



## MINUTES OF THE 2009 CMPA ANNUAL MEETING SASKATOON, SASKATCHEWAN – AUGUST 19, 2009

*The 2009 Annual Meeting of the Canadian Medical Protective Association was held, starting at 1330 hrs on Wednesday, 19 August 2009 in the Adam Ballroom of the Delta Bessborough Hotel, 601 Spadina Crescent East, Saskatoon, Saskatchewan. The meeting was conducted in English and simultaneous interpretation was available for all attendees. There were 177 physician-members present.*

### INTRODUCTION

The President, Dr. William Tucker, welcomed the attendees and introduced the individuals at the head table:

- ▶ Dr. Michael Lawrence from Vancouver BC, 1<sup>st</sup> Vice-President
- ▶ Dr. Lawrence Groves from Brandon MB, 2<sup>nd</sup> Vice-President
- ▶ Dr. John Gray, Executive Director/Chief Executive Officer
- ▶ Dr. Douglas Bell, Associate Executive Director and Managing Director of Risk Management Services
- ▶ Mrs. Margaret Ross of Gowling Lafleur Henderson, General Counsel

Dr. Tucker acknowledged the attendance of four past Presidents: Drs. Peter Fraser, André Duranceau, Bill Thomas and Hugh Morrish.

The President directed that any new business could be raised for discussion during the New Business section of the meeting and he reminded the participants that only members were permitted to ask questions, raise issues or vote.

He noted the business portion of the meeting would be followed by an information session on "Learning from Adverse Events: A Medical Liability Perspective." Stressing the value of feedback, he asked the

participants to complete and return, upon conclusion of the information session, the evaluation form provided in the delegate package. Lastly, he invited everyone to a closing reception to be held in the foyer immediately following the information session.

### CALL TO ORDER

Dr. Gray, Executive Director/CEO, read the Notice of the 2009 Annual Meeting of the Canadian Medical Protective Association, whereupon the President declared the meeting to be duly constituted.

### APPOINTMENT OF SCRUTINEERS

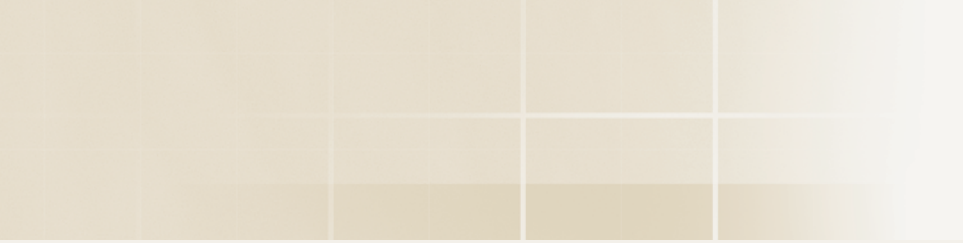
Dr. Tucker indicated that Drs. Shane Sheppard, Allon Reddoch and Louis Godin were prepared to act as scrutineers in the event a vote should be required.

**A motion to accept the proposed scrutineers was raised by Dr. Callaghan, seconded by Dr. Rinaldi and carried.**

### APPROVAL OF THE MINUTES OF THE 2008 ANNUAL MEETING

The draft minutes of the 2008 annual meeting held in Montréal, Québec were in the 2008 Annual Report which was included in the delegate package. These had also been made available on the CMPA website. During the 2008 annual meeting, Dr. Alexandra Tcheremenska-Greenhill from BC asked whether the CMPA has a policy with respect to investing with companies that sell tobacco products. The President reported to the 2009 meeting attendees that the Association has subsequently formalized a policy that it will not hold investments in tobacco, either directly or indirectly.

