether these increased expenditures are indeed worthwhile, when all available evidence suggests that members are not really taking advantage of the information that is only several mouse clicks away... Unions, particularly in the U.S.A., are diverting significant sums of money to generate more detailed reports, but what good are these expenses if members are not reading, understanding or acting on them?"[8]

These research reports and studies of legislation in other jurisdictions that have even less onerous reporting requirements show that they are seldom used by either union members or the public. In fact, the prime user of the information are companies that were established to research and to mine the data so it can be sold to companies running anti-union campaigns. The information

7 John Lund, "Financial Reporting and Disclosure Requirements for Trade Unions: A Comparison of UK and US Public Policy," Industrial Relations Journal 40:2 (2009), p. 137.

8 Lund, op. cit., p. 138.

the government forces unions to provide is used to undermine and defeat organizing drives by workers seeking to join a union or to initiate campaigns to have a union decertified.

The sponsor of the bill stated in the House on February 26, 2012 that he "received plenty of input concerning the statements that would best illustrate how unions use their public benefits to help their members."

When asked by a reporter at the press conference if he had talked to other groups, the sponsor of the bill replied, "Other stakeholders? Absolutely. Yeah, I've canvassed broadly people who would have an interest in this legislation, both union members, union leaders, business leaders, the public. When the journalist said, "But you cannot give us names?" Mr. Hiebert replied, "Absolutely not."

We believe it is only reasonable to conclude that he did not consult with anyone in the mainstream, legitimate labour movement. We can find no one from any of our organizations representing 3.3 million members who spoke to Mr. Hiebert.

Confidentiality and Privacy

Labour trusts are included in the list of organizations to provide reports. In the bill a "labour trust" means a trust fund in which a labour organization has a legal, beneficial or financial interest or that is established or maintained in whole or in part for the benefit of a labour organization, its members or the persons it represents. This means that all pension plans providing pensions for workers who belong to a union, all health benefit trusts and long-term disability plan carriers making payments for providing health plans for workers and all education and training trusts will need to report in the same detail as other labour organizations.

This provision will impose significant additional costs by approximately 2% on the pension plans and trust funds, possibly reducing benefits or increasing premiums and contributions and providing to the CRA for publication on their website information related to the participants in the plans. This issue has been addressed in detail in a submission from the Multi-Employer Benefits Council of Canada.

The pension plans involved, such as the Ontario Municipal Employees Retirement System (OMERS), the Ontario Teachers Pension Plan, British Columbia Public Service Pension Plan and others are all regulated by provincial governments. These limit the publication of information which could identify individuals or disclose confidential information. Bill C-377, if passed into law will be in conflict with provincial legislation providing for confidentiality and protection of privacy.

Section 3(b) also requires labour organizations to file reports of all transactions over $5,000 showing the name and address of the payee, the purpose and description of the transaction and the specific amount paid. What this means is that a health plan beneficiary receiving reimbursement for a costly prescription will have their name, address, why they are receiving the payment and amount received made publicly available for everyone to see. It is an outrageous invasion of an individual's privacy.

The publication of private, personal information on payments to an individual such as their name and address from a pension plan, trust fund or health plan could make them vulnerable to confidence artists or other illegal schemes.

It also means that all transactions over $5,000 to legal counsel by labour organizations identifying the issue for which the payment was made will be publicly available on the CRA website and to anti-union employers. This is a serious violation of solicitor-

client privilege and identifies publicly the type of legal services or advice unions receive and which lawyers in a community are working for unions.

In a recent article in the Ottawa Business Journal, June 4, 2012, *The Riddle of Bill C-377 and Solicitor-Client Privilege, by* Colin Green a specialist in tax and estate law, it was pointed out that:

> "Bill C-377, as currently drafted, could potentially force unions to abandon solicitor-client privilege by disclosing invoices from legal counsel, and as such, may be attacked as being unconstitutional. While this issue is germane to labour organizations, it should also be appreciated in the wider context: solicitor-client privilege is a critical underpinning of our judicial system and should be properly protected as such. Any law that could weaken this concept should be carefully weighed and reviewed."

This section will also require labour organizations to provide to the CRA details of payments to commercial suppliers. These details will be publicly posted. Certainly private companies such as Canon would like to know what we pay Xerox annually, similarly with Telus, Bell and Rogers in the highly competitive mobile communications market. Also required is a statement of disbursements to contractors employed by labour organizations.

A number of private companies have already filed submissions with the Committee objecting to confidential information on their commercial dealings with labour organizations being made available to their competitors on the CRA website.

Many of our contractors, service providers and commercial companies operate in very competitive environments and are always looking for additional information to assist them in the

bidding process. This bill will give them and their competitors an incredible amount of confidential contractual information.

The bill will also require labour organizations to file information on the salaries and benefits paid to their employees along with their names. Requiring labour organizations to provide to CRA for public viewing what we pay our production and warehouse staff, the receptionist who answers the telephone or the administrative staff who prepare correspondence, seems somewhat intrusive compared to the fact that we cannot obtain information on the salaries of those who work in the Prime Minister's Office.

In an attempt to gather as much information as possible so it can be made available to employers and anti-union organizations, the sponsor of the bill includes a list of overlapping and confusing disbursements.

