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# personal injury & ICBC claim

H A N D B O O K

PERSONAL INJURY | ESTATE LITIGATION | PRODUCT LIABILITY | INSURANCE DENIALS

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## Introduction

**If you have been injured** in an accident by no fault of your own, then you have two options: Either take the insurance settlement ICBC offers you, or hire a personal injury lawyer to fight for justice for you and do all the negotiating and other work for you.

While you can file a claim yourself online or through the 24-hour dial-a-claim service, you need to know that your conversation with ICBC will be recorded and anything you say can be used to restrict or deny your claim. This is why it's highly advisable to consult with a lawyer as soon as possible following an accident and ideally, even before calling ICBC.

Helpforme is the Personal Legal Services Group of Hammerberg Lawyers LLP. Hammerberg is one of British Columbia's largest and most vibrant groups of personal injury lawyers and a highly respected law firm, entering its 20th year of legal practice in 2019.

Led by some of the most knowledgeable lawyers in their fields, Helpforme provides a **free consultation**, and we listen. Your needs are paramount when determining the best legal strategy to ensure a meaningful and deserved outcome. Our exceptional team has a long history of success, getting results that matter to our clients. To you. When you come to us with an injury, we take your case personally. We do everything we can—including dedicating all our resources—to help you get the best compensation possible.

We are **contingency lawyers**, which means you control the cost— we take on the risk so that your risk is low. Helpforme's "**No Win – No Fee**" Personal Injury legal services defer legal costs until your case is settled positively. It's not just about the financial aspects; we aim to remove your worry and stress so that you can focus on your recovery. We deal with insurance companies; cut through red tape; secure income replacement and disability benefits; and arrange for the medical care and therapy you need to heal. We take the burden off your shoulders and fight on your behalf to get the compensation you justly deserve so you can move forward and live your best life.

Contingency-based legal representation gives everyday people **access to justice** and the ability to pursue their rights – people who might not otherwise have the means to retain a lawyer. We are pleased to be able to provide you with the following Personal Injury & ICBC Claim handbook to help you **understand your legal rights and your options for dispute resolution**.

## Overview of ICBC Personal Injury Claims

Anyone injured in an accident, regardless of fault, is entitled to Part VII benefits from ICBC such as coverage of rehabilitation or treatment expenses, prescription costs, and disability payments (if applicable). Depending on the extent of the injury, the benefits and compensation may vary.

If you suffered injuries in an accident for which another driver was at fault, then you can also make a personal injury claim with ICBC to receive compensation.

If you or your loved one is ever in the unfortunate situation of being injured in an accident, it's imperative that you think your decisions through and take action to protect yourself.

The first thing you need to know is that ICBC doesn't always work in your best interest—it's an insurance company, albeit a public corporation, which holds over 90% of the market share in British Columbia's auto insurance. ICBC's mandate is to minimize settlements, which usually don't work in your favour, even when an accident isn't your fault.

In the event of an accident, you do not have to report it to ICBC right away. You are legally obligated to notify ICBC, but only within a reasonable amount of time.

Why is it essential for you to know this?

ICBC records everything you say, and your statement can be used against you in an insurance claim. Educate yourself on your rights or contact Helpforme for a free no obligation consultation. They can guide you through the procedure and advise you on what to say during your initial report.

You do not need to sign your statement or disclose your medical records to ICBC.

An ICBC Adjuster's job is to investigate and determine who's at fault in an accident. ICBC already has access to a comprehensive database of information, in addition to some Motor Vehicle Branch databases, which can be used to review personal details about the parties involved in the accident.

How to tell if you're helping or harming.

By signing your statement or disclosing further personal details, you may inadvertently accept some portion of fault for the accident, even if it was not your intention.

Helpforme wants you to understand the implications of all your interactions ICBC, be legally protected, and get the best settlement possible—you're entitled to this.

Hiring a lawyer can help your case—we'll advocate on your behalf.

Most personal injury lawyers, including Helpforme, charge on a contingency basis, which means you don't pay a legal fee unless you win the case. If we win the case, we take a percentage of the settlement, and that's our fee.

Read this handbook to understand the ICBC claims process better and find the best course of action for you.

