

Court File No.: T-1276-20

Montréal Registry

Id.#1

FEDERAL COURT -- TRIAL DIVISION

BETWEEN:

CALVIN SANDIFORD

D É P O S É	COUR FÉDÉRALE FEDERAL COURT	F I L E D
	OCT 23 2020	
	AHMED LAGRANI	
MONTRÉAL, QC		1

Applicant

AND:

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

(pursuant to *Federal Court Act*, R.S., 1985, c. F-7, sections 18 and 18.1)

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules*, 1998, and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Vancouver (telephone 250-666-3232) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: **OCT 23 2020**

**ORIGINAL A ÉTÉ SIGNÉ PAR
AHMED LAGRANI**

Issued by:
(Registry
Officer)

~~HE SIGNED THE ORIGINAL~~
(Signature)

Address of local office: 30 McGill Street
Montréal, Québec
H2Y 3Z7

Phone: (514) 283-4820
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TO: **The Registrar**
Federal Court
30 McGill Street
Montréal, Québec
H2Y 3Z7

**30 McGill St.
Montreal, Quebec H2Y 3Z7
Tel.: (514) 283-4820
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AND TO: **The Attorney General of Canada**
on the behalf of Her Majesty the Queen

c/o Nathalie G. Drouin
Office of the Deputy Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, Ontario
K1A 0H8

APPLICATION

1. The Applicant seeks judicial review of the decision made by the Minister of Veterans Affairs, National Second Level Appeal [the NSLA], dated 24th September 2020 which was communicated by electronic letter through MY VAC portal of the Department Veterans Affairs Canada [VAC] to the Applicant on or around 28th September, 2020. To date no formal letter of this decision has been sent to the Applicant through normal post.

2. In brief, the decision of the Minister affirmed the cumulative resultant decision of the National First Level Appeal [the NFLA] of the VAC *et. al*, 28th February 2020. The NSLA decision affirmed the cancellation of and/or the removal of:

- (a) the Applicant's Rehabilitation Services and Vocational Assistance Program;
- (b) Income Replacement Benefit which the Applicant was entitled to pursuant to amendments to the *Veterans Well-being Act, SC 2005, c 21, effective 1st April, 2018*; and
- (c) support for the Applicant's Mental Health, Post-Traumatic Stress Disorder, which the Department had attributed to the Applicant's military service on or around 12th September 2012.

3. The initial decision to deny these benefits was made on or around 30th October 2019. The Respondent claimed that the reason for the termination cancellation of the aforementioned support is because the Respondent asserts that there was no contact between the Applicant and the Applicant's Case Manager before 27th October, 2019 and that gives them the justification to terminate any and all support to the Applicant.

4. The Applicant states that this assertion on the part of the Respondent is unreasonable in its assertion, procedurally unfair in its implementation, is a denial of legitimate expectation and the factual assertion is patently false. Consequently, as the Respondent failed to take all reasonable steps to contact the Applicant, the Applicant did not know what were the allegations on the part of the Respondent that had to be addressed, that time was of the essence and that the Applicant was denied a fair and reasonable opportunity to adequately address the concerns of the Respondent which the Applicant has always done in the past.

5. The Applicant has completely exhausted the internal process and has no aid or recourse to the Bureau of Pension Advocates.

6. The aforementioned which are the subjects of this judicial review were awarded pursuant to *Canadian Forces Members and Veterans Re-establishment and Compensation Act, SC 2005, c 21* (renamed the *Veterans Well-being Act, SC 2005, c 21, effective 1st April, 2018*). The exact section of the statutes which the Respondent used to justify these decisions were never referred to in the decisions supplied to the Applicant.

THE APPLICANT MAKES APPLICATION FOR:

1. A Declaration that the Minister's decision to remove:
 - (i) the Rehabilitation Services and Vocational Assistance Program;

- (ii) the Income Replacement Benefit which the Applicant was entitled to pursuant to amendments to the *Veterans Well-being Act* which was granted to the Applicant; and
- (iii) support for the Applicant's Mental Health, Post-Traumatic Stress Disorder, which the Department had attributed to the Applicant's military service which was granted pursuant to *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21 (renamed the *Veterans Well-being Act*, SC 2005, c 21, effective April 1, 2018)

was unreasonable and/or was a breach of natural justice and/or a denial of legitimate expectations and/or breach of procedure;

2. An Order Quashing the decision to remove:

- (i) the Rehabilitation Services and Vocational Assistance Program;
- (ii) the Income Replacement Benefit which the Applicant was entitled to pursuant to amendments to the *Veterans Well-being Act* which was granted to the Applicant;
- (iii) support for the Applicant's Mental Health, Post-Traumatic Stress Disorder, which the Department had attributed to the Applicant's military service which was granted pursuant to *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21 (renamed the *Veterans Well-being Act*, SC 2005, c 21, effective April 1, 2018)

from the Applicant.

