

CANADA / JUDGMENT

Feizy v. Wang

2025 BCSC 1678

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1678 Feizy v. Wang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Feizy v. Wang,

2025 BCSC 1678

Date: 20250829

Docket: S251939

Registry: Vancouver

Between:

Zohreh Feizy

Petitioner

And

Yinlue Wang

Respondent

Before: The Honourable Justice E. Sigurdson

Reasons for Judgment

Counsel for the Petitioner:

D. Shim

Counsel for the Respondent:

S. Khazei

Place and Date of Hearing:

Vancouver, B.C.

August 6, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 29, 2025

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- [1] This petition arises following the decision of an arbitrator of the Residential Tenancy Branch ("RTB") ordering monetary compensation pursuant to s. 51(2) of the Residential Tenancy Act, S.B.C. 2002, c. 78 [RTA]. The petitioner landlord, Zohreh Feizy, alleges the arbitrator's decision in favour of the tenant, Yinlue Wang, was patently unreasonable and tainted by procedural unfairness.
- [2] A central issue in the case is whose perspective is relevant to the question of whether extenuating circumstances existed to excuse the landlord from compliance with the six-month minimum residence requirement under s. 52(3) of the RTA, and whether the arbitrator's decision in this regard was made in a patently unreasonable manner.
- [3] I conclude that Ms. Feizy has not demonstrated the decision was patently unreasonable.

Facts

- [4] The underlying facts of the dispute are uncontroversial.

- [5] Ms. Feizy owns the rental unit at 1203-1238 Seymour Street, Vancouver, BC (the "Rental Unit"). Mr. Wang was a tenant at the Rental Unit from July 1, 2021, until October 23, 2023. The last monthly rent payment was \$1,725.50.
- [6] Ms. Feizy's child is her university-aged daughter, Mahgol Cheherhpardaz.
- [7] Ms. Feizy describes herself as an Iranian immigrant with limited English skills and experience as a landlord.
- [8] Her evidence is that she is responsible further to a separation agreement for contributing to her daughter's living costs as long as she is a student. Ms. Feizy was struggling financially and could no longer support Ms. Cheherhpardaz with her rent.
- [9] In the summer of 2023, Ms. Feizy issued four notices to end Mr. Wang's tenancy for the landlord's use. The ultimate notice was issued July 28, 2023 with a move out date of September 30, 2023.
- [10] The eviction notices stated that the Rental Unit would be occupied by the child of the landlord, Ms. Cheherhpardaz.
- [11] Ms. Feizy attests that Mr. Wang refused to vacate the Rental Unit by the effective date of September 30, 2023. Mr. Wang disputed the notice, and a hearing was scheduled for October 27, 2023.
- [12] Mr. Wang vacated the Rental Unit on October 26, 2023, and withdrew the filed application for dispute resolution, having secured alternate housing.
- [13] After Mr. Wang vacated, repairs, repainting and cleaning were required in the Rental Unit. Ms. Cheherhpardaz was not able to reside there until November 10, 2023.
- [14] Ms. Cheherhpardaz moved to Korea on April 20, 2024, for an internship as part of her education. She later advised her mother she had been admitted to the University of Victoria and would reside in Victoria starting in September 2024.

Procedural History

- [15] In the fall of 2024, Mr. Wang applied to the RTB for a monetary order for compensation from the RTB alleging Ms. Feizy failed to accomplish the stated purpose on the notice to end tenancy pursuant to s. 51 of the RTA.

Hearing

- [16] The RTB held two hearings by conference call on December 9, 2024, and January 4, 2025. Ms. Feizy and her daughter attended, with Ms. Cheherhpardaz attending as a witness. Ms. Feizy was also accompanied by an individual who translated for her. The hearing took place over two sittings because the first hearing did not complete within the allotted time. At the hearing there was occasional confusion about who was speaking when, and on whose behalf.

Initial Decision

[17] In a decision issued January 20, 2025, the RTB concluded that Ms. Feizy failed to accomplish the stated purpose on the eviction notice, and that extenuating circumstances did not prevent her from accomplishing that purpose, ultimately granting a monetary order of \$20,806 to Mr. Wang (the "Decision").

[18] In the Decision, the Arbitrator found that Ms. Feizy admitted that her daughter's five-month residency in the Rental Unit did not meet the RTA requirements, and so moved to consideration of extenuating circumstances.

[19] Regarding extenuating circumstances, the Arbitrator found:

Residential Tenancy Policy Guideline 50 defines extenuating circumstances with respect to this section as matters that could not be anticipated or were outside a reasonable owner's control. It provides examples of circumstances which do not typically constitute extenuating circumstances and includes a landlord ending a tenancy to occupy a rental unit and then changing their mind.