## ICBC Claim Process

As stated earlier, if you're in an accident, you don't have to report it to ICBC right away. You are required to contact them within a reasonable amount of time, as long as it's within 30 days of the accident. ICBC records your phone call, and anything you reveal in your statement can be used against you to reduce your compensation. Keep this in mind.

### Your Initial Report to ICBC

You can file your report by phoning dial-a-claim, reporting online, or have your lawyer report it on your behalf. The ICBC representative will take your statement on how the accident happened and may also want you to bring your car in to have the damage recorded.

Here's what you'll need for your initial report to ICBC:

- Date and time of the accident
- Location of the accident
- Your vehicle license plate number and registration
- Name, driver's license numbers, and vehicle details of the other parties involved in the crash
- Details of how the accident happened
- Details of injuries, if any
- Information of witnesses, if any
- Police file number (if police were present)

Note that when you phone dial-a-claim, the ICBC representative is filling out their internal CL-75 form with the information you're providing. Whatever you say can be used against you in your claim.

You can also report a claim 24-hours a day online at ICBC's website. An ICBC adjuster will process the claim usually within 24 hours and post an online claim report notice, which you then retrieve.

## Protect Yourself

Once you report the accident, ICBC will open an investigation to determine who's at fault. Depending on whether ICBC finds you partially, completely, or not responsible for the accident, their decision may affect your insurance premiums and your right to claim compensation for your injuries.

In some circumstances, ICBC will send a private investigator to interview the people involved in the accident; this can then be used against you. Hiring a lawyer will help you protect yourself.

## Dispute a Liability Determination

If you disagree with ICBC's decision of who's at fault, you can do one of the following:

- Dispute the decision through an independent proceeding offered by ICBC. An independent arbiter will take a look at the evidence and conclude on who's responsible for the accident.
- File a small claims or Supreme Court lawsuit.

You can seek the counsel of a lawyer at any stage of the process, so if you're unsure of how to proceed, contact a lawyer.

## ICBC Claim Time Limit

### Time limits to be aware of on your ICBC insurance claim.

When you're involved in an accident, whether it is in British Columbia or elsewhere, although you're legally required to report it, it doesn't have to be right away. If unsure about your rights and duties (and to protect yourself) consult with a lawyer immediately. If you choose to report the claim yourself, do so within 30 days of the accident.

Section 97 of the Insurance Vehicle Regulation under the Insurance (Vehicle) Act states that when you claim for "no-fault benefits" (Part VII benefits), you must give notice of the accident within 30 days.

If the accident involves a hit and run, or a driver whom you have not been able to identify, there are similar time limits involved. Please review the section on hit-and-run claims.

You have a two-year limitation period after the accident to start a lawsuit against the at-fault driver for compensation for injuries. If you do not start a lawsuit within two years, your claim will be barred and you will not be entitled to any compensation.

You have a two-year limitation period after the accident, or after the last payment under Part VII, to bring a lawsuit against ICBC to force payment of Part VII benefits.

## What to do After an Accident

### What to do immediately after a car accident.

If you've been in a car accident, you must stay at the scene. It's the law. The Motor Vehicle Act requires you to stay where you are so you can lend a hand, and exchange registration and license information with all parties involved.

If it looks like the motorcycle damage exceeds \$600 or motor vehicle damage exceeds \$1000, or if people are injured, then you should report the accident to the local police.

In a minor accident without injuries, the police probably won't attend. However, if an accident is more severe and, especially if there are injuries involved, the police will likely attend the scene and investigate.

### What to do while at the scene.

Collect the names, addresses, phone numbers and driver's license numbers of all parties involved in the accident, regardless of who is at fault for the accident and how minor the accident is:

- Have a look at the insurance of each of the motor vehicles involved in the accident to get the names of the registered owner and the insurance details
- Look at the other parties' driver's license to ensure that you're not receiving false information
- Record the plate numbers (and province) of all the vehicles involved in the accident by looking at the license plates and registration
- If a vehicle involved in the accident is registered outside British Columbia, then get the name of the insurance company.
- Find out the names and contact information of any witnesses.
- Take some pictures of the vehicles and their resting positions.
- Take notes about how the accident happened, or draw a sketch of the scene to help refresh your memory later.