**A motion to approve the minutes of the 2008 annual meeting held in Montréal, Québec, was raised by Dr. Sabbah, seconded by Dr. Kane and carried.**



# Business arising from the minutes

## PRESIDENT'S REPORT

### Challenges and accomplishments

Dr. Tucker referred meeting attendees to the 2008 Annual Report included in the registration package and noted everyone connected with the Association takes pride in its strong commitment to its 76,000 members. Examples cited include the following:

- ▶ The Association has been able to improve services, such as reducing the number of transferred calls by answering questions at the first contact point, while keeping operating costs relatively steady over the past five years.
- ▶ The CMPA continues to enhance its contribution to patient safety through ongoing collaboration with others and through its own educational programs. In 2008, over 25,000 physicians and those who work with them attended one of the Association's approximately 440 face-to-face education sessions. Also, a member booklet on how to effectively disclose adverse events to patients was published and is now available on the CMPA website.
- ▶ Over the past year, the CMPA has improved access to its risk management information by upgrading its website, providing easy access to the hundreds of risk management articles and its CME-accredited eLearning program.
- ▶ Within its domain of expertise, the CMPA has a valuable perspective on issues that impact the medical profession and is increasingly providing early input to policies that impact its members.
- ▶ Finally, the CMPA has effectively managed the impact of the economic downturn. While its financial position is not as strong as it was one year prior, the CMPA remains fully funded and ready to meet its commitments to members.

### Medical liability environment

Dr. Tucker noted the medical liability environment is becoming more challenging. During last year's annual meeting, the medical liability issues associated with electronic records were discussed and, over the past twelve months, progress has been made in electronic records implementation. While many of the medical liability issues regarding stewardship, consent and access are being addressed, there is more to do in this area.

The Association remains concerned with rising medical liability costs and continues to advocate for sensible reforms that will reduce unnecessary costs, while providing patients proven to have been harmed through negligent care with appropriate compensation. Over the past decade, the annual increase in median damages has risen by 10% in Ontario, 6% in Québec and 25% in the Rest of Canada.

### New legal actions

Dr. Tucker reported, during the past decade, the CMPA has seen a decline in new legal actions opened each year, suggesting the efforts of many organizations, including the Association, to improve the safety of medicine, are paying dividends. The CMPA's membership has grown significantly over the past decade and the decline in new legal actions on a per member basis is even more evident. He stated a member is now half as likely to be the subject of a legal action as was the case ten years ago.

### CMPA responses to emerging challenges

The President reiterated that, within areas the CMPA can influence, it continues to look for ways to reduce system costs. An important part of the solution is to reduce the number of adverse events by improving the safety of medicine. The Association's risk management and education efforts and those of others are important to achieving this goal.

Dr. Tucker identified an increase in intrusions on a physician's right to due process, often with the logic such intrusions will advance patient safety. The CMPA believes due process is an important element of natural justice. Another cause for concern is the collection of physician information, largely but not exclusively by regulatory authorities. While the CMPA recognizes Colleges have a legitimate requirement to collect a certain amount of information, the President indicated that in some cases, more is being collected than should be necessary for the regulatory function. Information collection is particularly sensitive when it involves a physician's personal health, including blood-borne pathogen status. The CMPA is actively involved with the Colleges in trying to seek a reasonable approach to this issue that recognizes the public safety imperative and respects a physician's rights.

The CMPA is active in addressing the impacts of medical liability issues that inevitably arise from changing practices on multiple fronts. The Association continually reviews its extent of assistance principles to ensure they remain relevant to members' practices. It works with governments, health care authorities and other liability protection providers to identify and, where possible, address protection gaps created by changing scopes of practice or methods of care delivery.

### **Effective governance and management**

The President noted the CMPA Council, recognizing its responsibility to the over 76,000 members, remains committed to governance best practices, including the conduct of individual and collective performance evaluations.

### **Beyond 2009**

Dr. Tucker noted the importance of maintaining the programs wherein provincial and territorial governments reimburse a portion of medical liability costs, be they CMPA membership fees or commercial insurance premiums. The specifics of

these programs, each resulting from negotiations between physicians and governments, differ from one province or territory to another. The funds allocated to these programs are monies that would otherwise be due to physicians in another form, such as higher fees for clinical care. There are several international examples where high medical liability costs have forced physicians from practice or caused them to leave the jurisdiction in question. The reimbursement programs are crucial to ensuring such a situation does not occur in Canada.

The President concluded, while the next few years will be challenging, the CMPA is well positioned to meet these challenges.

### **Comments/Questions**

Dr. Dennis Kendall requested clarification regarding the nature of CMPA concerns with respect to regulatory authorities. Dr. Tucker responded the CMPA would like to be certain the information collected is necessary to the fulfillment of a College's mandate. As an example, he noted the number of legal settlements involving a physician could be perceived as an indication of performance when, in fact, there are many reasons a physician could be involved in a settlement. Dr. Kendall reiterated his view that Colleges have a responsibility to collect information necessary to meet their obligations.