I find that [Ms. Cheherhpardaz] changed her mind about occupying the rental unit in January 2024, when she applied to and accepted the internship in Korea. It cannot be said that this could not be anticipated or was outside her control, as she applied for the internship herself after the tenancy ended. I find that she did not occupy the rental unit as of April 10, 2024. While it may have been reasonable to be temporarily absent from the rental unit and resume occupancy after the internship, [Ms. Cheherhpardaz] applied to and moved away for law school immediately afterwards, again after the tenancy ended.

[20] The Arbitrator concluded that, on a balance of probabilities, Mr. Wang established his claim for compensation. The Arbitrator found Ms. Feizy was not prevented by extenuating circumstances from accomplishing the stated purpose of the two-month notice.

Review Consideration Decision

[21] Ms. Feizy sought review consideration of the Decision. She argued there was new evidence that may change the result, and that the Arbitrator was outside of their jurisdiction in determining whether there were extenuating circumstances. The Adjudicator determined the evidence proposed provided no basis on which the decision of the Arbitrator should be set aside, and concluded the Arbitrator did have jurisdiction to make the Decision under s. 51 of the RTA. The RTB dismissed the application for review on February 4, 2025.

Judicial Review

[22] Ms. Feizy filed this petition for judicial review on March 13, 2025, and Mr. Wang was served with the petition on March 31, 2025. The petition alleges the Decision was patently unreasonable because although the legal standard in s. 51(3) of the RTA focuses its inquiry on extenuating circumstances as based on the perspective of and responsibilities held by the landlord, the Arbitrator made the Decision based on what Ms. Cheherhpardaz knew or

intended and when. The Petitioner argues this approach is inconsistent with the legal standard and is patently unreasonable, setting out the central alleged error as follows:

The Arbitrator's failure to apply the test to the petitioner herself constitutes a fundamental misapplication of the law. By focusing on the actions of a third party rather than the legal obligations and constraints of the landlord, the Arbitrator reached a patently unreasonable conclusion that unjustly penalizes the petitioner for factors beyond her control.

[23] At the hearing before this Court, the Petitioner further argued the hearing process was procedurally unfair for failing to give Ms. Feizy more of an opportunity to participate directly, and for failing to inquire into her knowledge but instead focusing on her daughter's. The respondent did not have specific notice of the basis for this ground of review but nevertheless made submissions to address whether the Decision should be found to be procedurally unfair.

Legal Framework

[24] The applicable law was stated by Justice Baker in *Moore v. Cheung*, 2024 BCSC 2312:

[31] The appropriate standard of review of an arbitrator's decision under the Act has been determined many times by this court, and is grounded in ss. 5.1 and 84.1 of the Act and s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45 (the "ATA"). Questions of fact, law and discretion are only open to review if such decisions are patently unreasonable: *Campbell v. McInnes*, 2017 BCSC 1134 [Campbell] at para 8.

[32] For questions of fact or law, a decision is patently unreasonable if it is "openly, clearly, and evidently unreasonable" or it is "so flawed that no amount of curial deference can justify letting it stand": *Campbell* at para. 9.

[33] A review of an arbitrator's decision is always founded in the written reasons. The reasons must set out the legal test to be met and, importantly, the findings of fact and the principal evidence upon which those findings were made. The reasons must disclose how and why the decision was made: *Christiansen v. Harwood*, 2015 BCSC 1440 at para. 20.

See also, *Kong v. Lee*, 2021 BCSC 606 at paras. 54-66.

[25] As set out above, s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45, [ATA], provides that a finding of fact, a finding of law, or an exercise of discretion by a tribunal which has exclusive jurisdiction under a privative clause must not be set aside unless it is patently unreasonable.

[26] Under s. 58(2)(b) of the ATA, a question of whether an RTB hearing was procedurally unfair is addressed on the standard of whether, in all the circumstances, the tribunal acted fairly.