## What happens if you leave the scene?

It's important to note that, if you leave the scene of the accident without reporting to the police or exchanging information with the other parties, you could be charged under the Motor Vehicle Act or you could be held in breach of your contract of insurance with ICBC. In that case, ICBC can come after you for the money they pay out under a claim, for vehicle damage or injuries, which could be significant.

If you're in a single vehicle accident, especially at night, don't just leave the scene. Instead, call the police and follow their instructions. Otherwise, ICBC will assume you have something to hide like impaired driving and, again, could consider you in breach of your contract.

## Get Initial Medical Care

After you have been involved in an accident, see a doctor as soon as possible. Besides the importance to your well-being, it also means that your injuries are documented from the start. It will be crucial evidence, should ICBC argue that you weren't injured in the accident because you never sought early medical treatment.

If you can't see your regular doctor within 24 hours of the accident, go to a walk-in clinic or a hospital emergency. Don't delay seeking medical treatment, even if you are hoping things will get better on their own. Not seeking immediate treatment can be used against you later.

## How to Report & Claim Your ICBC Injury

First off, don't forget that when you report an ICBC claim, whatever you say can be used against you in your case. We can't emphasize this enough—you need to be careful about what you say, and a personal injury lawyer can help you phrase your statement to ICBC in a way that protects you.

For your initial report to ICBC, be prepared with the following information:

- Date and time of the accident
- Location of the accident
- Your vehicle license plate number and registration
- Name and driver's license numbers of the parties involved in the accident
- Details of the accident
- Details of injuries, if any, to the parties involved
- Information of witnesses, if any
- Police file number (if police were present)

You can file your report by phoning in, reporting online or at a local claim centre, or have your lawyer report it on your behalf. The ICBC representative will take your statement on how the accident happened and may also want you to bring your car in to have the damage recorded.

## Dealing with Your ICBC Adjuster

An ICBC adjuster works for ICBC, not for you. The adjuster might be good-natured, helpful, even sympathetic, but they are working towards ICBC's best interests.

In fact, an adjuster's performance is evaluated on two measures. One is on how much time he or she spends on a file doing tasks such as ordering reports, defense lawyer costs, etc., which is called "allocation expenses."

The other is on "severities," which refers to the amount paid per file.

An adjuster who keeps the costs of allocated expenses and severities down will have a more favourable review. It isn't to suggest that the adjuster doesn't care about you, but they have a job to do – and that's paying as little as possible on the claim.

## How to Appeal ICBC's Decision

If you want to appeal a decision made by ICBC, there are three options you can take that don't require hiring a lawyer. All three are available as part of ICBC's internal review process, and they can be leveraged for all ICBC decisions from car repair issues to determining liability.

### Speak to a Manager or Supervisor at the ICBC

If you don't agree with a decision, contact the person who oversees the adjuster who worked on your file. Discuss the issue with him or her, or get some direction on how to start the Fair Practices Review.

### Fair Practices Review

If your previous dealings still didn't resolve your issue satisfactorily, you should launch a complaint through ICBC's Fair Practices Review department.

### Fairness Commissioner

If you're still not satisfied with the way your issue has been dealt with, then you can put in a written request to have your issue reviewed by the Fairness Commissioner. The Fairness Commissioner might agree to the review and then make findings and recommendations.

### Take it to court

If you've done all you can with the ICBC internal process and still don't feel satisfied, then you can sue. For a small dispute, you can go through the Small Claims Court, or you can hire a lawyer to go through the BC Supreme Court

For more information on the ICBC internal dispute process, you can visit [www.icbc.com](http://www.icbc.com).

## Should I Hire an ICBC Lawyer?

To protect yourself, we strongly recommend that you consult with an established personal injury lawyer—a consultation with Helpforme is always free. Regardless of which stage of the process you're in, experienced lawyers can give you a strong idea of what your case is likely worth. If you've already filed a claim, they can let you know if the offer from ICBC is fair. You're also likely to get more money with the help of a lawyer than without one.

If you've been in an accident and suffered a soft tissue injury that would only last a short while, you might choose to deal with the adjuster yourself, especially if you think you can get fair compensation.

Generally, if you've been injured in an accident, it's best not to deal with ICBC by yourself. At least, not if you want maximum compensation.