There being no further questions on the President's Report, Dr. Tucker invited Dr. Naysmith, Chair of the Audit Committee to present the 2008 Financial Report.

## **2008 REPORT OF THE AUDIT COMMITTEE**

Dr. Naysmith explained the CMPA's not-for-profit status and its mandate as a mutual medical defence organization entail a corporate responsibility to its members to prudently manage funds and financial assets. This is done in an effort to ensure a long-term ability to fully meet projected costs arising from the Association's commitment to defend members and compensate patients found to have been harmed as a result of medical negligence.

Dr. Naysmith reported the 2008 financial statements were audited by PricewaterhouseCoopers, which provided a "clean" opinion on the CMPA statements and attested they properly present the results of operations in 2008 and the financial position of the Association as at 31 December 2008.

## **2008 FINANCIAL REPORT**

Mr. Campbell declared the Association has managed to maintain its positive financial position in spite of the dismal performance of the investment markets in 2008. At the end of 2008, the Association held \$2.4 billion of net assets against an outstanding claims obligation on behalf of all current and past members of \$2.2 billion. After giving effect to the funds committed to capital assets and the retained risk reserve, the Association held unrestricted net assets of just over \$200 million. While this remains a positive-funded position, it is significantly reduced from figures reported for the end of 2007.

To put the 2008 figures in context, Mr. Campbell provided an overview of the CMPA's year end unrestricted net asset position since 1998. Up to the end of 2003, the CMPA fluctuated around its fully funded position within a +/-10% band. The year 2004 saw the funded position grow beyond this 10% range for the first time, peaking at \$930 million at the end of 2006 and representing a positive turnaround of almost \$1 billion over a five-year period. The credit crisis of 2008 resulted in losses across all equity markets. The CMPA, with equity exposure in Canada, the US and internationally, saw the value of its holdings decrease significantly,

accounting for most of the deteriorated unrestricted net asset position.

Using a diagram that depicted the underlying CMPA financial model, Mr. Campbell demonstrated the CMPA funding approach and how the current financial position was generated. Underlying all the CMPA's financial models is the disbursement of costs arising from a single occurrence year. The cost of protecting members in an occurrence year, including damages, legal and expert fees, is spread out over many years into the future, with the final payments not being disbursed until forty to fifty years after the occurrence year. At the end of each fiscal year, the Association carries the obligations from all past membership years, at different stages of their individual disbursement profiles, while adding the obligations arising from the activities of members in the occurrence year. Accordingly, the CMPA must maintain its pool of assets (the Provision for Outstanding Claims) at a fully funded level, which Mr. Campbell defined as having \$1 of reserve for every \$1 of discounted future liability arising from current and past members.

He stated each year, funds flow into the pool from investment income and membership fees. Funds are drawn from the pool as annual disbursements in support of members, comprising awards and settlements, legal and expert fees and operational costs. When inflows exceed outflows and the pool is at a fully funded level, any excess funds overflow into a reservoir of "accumulated experience gains" which are used to stabilize or reduce future membership fees. Each year, the Association collects from its members sufficient fees to cover the estimated costs arising out of that protection year. To the extent that accumulated experience gains are available, this overall fee requirement can be partially met by amortizing experience gains over several years as membership fee credits.

Mr. Campbell illustrated how, from 2003 to 2007, the CMPA's actual investment returns significantly exceeded the 7% expected return used by the

Association's actuaries. This resulted in a larger than anticipated inflow into the already fully funded pool of assets. The overflow into the accumulated experience gain reservoir remained within the CMPA portfolio, earning additional investment income which further accelerated or compounded the accumulation of experience gains. Ongoing evaluation of the assumptions used in CMPA actuarial models, particularly following the review conducted in 2005, reduced the overall size of the required Provision for Outstanding Claims, releasing an additional layer of funds into the experience gain pool.

In considering the events of 2008 in the context of the previous five years, Mr. Campbell noted, while the CMPA expected the investment portfolio to produce a positive 7% return over the year, returns in 2008 were actually negative. Investment income stopped flowing into the reserve from the surplus and on the reserve pool itself. With the market value of the CMPA portfolio falling, funds flowed out of the pool. Notwithstanding the 2008 performance, the Provision for Outstanding Claims remains fully funded and the Association still enjoys an accumulated experience gain pool.