3. An Order in the nature of Mandamus to restore:

- (i) the Rehabilitation Services and Vocational Assistance Program;
- (ii) the Income Replacement Benefit which the Applicant was entitled to pursuant to amendments to the *Veterans Well-being Act* which was granted to the Applicant;
- (iii) support for the Applicant's Mental Health, Post-Traumatic Stress Disorder, which the Department had attributed to the Applicant's military service which was granted to the Applicant pursuant to *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21 (renamed the *Veterans Well-being Act*, SC 2005, c 21, effective April 1, 2018).

4. A Declaration that the decision of the Minister pursuant to *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21 (renamed the *Veterans Well-being Act*, SC 2005, c 21, effective April 1, 2018) that the Applicant never contacted VAC until 27th October 2019 was in error and was unreasonable and/or was a breach of natural justice.

5. An Order Quashing the decision of the Minister pursuant to *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21 (renamed the *Veterans Well-being Act*, SC 2005, c 21, effective April 1, 2018) that the Applicant never contacted VAC until 27th October 2019.

6. A Declaration that the Respondent's appeal process was unreasonable and/or lacked procedural fairness and/or natural justice and/or unconstitutional in that the Applicant was denied access to the Bureau of Pension Advocates as well as the nature of the Bureau of Pension Advocates pursuant to the *Veterans Affairs Act* R.S.C., 1985, c. V-1 and section 8 of the *Privacy Act*, R.S.C., 1985, c. P-21 which has adversely affected the Applicants rights pursuant to section 7 of the

Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (The Charter) and/or in the alternative, those provisions which restrict the scope of the Bureau of Advocates powers must be read down or considered constitutionally inapplicable as these provisions violates the Applicant's rights pursuant to section 7 of the *Constitution Act 1982* as such a restriction on the Bureau of Pension Advocates violates the section 7 rights and cannot be justified under section 1 of *The Charter*.

7. A Declaration that the refusal of the Respondent and its agents and/or servant and/or employees pursuant to the *Veterans Affairs Act* to turn over or help to turn over the Applicant's full medical file which is connected to the Applicant's medical and mental health and any rehabilitation is contrary to section 7 of *The Charter*.

8. A Declaration that Respondent's the failure to take all reasonable steps to turn over the Applicant's complete medical records which is essential to the Applicant's health care in the context of physical and mental health and that the Respondent failed to take the Applicant's health status and health care needs into consideration in all decisions affecting the Applicant violates the rights guaranteed by sections 7 of *The Charter*.

9. Should Mandamus not issue, an order pursuant to section 24(1) of *The Charter* requiring the Respondent to take the steps set out in paragraph 3 above;

10. An Order in the nature of Mandamus releasing the Applicant's full medical records as identified by the Respondent in 2009;

11. Costs of this application.

12. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

Decision Under Dispute

1. On or around 24th September 2020 the Minister of Veterans Affairs, through the NSLA, denied the Applicant's appeal from the NFLA. The decision was communicated by electronic letter through MY VAC portal of VAC on or around 28th September, 2020 to the Applicant. The exact section of the statutes which the Respondent used to justify these decisions were never referred to in the decisions supplied to the Applicant. To date this is the only indication of the Minister's decision.
2. The decision of the Minister affirmed the cumulative resultant decision of the NFLA of the VAC *et. al*, 28th February 2020. The NSLA decision affirmed the cancellation of and/or the removal of:
 - (a) the Applicant's Rehabilitation Services and Vocational Assistance Program;
 - (b) Income Replacement Benefit which the Applicant was entitled to pursuant to amendments to the *Veterans Well-being Act, SC 2005, c 21, effective 1st April, 2018*;and