Hiring an experienced personal injury lawyer who knows ICBC's tactics will give you a better chance of getting the money you want and deserve. Having that lawyer on your side from the start is especially important in these instances:

- If a family member is killed in the car accident
- If someone is seriously injured and needs to be hospitalized
- When liability is questionable, and you suffered moderate to severe injuries
- Where ICBC denies a claim because of the type of the collision, yet you suffered more than a minor injury
- When the injury likely has a permanent effect on your income or will require money for future care

An experienced personal injury lawyer has access to investigators and accident reconstruction engineers who know how to collect evidence and expert reports so that you have a complete and compelling claim. Also, a lawyer helps you document your injuries and needs so that these can be included in your claim.

Your lawyer will bill you a fee that's based on a percentage of your compensation. Bear in mind that the payment will probably far exceed what you would have earned on your own. Ultimately, even after costs, you'll be in a better financial position. What's more, your lawyer takes on the stress of dealing with ICBC, and that's invaluable.

Come in for your free consultation so that you can feel confident at the outset.

## 8 Things to Consider When Hiring an ICBC Personal Injury Lawyer?

Hiring a lawyer is an important decision. Having the right lawyer can significantly improve the outcome of your claim, along with the quality of your life following an injury.

## **That's why you should get the best.**

Consider the following things when hiring an ICBC personal injury lawyer:

### **1. Look for experience and expertise.**

All lawyers have their areas of expertise. When you pick a lawyer, the fundamental thing you need to look for is their expertise in ICBC personal injury cases. Ensure that they have previous – and ideally, a lot – of experience working on your type of situation, be it based on a specific injury or type of accident.

### **2. Check previous success rates.**

Does the lawyer have a strong track record of successful cases? End of the day, it's about you. You need the best compensation settlement and a lawyer who'll help you get there. Find a personal injury lawyer with a history of being a strong advocate for his/her clients.

### **3. Read client testimonials.**

Find out about other clients' experiences working with the lawyer you're considering. Research and read client testimonials and reviews.

### **4. Control the cost.**

Don't pay when you don't have to. Most ICBC personal injury lawyers work on a contingency basis, which means you don't pay unless and until your case gets a settlement. When that happens, your lawyer gets a percentage of your compensation. The costs – and the risk – involved for you is minimal, as it should be. Pick a lawyer who looks out for you.

### **5. Find the right fit.**

Find a lawyer you understand you and your case. Not just legally, but the impact it has on you emotionally and physically. You need to find the right fit, a lawyer you can trust to fight for you. Find a lawyer who'll give it everything to win your case and get you the best outcome, because you shouldn't settle for anything less.

### **6. Make sure the firm you sign up with is the one that represents you.**

Do your research and make sure you know the firm you're signing on. Some law firms take your case at the initial meeting, but pass it onto another firm for a commission—without you knowing about it. For you, this means you don't have any control in the lawyer you'll get, and there's no guarantee of excellent service.

## 7. Be cautious of “referral” services.

Don't sign up for a referral service online. Work with an actual lawyer who is knowledgeable and can represent you. Referral service websites usually have no legal background and can't help you.

## 8. Access to resources.

More complicated cases require more evidence, which takes time. If your situation is complicated or you've had a significant injury, choose a law firm with access to a wide range of resources such as medical specialists, private investigators, and engineers, who can all work on your case and get you the best possible outcome.

# ICBC Personal Injury Lawyer Fees

## Paying your Personal Injury Lawyer (Vancouver / in BC)

At Helpforme, Personal injury lawyers are retained on contingency. In other words, they get a percentage of your compensation, but only once the case is settled. Generally, this is more favourable than paying on an hourly rate as you do not have to pay anything up front, and the fee is proportionate to the size of the claim.

The contingency fee agreement forms the basis for the lawyer/client relationship. In addition to the fee, it also sets out how disbursements are dealt with. Disbursements are the costs incurred in building your claim, such as the cost of medical assessments, engineering opinions, and records. At Helpforme, we cover the cost of the disbursements up front so you do not have to pay anything out of pocket for these costs until you receive your compensation.

## Out of Province/Country Claims

Even if you're involved in an accident outside of BC, you may still be dealing with ICBC. If you are at fault for the accident, you will still be dealing with ICBC for your own vehicle damage and Part VII benefits, as well as any claims made against you.