- [27] The role of the court on judicial review is not to conduct a new hearing. It is not to re-weigh the evidence that was before the arbitrator, or to make new credibility findings in place of those made by the arbitrator: *Acton Transport Ltd. v. British Columbia (Employment Standards)*, 2010 BCCA 272 at para. 23.
- [28] Patent unreasonableness was described in *Kong*:
- [58] There are many formulations of the patently unreasonable standard in the jurisprudence. They all demonstrate that expert tribunals are entitled to significant deference and that the standard is an onerous one. A decision can only be quashed if there is no "rational or tenable line of analysis" supporting it: *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65, *aff'd* 2009 BCCA 229.
- [59] A decision is patently unreasonable if it is "openly, evidently, and clearly irrational": *Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114. A decision is also patently unreasonable if it is "unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures": *Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1 at para. 41.
- [60] The Supreme Court of Canada has held that a patently unreasonable decision is one that almost borders on the absurd: *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28.
- [61] In *Yee*, the Court of Appeal discussed the standard of patent unreasonableness in the context of a review of an RTB decision. The court stated:
- [21] The ATA does not define patent unreasonableness as the term applies to questions of fact or law. In *Manz v. Sundher*, 2009 BCCA 92 at para. 39, Saunders J.A. adopted the meaning of the phrase in relation to factual matters from *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80:
- [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable
- [*Italics emphasis in original.*]
- [29] Additionally, as noted in 1129728 B.C. Ltd. v. Kassam, 2025 BCSC 160 [Kassam]:

- [27] While s. 58(3) of the ATA defines the standard of patent unreasonableness only in relation to exercises of an expert tribunal's discretion, and not in relation to its findings of fact or law, it is well-settled that patent unreasonableness calls for a high degree of deference to both discretionary and non-discretionary decisions of an administrative decision-maker: *Kohli v. Van Essen*, 2023 BCSC 1710 at para. 32, citing *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496 at paras. 39 - 44, leave to appeal to SCC ref'd 36305 (29 October 2015).
- [28] A discretionary decision is patently unreasonable if it is exercised arbitrarily or in bad faith, exercised for an improper purpose, based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account: ATA, s. 58(3).
- [29] A decision is patently unreasonable if it is:
- a) Openly, evidently, and clearly irrational (*Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114);
 - b) Unreasonable on its face, unsupported by evidence, or vitiated by a failure to consider the proper factors or to apply the appropriate procedures (*Suresh v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 1 at para. 41); or
 - c) One that almost borders on the absurd (*Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28.
- [30] As noted by Justice D. MacDonald in *Kong v. Lee*, 2021 BCSC 606 at para. 58, the jurisprudence references many formulations of the patently unreasonable standard; all demonstrate that the standard is an onerous one and that expert tribunals are entitled to a high degree of deference. A decision can only be quashed if there is no rational or tenable line of analysis supporting it: *Kong* at para. 58, citing *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65, aff'd 2009 BCCA 229. In determining whether a decision is patently unreasonable, it is not the court's role to substitute findings or to reweigh the evidence: *Furtado v. Maasanen*, 2020 BCSC 1340 at para. 14, citing *Yee v. Montie*, 2016 BCCA 256.
- [31] A court conducting a judicial review must consider both the outcome and the reasons provided for it: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 83 [Vavilov]. It is the duty of a reviewing court, whether applying the standard of reasonableness or patent unreasonableness, to determine whether the reasons meaningfully consider the central issue in the case and the concerns raised by the parties: *Kong* at para. 64, citing *Guevara v. Louie*, 2020 BCSC 380 at para. 48.

[32] An RTB decision may be set aside due to the inadequacy of reasons, where such inadequacy rises to the level of patent unreasonableness: *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232 at paras. 30-31. As noted in *Laverdure* at para. 35, for reasons to be adequate, the decision-maker must:

- a) Set out the legal test to be met by the party advancing its claim;
- b) Set out the adjudicator's findings of fact and the principal evidence upon which those findings were made; and
- c) Apply those findings of fact to the test to be met in reaching a conclusion that will allow the parties and others (including a reviewing court) to understand how and why the adjudicator reached that decision.

[33] In short, as summarised in *Laverdure* at para. 37:

[F]or reasons to be adequate, they need not necessarily address every issue raised by the parties nor all of the evidence adduced, but on the central issue or issues that underlie the conclusion reached there must be sufficient clarity of fact finding and application of those facts to the test to be met to allow the parties and a court to know why the decision was reached and whether it was within a range of acceptable outcomes.

[30] In short, the standard of review of RTB decisions is highly deferential. For the court to interfere, the decision must have been clearly unreasonable or irrational on its face. The implication of this standard is that even if the court does not agree with the decision, or would not have come to the same conclusion, the decision will stand: *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para. 47.

Decision

Was the Decision procedurally unfair?

[31] Mr. Wang submits that Ms. Feizy did not plead procedural fairness concerns and so they are not a proper ground of review; nevertheless, Mr. Wang provided a response to those issues.

[32] While this issue was not particularized in the pleadings, I heard arguments from the Petitioner that the hearings inadequately provided Ms. Feizy with an opportunity to be heard. I would not agree that the process was unfair. The landlord says the process established was procedurally unfair because it failed to allow the proper perspective (that of the landlord) to be adduced in evidence.