### **Membership revenues**

Mr. Campbell noted the CMPA had, at year end 2008, almost 76,000 CMPA members, representing a consistent annual growth rate of 2 to 3% over the last ten years and a 3.5% 2008 growth on a national basis. This growth in membership combined with the increase in medical liability protection costs have resulted in a similar growth in the aggregate membership revenues charged by the CMPA.

In summarizing the 2008 membership fee calculations, Mr. Campbell shared the fact that positive investment experience and moderating actuarial assumptions produced accumulated experience gains, which allowed the 2008 fees to be reduced by a fee credit of \$52 million. The \$274 million received from members in 2008 represents a 16% discount to the fees otherwise collectable and a 47% discount from the estimated future costs arising from their practice in 2008.

In speaking to occurrence year costs, Mr. Campbell indicated, while the component of overall costs covered by the application of a fee credit approved by Council has varied by year from a low of \$37 million in 1999 to a peak of \$72 million in 2002, prudent application of emerging experience gains and losses have allowed fee credits in each of the last ten years. These credits contributed to members having been charged \$547 million less than CMPA actuaries had deemed necessary in order to cover the costs of the protection afforded them through membership in the Association. Emerging experience gains, primarily generated from investment returns that were significantly better than expected, along with some moderation in the expected growth of CMPA liabilities, have allowed the Association to bring a large measure of stability to the costs of professional medical liability protection in Canada.

### **Investment returns**

Mr. Campbell reiterated, after four years of exceptional investment performance, the financial markets performed less favourably in 2007 when the CMPA recorded a 1.9% overall portfolio return. In 2008 the returns from the portfolio were negative with an overall net investment loss for the year of \$449 million, representing a decline in value of 15.5%. Recognizing the CMPA fee setting process assumes a 7% long-term rate of return, the true impact on the Association was to miss its target by over 22.5%.

However, the actuarial assumption is a long-term return expectation intended to reflect the anticipated returns of the CMPA portfolio over the next ten to fifteen years.

### **Disbursements**

Turning to the 2008 disbursements, Mr. Campbell reminded meeting participants annual disbursement figures can vary widely based on cases closed in a given year. He stated a longer term perspective is required when viewing disbursement patterns.

Mr. Campbell provided comparative disbursement data to show that while the early part of the decade experienced an upward trend in all disbursement categories, the last four years saw legal, operations and expert costs remaining fairly constant. The fluctuations in awards and settlements paid have caused the greatest year-to-year variation in overall costs. As such, the timing of the progress of specific individual cases can have a dramatic impact on the total reported each year.

In speaking to a chart showing the total awards and settlements paid out in each of the past five years, Mr. Campbell noted the number of cases with damages below \$4 million have generally tracked lower, dropping from 492 in 2004 to 397 in 2008, in line with the falling number of new cases being opened each year. The closure of the small number of cases above \$4 million can greatly impact the awards and settlement costs in a year.

### **Overall reserve position**

Mr. Campbell identified the overall reserve or funded position as the most critical aspect of the CMPA's financial reporting.

Given the CMPA provides occurrence-based protection, at any point in time, the CMPA carries a significant future financial obligation on behalf of its members. While the magnitude of this obligation will not become definitively known for many years, the CMPA must ensure there is sufficient money in its reserves to discharge the obligations. The relative position of the available assets compared to the outstanding obligations of the Association over the last ten years show a liability growth of 12% from 1998 to 2002, which remained unchanged at just under \$2 billion until 2007. The amount in 2008 has gone above \$2 billion for the first time. At the end of 2007, the CMPA held over \$2.8 billion in assets against an estimated outstanding claims liability of just under \$2 billion. The difference is the unrestricted net asset balance of \$859 million. The economic downturn of 2008 removed \$450 million of the CMPA's assets and members were provided a \$52 million fee credit.

The increasing size of the Association's actuarial liability also narrowed the gap, leaving the overall net financial position at positive \$201 million.

Concluding on a positive note, Mr. Campbell affirmed the Association remains in a fully funded position at year end 2008 and still holds significant additional unrestricted net assets. The CMPA's strong financial position enables it to deliver the comprehensive protection services upon which members have come to rely.