- (c) support for the Applicant's Mental Health, Post-Traumatic Stress Disorder, which the Department had attributed to the Applicant's military service on or around 12th September 2012.
3. The initial decision to deny these benefits was made on or around 30th October 2019. The Applicant states that this assertion on the part of the Respondent is unreasonable in its assertion, procedurally unfair in its implementation, is a denial of legitimate expectation and the factual assertion is patently false. The Respondent failed to take all reasonable steps to contact the Applicant, the Applicant did not know what were the allegations on the part of the Respondent that had to be addressed, that time was of the essence and that the Applicant was denied a fair and reasonable opportunity to adequately address the concerns of the Respondent which the Applicant has always done in the past.
 4. It was only in or around late 2019, when the Applicant was dealing with an injury, that he finally received complete copies of all of the correspondence sent to him by VAC with respect to this decision.
 5. On or around 12th August 2020 the Minister of the Department of Veterans Affairs wrote to the Applicant. In the letter *inter alia* the Minister stated that his Department had been recently in communication with the Applicant about the support that was mention in paragraph 2(a) above. At no point in time since December 2018 has any of the Minister's agents and/or servant and/or employees ever talk about these matters to the Applicant. What was written was factually in error.
 6. At no point in time did the Applicant's Case Manager ever attempt to phone him. The Applicant has been subsequently informed on or around 2nd October 2020 that he has no Case Manager.

Unreasonable Decisions, Lack of Procedural Fairness, Errors in Fact and Loss of Legitimate Expectation

7. In the NFLA the Respondent stated that they had carefully reviewed my file. This is disputed.
8. The Respondent also stated that the basis for the termination of any and all support to the Applicant is because "Unfortunately no contact between you and your Case Manager occurred before 27th October, 2019". This is factually in error.
9. On or around April 2019 the Applicant made his first attempt to reach his Case Manager. The Applicant phoned into the Department of Veterans Affairs. The Applicant had received information about his income guarantee. At that time, the Applicant was told that he had a Case Manager. The Applicant was told that her name was Ms. Bunnnett. The Applicant asked if he could have her email address to contact her. The Applicant was denied that request. The Applicant then asked if he could leave a voice mail. The Applicant was told by the Respondent's agents and/or servant and/or employees that they attempted to that that was not possible. They stated that she would contact the Applicant.

10. On or around 11th June 2019 The Applicant made the second attempt to reach his Case Manager. The Applicant received a letter from her. It indicated how to contact her by phone. The Applicant called and could not leave a message.
11. On or around 21st June 2019 the Applicant made a third attempt to reach his Case Manager. The Applicant called her again and the Applicant was not able to leave a message. It was at that time that the Applicant found out that there was a Minister's First Level Review conducted on the Applicant without his knowledge. The review was concluded on or around 20th June 2019. VAC's agents and/or servant and/or employees refused to give the Applicant the document or refused to reveal the content of the document over the phone. The Applicant received the document through the Bureau of Pension Advocates [BPA]. There were a number of calls connected to this document. The Applicant never reached his Case Manager but he was told that his Case Manager would write the Applicant about this. Until the time of this writing the Respondent's Case Manager is yet to write or contact the Applicant about this report.
12. The Minister's First Level Review contained errors. These errors are influential to the decision-making process. This Report followed from an attempt to remove the Applicant's psychological support by claiming that there was a relationship of co-dependency between the Applicant and the Applicant's psychologist. The Applicant found the accusation offensive and informed his psychologist and wrote a series of formal complaints to VAC. It is out of those complaints that this report was generated without the Applicant's knowledge.
13. On or around the 27th June 2019 the Respondent's Case Manager wrote back to the Applicant.
14. On or around the 27th July 2019 the Applicant made a fourth attempt to reach his Case Manager. The Applicant received a letter from her. The Case Manager indicated in the letter that the Applicant had attempted to contact her but that the Applicant had not reached her. By this point in time the Applicant was frustrated. It triggered his PTSD. Without her email address and not part of My VAC at that time the Applicant tried to reach the Case Manager by phone. The Applicant called Veterans Affairs and yet again the Applicant was not able to reach her.
15. On or around the 10th July 2019 the Applicant made his fifth attempt to reach his Case Manager. The Applicant wrote her a letter. The Applicant clearly indicated that he would contact her again and that he was struggling. She never attempted to contact the Applicant or respond to the Applicant.
16. From in or around August 2019, at least once a month, the Applicant regularly called in to try to reach his Case Manager. The Applicant also asked repeatedly if there was any problem with his file. The Applicant was consistently told and reassured by the Respondent's agents and/or servant and/or employees that there was no problem with or any problem indicated within his file. At no point in time did the Respondent say that she was trying to reach me.
17. The Applicant has never spoken to Ms. Bunnett. The Respondent never heard her voice mail but the Applicant left messages for her through the Respondent's servants and/or agents for her to contact him. Throughout all of the attempts to contact the Respondent's

Case Manager the Applicant was given the legitimate expectation that all is well from the Respondent's agents and/or servant and/or employees.