If you're injured outside of BC and the accident was not your fault, you will have a claim against the other driver's insurance company, but you might still have ICBC insurance coverage.

In many jurisdictions in the United States, the amount of third-party liability coverage available to pay damages suffered in an accident can be as low as \$10,000. It's also not uncommon for vehicles there to be driven without insurance. If there's not enough insurance coverage to pay for all your damages, ICBC may have to compensate you under the underinsured motorist protection ("U.M.P.") plan.

Please see the section on U.M.P. coverage for a full description.

In other situations where you're injured outside the Province, disability benefits, and medical expenses coverage may not be available to the same extent as Part VII benefits available through ICBC. Your entitlement to Part VII benefits applies regardless of the location of the accident, but Part VII benefits are secondary insurance. It means you have to claim against other insurance before going to ICBC for the Part VII benefits.

If the injury occurs in Saskatchewan, Manitoba, Quebec or Ontario, ICBC will have to comply with their legislated higher limits of medical and rehabilitation coverage.

In short, whenever you're involved in an out-of-Province accident, contact ICBC's dial-a-claim and report it just to be sure.

## Hit & Run Accidents

Unfortunately, hit and run accidents are a frequent occurrence. Sometimes the other driver will flee right away, or they may remain at the scene for a short while, but not provide their information. Under Section 24 of the Insurance (Vehicle) Act, ICBC has to compensate you for death, or injury, or for damage to a vehicle, even if the motorist at fault isn't known. All you have to do is make "reasonable efforts" to ascertain the identity of the driver. While the interpretation of "reasonable efforts" varies, at a minimum you should report the accident to the police so they can begin an investigation.

The following are examples of what may constitute reasonable efforts:

- Take a picture of the other vehicle to try to get the license plate information;
- Talk to any witnesses in the area;
- Notify the police at the accident scene or within hours of the accident;
- Notify ICBC within hours of the accident, if possible;
- Place a sign at the accident scene looking for witnesses and the other driver;

- Place an ad in the local newspaper looking for witnesses and the other driver;
- Follow-up with the police regarding the investigation; and
- If the accident occurred in a busy or commercial area, see if anyone has surveillance video that may have captured what happened.

In other words, do everything you can so that ICBC can't argue that you didn't take all the steps possible. We recommend you talk to a lawyer right away to find out what additional steps you can take to strengthen your claim.

Section 24 also provides clear reporting requirements. When you have been involved in a hit and run, you must notify ICBC of the accident in writing as soon as possible and no later than six months after the accident. The courts have interpreted this provision as requiring a motorist to give ICBC notice within days of the accident unless for some reason your injuries preclude you from doing so.

If you pass the initial threshold test, you then pursue ICBC for payment of damages. If you need to launch a lawsuit, you will sue ICBC as a nominal defendant. If the identity of the vehicle and driver becomes known later, you will amend the lawsuit so that you sue the owner and operator of that vehicle.

Like other ICBC cases, all defenses open to ICBC are also available in a hit-and-run claim, including arguing liability, even though the other motorist involved in the accident is not available to testify at trial. The limits on the claim are \$200,000 legal costs and disbursements at which time underinsured motorist protection ("U.M.P.") would also be available.

In short, if you're the victim of a Hit and Run, contact ICBC and the police as soon as possible. Also, do everything you can to try and identify the other vehicle and driver involved. Otherwise, you won't have a claim against ICBC. If you are in doubt about your obligations, or have questions about the process, contact a lawyer as soon as possible.

## Claims Against a Family Member

In some cases, you may be a passenger in a vehicle being driven by a family member or friend, and that person might cause you to be injured in an accident. While the thought of suing a family member or friend may feel uncomfortable, remember that in the vast majority of cases the reality is that you're suing an individual to access their insurance policy, so that ICBC can compensate you. A term of the insurance contract is that ICBC also pays for the cost of any defence in a lawsuit, so in most cases, there is no need for your family member or friend to get their own lawyer.

Filing a claim against a family member is no different from filing one against a stranger. If you have any concerns, a lawyer can help you navigate the delicacies of the situation.

## Pedestrian & Cyclist Claims

Pedestrians and cyclists are especially vulnerable in an accident—both because of their exposure on the road, but also because the laws protecting you may not be as apparent. Accidents involving pedestrians and cyclists are almost always an ICBC concern.