### **Comments/Questions**

Dr. Laurence Colman questioned why, three-quarters of the way through the forty-five year trend analysis, there is a slight rise in projected disbursements from a single occurrence year. Mr. Campbell explained this deviation primarily represents the obstetric cases, which take a long time to develop. These also typically have large damages and legal costs.

Dr. Robert Barnes questioned, regarding the prudence of the future modeling, whether a 7% return on investment was too high. Mr. Campbell recalled the CMPA used a 9% assumption for many years and after the interest rate fell, the Investment Committee recommended the assumption be lowered to 7%. Following difficult market times, there is a reasonable likelihood of higher returns and the CMPA believes this target is feasible based on the current state of its portfolio. This assumption is reviewed annually.

Dr. Barnes also wondered to what extent the investment portfolios are actively managed and whether there is opportunity for the CMPA to respond quickly to changing conditions. Dr. Tucker responded the CMPA remains fully invested, with most dollars currently in the hands of external money managers. Mr. Campbell noted within the long-term construct of the portfolio, some flexibility exists to exploit opportunities, including those associated with re-balancing efforts.

## 2010 AGGREGATE FEE REQUIREMENTS

Dr. Gray commenced by defining 'occurrence-based protection,' explaining that a physician who has maintained membership in the CMPA through a calendar year can turn to the Association for medico-legal assistance regarding an occurrence that took place in that year, at any time in the future, regardless of when such assistance is required. As a consequence of this occurrence-based protection and of the Association's commitment to maintain a fully funded position, membership fees levied in a given year are intended to cover the ultimate cost of all assistance provided to members arising from occurrences in that year.

Dr. Gray noted that as fees are set well in advance of the occurrence year and long before the ultimate costs of an occurrence year are known, the Association makes use of actuarial models to construct a reasonable estimate of what these costs might be. The models are based on historic data taken from the CMPA's database of cases. Assumptions regarding the frequency, severity and progression of cases arising from the fee-setting year under review are applied, and a forecast of disbursements is generated by the actuarial model.

Dr. Gray enlarged on four primary imperatives of the CMPA's philosophy towards fee setting:

- ▶ To retain a fully funded position
- ▶ To achieve long term fee stability
- ▶ To remain committed to a regionally-based fee model that recognizes the cost drivers in each of our three fee regions are different
- ▶ To adhere to sound actuarial practices

Summarizing slides depicting current year costs and fees, Dr. Gray proceeded with a review of the per-member 2010 aggregate fee requirement for each region.

## 2010 aggregate fee requirement for Rest of Canada region

Dr. Gray's presentation of the average current year costs and average membership fee in the Rest of Canada over the past six years showed the prudent use of fee credits has enabled fees to remain well below the actual costs in each of these years. The Association is seeing a significant increase in the per case costs in the Rest of Canada region, both with respect to damages and to legal expenses. This trend is expected to continue in the short term.

The CMPA's forecast of the adjusted occurrence year costs in 2009 may have been too low. Guided by its objective of achieving fee stability, the CMPA will seek to smooth out the necessary fee increases and accordingly, a significant amount of the remaining accumulated experience has been allocated as fee credits. This increase brings the average member fee back to the same level it was in 2008 and it remains well below that of 2006 and 2007.

## 2010 aggregate fee requirement for Québec region

For a number of years, Québec membership fees were less than the current year costs. As the unrestricted net assets were drawn down, the costs and fees converged so that, in 2007, they were identical. In 2009, the CMPA was able to make a significant reduction in the fees by applying \$7.5 million in experience funding adjustments. In 2010, as a result of the lower-than-forecast investment returns, the Association has less accumulated experience to allocate to fee credits and while the total costs per member have stayed almost the same over the past year, the per member fee will increase by an average of 9.0%. This average is still almost \$500 lower than it was in 2007.

### 2010 aggregate fee requirement for Ontario region

With respect to the occurrence year costs in Ontario and the fees collected from members since 2004, as a result of the prudent management of accumulated experience, the CMPA has been able to establish a situation in which the application of fee credits has benefited members and reimbursing agencies through lower fees. While there are fewer fee credits available as a result of the investment performance, the CMPA was able to further reduce the average member fee in Ontario by 8.0%. The per member fee is now just over half of what it was in 2005.