18. At or around 30th October 2019 the Applicant was cut from the program without notification and was left with no money and psychological support.
19. On or around 18th November 2019 the Applicant sustained a major injury to his left leg which was caused by injuries sustained to his ankle and foot during his time with the Canadian Forces.
20. As a result of this decision the Applicant has suffered hardship which has adversely affected his mental health. The Applicant's security of person has been violated and the effect of these decisions has been to cause financial ruin.

Unreasonableness, Lack of Procedural Fairness, Independence, Violation of *The Charter*

21. Throughout this process the Respondent has acted unreasonably, in bad faith, and with a total disregard for the facts, law and their own analysis. The Respondent constantly attempted to make the Applicant take a path that the Respondent knew would not lead to any resolution of the matter and refused to contact the Applicant when the Applicant made numerous attempts to contact the Respondent's agents and/or servant and/or employees. The Respondent knew that they had wanted to terminate any and all aid that the Applicant was receiving even though statutory law provided for it to the Applicant as the Respondent had previously told the Applicant. The actions of the Respondent violate stated governmental policy in support of Veterans as well as the statutory law, *Veterans Affairs Act*, and the case law that surrounds it.
22. The Respondent always sought full medical information from the Applicant. During this process the Applicant was alerted to the fact that VAC had very little by way of medical information on his file. The Applicant contacted the BPA for assistance to obtain his full medical records on or around 21st May 2019. It became evident through discussions with the BPA that neither VAC or the BPA ever had access to the Applicant's full medical records. Upon release the Department of National Defence, as is their statutory duty to do so, never transferred the Applicant's medical file to the Applicant.
23. The Applicant also asked if the BPA could assist with the matter of obtaining these documents. The BPA stated that they could not.
24. The Department of National Defence stated to the Privacy Commissioner that there were no medical records that belonged to the Applicant. This was reported to the Applicant on or around 14th June 2012. This was a false statement. It became clear to the Applicant, through an unrelated request, that in 2019 that the complete medical records of the Applicant were transferred from the Department of National Defence to the Department of Justice on or around 13th October 2009 in accordance with a request made by the Department of Justice pursuant to section 8 of the *Privacy Act*. The BPA stated that they could not access or request these records. The Applicant made a similar direct request to the Minister and the Minister is yet to respond to this request.

25. The appeal process that the Respondent has set up for disputes like this is unreasonable and/or lacked procedural fairness and/or natural justice in that the Applicant was denied access to the BPA to aid in this matter and denied access to his full medical record. The BPA are beholden to the Deputy Minister pursuant to the *Veterans Affairs Act* and are subject to any request made by the Respondent pursuant to section 8 of the *Privacy Act*.
26. Given such a position by virtue of the *Veterans Affairs Act* and the operational power granted to the Government through the Attorney General for Canada through the *Privacy Act*, such a position means that they are not constructively independent and cannot truly give free advice in any reasonable sense of the word; nor can they resist the compellability found within section 8 of the *Privacy Act*. By the Respondent's Departmental policy, they cannot challenge the Respondent fully on the behalf of the Applicant if the Respondent tells them not to do so.
27. The BPA are unable to supply by virtue of statute and policy to the Applicant and follow through for the Applicant the full array of legal tools that an independent lawyer can use as they are part of VAC and are constrained by policy. Without this independence from the Respondent and due to their relationship with the Deputy Minister for VAC such a relationship with the Applicant violates the Applicant's rights pursuant to section 7 of *The Charter* in that it blocks the Applicant having full access to his medical records. This is not justifiable under section 1 of *The Charter*.
28. On or around 30th September 2020 the BPA confirmed that they were prohibited from helping the Applicant with this matter.
29. The Applicant has completely exhausted the internal process and has no aid or recourse to the Bureau of Pension Advocates.

Other Grounds

30. The Applicant relies on the following:
 - (a) the *Federal Courts Act*, R.S.C. 1985, c. F-7, sections 2, 18, and 18.1;
 - (b) the *Federal Courts Rules*, SOR/98-106, Rules 300-18;
 - (c) *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, SC 2005, c 21;
 - (d) *Veterans Well-being Act*, SC 2005, c 21;
 - (e) *Veterans Affairs Act R.S.C., 1985*
 - (f) the *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11*;
 - (g) the *Privacy Act*, R.S.C. 1985, c. P-21; and
 - (h) such other grounds as the Applicant may advise and this Honourable Court may consider.