If you're a pedestrian or cyclist who was hit by an at-fault motorist, you can file a personal injury claim with ICBC and also access Part VII benefits, provided you obey all the traffic laws and you are not responsible for the accident. It is a straightforward claim, and the compensation usually covers all medication and rehabilitation costs.

If you are partially at fault because you weren't correctly obeying the traffic rules, the case becomes a little more complicated. Sections 179 and 180 of the Motor Vehicle Act provides more information regarding the right of way between a pedestrian and a motor vehicle. However, as a pedestrian, even if you have partial blame, you may still have access to Part VII benefits.

Cyclists have the same rights and duties as the driver of a motor vehicle, with some additional stipulations a specified in Section 183 of the Motor Vehicle Act. If, as a cyclist, you are injured by a motor vehicle, directly or by an evasive action, you may be eligible for a compensation claim, even if there was no contact between you and the vehicle.

If, as a cyclist, you are not following the regulations, for example, proper lamps or reflectors in place, the driver of the motor vehicle may file an allegation of contributory negligence against you. ICBC may examine your bike for signs of defect, and this will affect your claim.

Consult with a lawyer as soon as possible to get a better understanding of your claim eligibility.

## Infant Claims

Any accident in which a minor under the age of 19 suffers an injury is complex, as it means the Office of the Public Guardian and Trustee (PGT) has to be involved in the decision-making process.

The PGT looks out for the best interests of the child. They have to approve of any settlement reached to ensure it is fair and takes into account any future complications or ongoing issues.

If the claimed amount for pain and suffering and loss of enjoyment of life, known as non-pecuniary damages, is relatively modest, the procedure to get the settlement approved is quite straightforward. Your lawyer can help you complete the paperwork and make the submissions to the PGT to get it approved.

Bear in mind that once the settlement is approved by the PGT, the funds will go to the PGT in trust for the child until he or she reaches the age of 19.

In some cases involving more serious injuries, approval of the settlement may require a court hearing. Once an infant turns 19, then the PGT is no longer involved in the matter, no matter how long the case has been going on.

Due to the intricacies involved in an infant claim, it will be beneficial (or even necessary) to retain a lawyer to guide you through the procedure.

## Claim Against an Uninsured Driver

If you're in an accident caused by an uninsured motorist, you are likely still eligible to make an ICBC injury claim. There is a \$200,000 limit for anyone injured by an uninsured motorist in B.C., even if you don't own or insure a vehicle, as stated in Section 20 of the Insurance (Vehicle) Act.

You may also be eligible for damages exceeding \$200,000 if you have Underinsured Motorist Protection.

There are certain requirements that must be met to make this type of claim. For more information suitable for your particular case, consult with Helpforme.

## When You're at Fault

If you're injured in an accident and you are at fault for the accident, you are still entitled to Part VII benefits for medical and rehabilitation expenses, disability benefits and more. ICBC is liable for up to \$300,000 for motor vehicle collisions, regardless of who's at fault, as stated in Part VII of the Insurance (Vehicle) Regulations. However, this may not cover the full amount of your expenses and you may still incur some costs, such as "user" fees for your treatments.

If you're partially at-fault, as in not completely responsible for the accident, you still need to pay a portion of your deductible, depending on how the fault is shared. In addition to your basic autoplan, if you have collision coverage you may be eligible to claim compensation for damages, which includes repair and replacement costs, even if the accident is your fault.

If you are found to be partially at fault for an accident, you are still entitled to make an injury claim. Bear in mind your entitlement to damages will be proportionately reduced by the amount for which you are at fault.

*The materials provided in this handbook are for information purposes only. These materials constitute general information relating to areas of law familiar to our firm lawyers. They do NOT constitute legal advice or other professional advice, and you may not rely on the contents of this handbook as such. Doing so without seeking the advice of legal counsel constitutes a misuse of the information. Helpforme and Hammerberg Lawyers LLP and its partners are not liable for any damage arising from the misuse of any information provided in this handbook.*

*The contents of the handbook do not necessarily represent the opinions of Helpforme or Hammerberg Lawyers LLP. If you require legal advice, you should retain competent legal counsel to advise you. Helpforme and Hammerberg Lawyers LLP will be pleased to discuss whether our firm can assist you.*

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