In collecting information for employers and anti-union organizations at the taxpayers' expense, the sponsor of the bill has created such a confusing and conflicting list of issues to report, that it actually will be very difficult, if not impossible, to fully comply.

Provincial Jurisdiction

The Canadian Constitution gives exclusive federal jurisdiction over labour relations in specific industries, as well as some businesses, including transportation, that crosses provincial boundaries. However, the 90% of labour and employment that is not subject to federal jurisdiction is governed by the laws of the province or territory where the employment takes place. All provincial legislatures have enacted labour laws, employment standard legislations and established labour boards to regulate labour relations in their jurisdiction.

Many provinces have laws which require disclosure of financial information to union members. British Columbia and Nova Scotia require that unions provide each member with an audited financial statement on an annual basis. Six other provinces and the *Canada Labour Code* require that statements be provided upon request. Alberta, Saskatchewan and Prince Edward Island have opted not to regulate union finances because they are satisfied with the transparency provided by the constitution and bylaws of the unions. Importantly, the sponsor of the bill says that he has not received a single complaint from a union member that they cannot get the financial information they are entitled to.

Bill C-377, if enacted, would be regulating unions that fall within provincial/territorial jurisdiction. For the reasons already referred to above, the onerous filing and disclosure requirements could significantly affect the labour relations balance in the provinces. This could increase the frequency and duration of lockouts and strikes.

Although Bill C-377 is intended to amend the *Income Tax Act*, there are no tax implications to the proposed legislation. The bill regulates unions and labour relations in the provincial jurisdiction. Therefore, Bill C-377, if enacted, would be ultra vires federal jurisdiction.

Discrimination

As was mentioned above, there are over 90,000 organizations categorized by CRA as non-profit. Yet, the only one addressed in this private member's bill is labour.

And significantly, both the bill and its sponsor are silent on the amount of taxpayer subsidy that employers receive by being able to deduct from their profit income the fees they pay to belong to the various employer labour relations associations or groups like the Merit Contractors, the Canadian Council of Chief Executive

Officers, the Chamber of Commerce or the many employer organizations regulated by provincial labour codes.

There is a major difference in the two situations however. Unions are not publicly subsidized by their members' ability to deduct their union dues from their taxable income. It is workers and their families that receive this deduction when they file their tax returns. The fees paid by employers to belong to their equivalent of a union, the employer labour relations association, are deductions that can be applied to corporate profit and not to individual workers or families.

Clearly, labour organizations and their individual members are being discriminated against when compared to employers, employer organizations, professional organizations and professionals.

Union Transparency

What is the state of transparency in labour organizations that the bill's sponsor seeks to address? Unions are member-based organizations which, at the local union level, have frequent meetings (monthly or quarterly) where all members are entitled to attend. At these meetings, the executive officers of the local are accountable for their decisions. When they provide the financial reports where there are often questions, discussions and explanations, it is real accountability.

At all union conventions and executive board meetings, financial officers are subject to the same degree of scrutiny and are accountable to their members. It is important to note here that Mr. Hiebert himself has stated that he has not received any complaints from any union members that they are unable to get the financial information they want from their union. Union constitutions generally provide disclosure to members. Most provincial governments already require unions to either provide all

members with audited financial statements on an annual basis or to provide them on request to the member.

Some of the information which the bill seeks to have made publicly available is a duplication of information already filed and on a government website. The lobbying activities of the officers and staff of the Canadian Labour Congress and all other labour organizations is already filed with, and available on the website of the Commissioner of Lobbying.

In terms of direct political donations, the CLC was a strong supporter of legislation to restrict union and corporate donations from the initial introduction of this legislation by the New Democratic Party Government of Manitoba and at the federal level as well. The CLC has been a strong and consistent advocate of limits on and transparency in the funding of political parties for many years.

Bill C-377 is about accounting. What union leaders and union members are interested in is accountability. And that is what we are, accountable to our membership.

Conclusion

In conclusion, Bill C-377 is an attack on unions and their members designed to give employers and anti-union organizations significant confidential financial detail on the internal workings of labour organizations while not having to provide similar information themselves.

The Canadian Labour Congress asserts that Bill C-377:

- restricts freedom of association and is contrary to Section 2(d) of the *Canadian Charter of Rights and Freedoms*;
- contravenes federal and provincial privacy legislation;

- singles out and discriminates against unions compared to other organizations similarly treated in the *Income Tax Act*;
- intrudes into provincial jurisdiction with respect to the regulation of labour relations and unions;
- will impose significant costs on the government and labour organizations.

We also submit that Bill C-377 is so flawed that it cannot be amended in a way that addresses all the issues raised in this brief. It must be withdrawn or defeated in its entirety.

We would like to close with this observation. Accounting is numbers and line items. Accountability is much more – it is the story behind the numbers, the decision-making that takes place, the checks and balances in place to ensure money spent was properly authorized.

This bill is not about accountability. It is about weakening unions by vastly expanding reporting duties, regardless of whether the information disclosed is useful to union members, in the hopes that the information can be manipulated to weaken unions further.

This document is respectfully submitted on behalf of the Canadian Labour Congress:

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