Statutory Provisions, Rules and Principles:

1. *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;*
2. *National Defence Act, R.S.C. 1985, c, N-5*
3. *Canadian Forces Members and Veterans Re-establishment and Compensation Act, SC 2005, c 21;*
4. *Veterans Well-being Act, SC 2005, c 21, effective 1st April, 2018;*
5. *Veterans Affairs Act R.S.C., 1985, c. V-1;*
6. *Privacy Act, R.S.C., 1985, c. P-21;*
7. *Marshall v. Canada, 2002 FCA 172;*
8. *Gary Crummey v. Attorney General of Canada 2019 FC 73;*
9. *Leroux v. Canada (Attorney General), 2012 FC 869;*
10. *Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65*
11. *Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817*
12. *Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190*
13. *Zare v. Minister of Citizenship and Immigration, 2010 FC 1024*
14. *Youden v. Canada (Attorney General) 2005 FC 1696*
15. *Passey v. Canada (Attorney General) 2019 FC 1329*
16. *R. v. Généreux, [1992] 1 S.C.R. 259*
17. *Endicott v Canada 2005 FC 253*
18. *The Federal Court Act, R.S.C. 1985, c. F-7, s. 18 and 18.1;*
19. *Federal Court Rules, 1998 (SOR/98-106) Rules 300–18;*
20. *The Principles of Fiduciary Duty and the Rules of Equity;*
21. *Principles of Federal Common Law; and*
22. *Such other materials as counsel may advise and this Honourable Court may permit.*

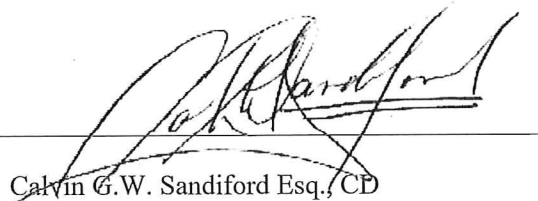
Request for Material in the Respondent's Possession

24. Pursuant to Rules 317 and 318 of the *Federal Courts Rules*, the Applicant requests that a certified copy of the following materials (the “**Certified Tribunal Record**”) to the Applicant and the Registry:
- (a) all records collected or created in the context of the National First and Second Level Appeals that have not already been disclosed to the Applicant; and
 - (b) all other relevant records that were before the National First and Second Level Appeals.

The following material will support the application:

- 1. The affidavit of the Applicant;
- 2. The Certified Tribunal Record;
- 3. One or more affidavits, to be filed; and
- 4. Such other materials as the Applicant may advise and this Honourable Court may permit.

21st October, 2020



Calvin G.W. Sandiford Esq., CD

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Facsimile: + 514-221-3187
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I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed by the Court on the _____

day of OCT 23 2020 A.D. 20 _____

Dated this _____ day of OCT 23 2020 20 _____



**AHMED LAGRANI
AGENT DU GREFFE
REGISTRY OFFICER**

Federal Courts Fees Receipt
Reçu pour frais judiciaires des cours fédérales

NO. **A 608141**



Federal Court of Appeal /
 Cour d'appel fédérale



Federal Court /
 Cour fédérale



Court Martial Appeal Court of Canada /
 Cour d'appel de la cour martiale

To / À : Name/Nom : <u>Mr. C. SANDIFORD</u> Organization/Organisation : _____ Address/Adresse : <u>(514) 3(4-2929)</u> _____ _____	Date : <u>23-Oct-2020</u>
	Issuing Office / Bureau émetteur : <u>MT1</u>
	Prepared by / Préparé par : <u>A.L</u>
	Court File No./ N° du dossier de la Cour : <u>T-1276-20</u>

Style of Cause & Description of Services Provided Intitulé de la cause et description des services rendus	Cost(s) Frais
<p><u>CALVIN SANDIFORD v. THE ATTORNEY GENERAL OF CANADA</u> <u>(Notice of application)</u></p> <p align="right">Total =</p>	<p><u>50.00\$</u></p>

Method of Payment / Mode de paiement

Account / Compte
 Cheque No. / N° chèque : _____
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 Cash / Comptant
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White - Original file - Ottawa
 Blanche - Dossier original - Ottawa

Blue - Accounting - Ottawa
 Bleue - Comptabilité - Ottawa

CAS/SATJ-26 (REV 2/11)

Goldenrod - Accounting 2nd copy. Local Office
 where costs retained by Province (Ottawa Statistics)

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