Having provided the 2010 aggregate fee requirements on a per member basis by region, Dr. Gray called attention to the significant use of fee credits from the Rest of Canada's accumulated experience to help smooth out the cost increase. In keeping with the CMPA's philosophy of having each region pay its own way, there is no subsidization between regions. The actual fees collected, which will vary by the type of work of the member in each region, will be announced in October, following approval by the CMPA Council.

There being no questions on the 2010 aggregate fee requirements, Dr. Tucker invited Dr. Gray to present the 2009 election results.

### 2010 Average per member fee (in \$)

	Rest of Canada	Québec	Ontario
Adjusted occurrence year cost	4,146	4,029	4,375
Fee credit	(1,741)	(130)	(530)
Fees collected from members	2,405	3,899	3,845
Change from 2009	23%	9%	(8%)

## 2009 election results

Dr. Gray reported that this year, the province of Ontario (Area 5), Division B (Specialists), held an election with five candidates vying for three positions. Drs. Gordon Crawford, William Easton and William Tucker were elected with 2027, 2042 and 2756 votes respectively. Dr. Gerard Craigen received 1421 votes and Dr. Arthur Keith received 1224 votes. In other provinces, the nominees proposed by the Nominating Committee were acclaimed as follows:

### **Area 1 (British Columbia & Yukon)**

Dr. Carole Williams – Division A (Generalist)

Dr. David Naysmith – Division B (Specialist)

### **Area 3 (Saskatchewan, Northwest Territories, Nunavut)**

Dr. Walter Oleksinski – Division A (Generalist)

### **Area 5 (Ontario)**

Dr. Robert Cooper – Division A (Generalist)

### **Area 6 (Québec)**

Dr. Jean-Hugues Brossard – Division B (Specialist)

Dr. Michel Carrier – Division B (Specialist)

Dr. Robert Sabbah – Division B (Specialist)

Dr. Gray recognized that every member of Council makes a tremendous commitment of time and effort to the Association and they are deserving of appreciation. He extended thanks to both the successful and unsuccessful candidates in the 2009 election for their willingness to support the Association's 76,000 members.

## New business

Dr. Tucker opened the floor to new business or additional questions from the members.

Dr. John O'Brien-Bell asked whether the CMPA was concerned physicians may not call the Association for assistance, particularly regarding College matters.

Dr. Tucker stated members are encouraged to call and several Registrars have indicated the process is more efficient if the member is provided CMPA advice. Dr. Gray added the CMPA believes many members deal with complaints on their own, which often slows the process, creates further difficulties and may not be in the member's best interests.

Dr. Alexandra Tcheremenska-Greenhill congratulated the CMPA on its ceasing to hold direct or indirect investments in tobacco.

Dr. Albert Schumacher questioned whether the CMPA provides assistance to physician assistants. Dr. Gray noted a number of the physician assistants are active in Ontario and Manitoba. He stated that only licensed physicians can be CMPA members and accordingly, physician assistants do not qualify for membership. However, the CMPA has actively engaged with interested parties to ensure the extent of the Association's assistance is known and the requirement for physician assistants to have adequate liability protection is understood.

In response to Dr. Pravinsagar Mehta's question regarding CMPA protection of members in retirement, Dr. Tucker reiterated the Association provides occurrence-based protection. A physician who was a member at the time the care was provided would be protected by the CMPA, even if the case does not come forward until years later.

Dr. William Shipley requested advice as to how to proceed with the urgent care of a patient when

unsure whether the CMPA would provide assistance. Noting the inclusive nature of the extent of assistance principles, Dr. Gray advised physicians to proceed with providing a patient the care required. He also reported the CMPA will now immediately transfer a call to a Medical Officer, rather than return the call within twenty-four hours, should that be the member's preference. While this improved response is only available during CMPA business hours, there are also increasing resources on the website.

### CONCLUSION

At 1440 hrs, there being no further business to discuss, a motion to adjourn the meeting was raised, seconded and carried.

Dr. Tucker thanked the members for their excellent questions. He invited meeting participants to return, following a short break, to the information session on "Learning from adverse events: A medical liability perspective."

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President

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Executive Director/CEO

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Date