[33] Ms. Feizy attended both hearings, with an interpreter who spoke on her behalf occasionally. Ms. Cheherhpardaz, her daughter, was a witness and also spoke on her own and Ms. Feizy's behalf during the hearings. The hearings by teleconference, from my review of the record, appeared challenging and indicated that there was at times confusion about who was speaking and what the focus of their evidence and submissions may be. A procedurally challenging hearing is not necessarily procedurally unfair. A hearing that is imperfect is not

necessarily unfair either, as that is not the standard.

- [34] Here, I do not agree with the Petitioner that Ms. Feizy did not have a fair opportunity to be heard or understood in the hearings before the Arbitrator. There were two one-hour hearings, which appeared to be somewhat chaotic in their conduct, but which provided a fair opportunity to be heard. Ms. Feizy did not speak on her own behalf throughout, but attended with a translator and her principal witness who also made representations on her behalf. I do not find that Ms. Feizy has met the burden to show the process was unfair, and so would not accede to this argument on judicial review.

Was the Decision patently unreasonable?

- [35] The provisions governing the Decision in this case are ss. 49 and 51 of the RTA, which address ending a tenancy.
- [36] Section 49 of the RTA provides that a landlord has the right to end a tenancy in respect of a rental unit where the landlord, or close family member of the landlord, intends in good faith to occupy the unit.
- [37] Section 51(2) of the RTA requires a landlord in these circumstances to take steps within a reasonable period of time after the effective date of the notice to end tenancy to accomplish the stated purpose for ending the tenancy, and use the rental unit for the stated purpose for at least six months beginning within a reasonable period of time after the effective date of the notice. If the landlord does not comply with both requirements, it must pay the tenant the equivalent of 12 months rent.
- [38] Section 51(3) of the RTA provides that a landlord may be excused from paying the 12-month penalty if there were extenuating circumstances preventing the landlord from accomplishing the stated purpose for ending the tenancy within a reasonable time. The Residential Tenancy Policy Guideline 50 ("Guideline 50") provides:

If evidence of extenuating circumstances is present, the director must consider whether those circumstances prevented the landlord from meeting their legal requirements [citations omitted].

Extenuating circumstances are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable landlord's control. The main question is whether the Legislature would have intended for the landlord to be captured by the compensation provisions, which have a punitive and deterrent element. [citations omitted.]

- [39] In other words, if a landlord wishes to end a tenancy so that a close family member can use the rental unit, they must do so in good faith, the close family member must start living in the rental unit within a reasonable period of time after the previous tenancy ends, and the close family member must continue living in the rental unit for at least six months. If a landlord fails to do that, absent extenuating circumstances compliant with the spirit of the legislation, they must pay a penalty to the tenant of 12-months rent.

- [40] Guideline 50 provides examples of what might constitute extenuating circumstances and what might not.
- [41] In this case, the fact found by the Arbitrator, which is not under review on this petition, is that the time in which Ms. Cheherhpardaz resided in the Rental Unit was November 10, 2023 to April 10, 2024. This was five months in length and does not meet the requirements of the RTA. The aspect of the Decision before me for which Ms. Feizy seeks review is whether the conclusion about whether extenuating circumstances existed preventing Ms. Feizy from fulfilling the six-month period, was patently unreasonable.
- [42] The critical question for this Court was whether the Arbitrator, in making the Decision, was patently unreasonable for failing to consider or rely upon the relevant perspective under the s. 51 analysis. The Petitioner says that in the hearing and the Decision, the Arbitrator focused their attention and analysis on what the landlord's daughter did, knew and intended, and not on what the landlord (her mother) did, knew or intended. In concluding there were no extenuating circumstances for the landlord arising from the daughter's plans changing, the arbitrator found that s. 51 had not been fulfilled, and the landlord must pay damages of approximately \$20,000 to the tenant.
- [43] To assess whether the Arbitrator's conclusion was patently unreasonable, I am asked to consider whose knowledge or intent is relevant to the s. 51 analysis. At the hearing before this Court, the parties agreed the burden under s. 51 is on the landlord to prove extenuating circumstances. They agreed that the obligation of the landlord is to be reasonably certain they will be able to fulfill the requirement of six months residency by a family member. So, to make out their extenuating circumstance in this case, the landlord would need to demonstrate it was reasonable to conclude they were surprised by the daughter's change in plans after five months. The burden is on the landlord to show why this was not anticipated or would have been such a surprise to her that it was nevertheless appropriate to rely on the notice of eviction in the circumstances.
- [44] In this case, the Arbitrator's reasons, informed and enhanced by the record of the hearing, disclose that the central concern was the proper question about extenuating circumstances.
- [45] While I agree with the Petitioner that the Arbitrator fused the perspective of the witness and the landlord, and in doing so made inferences about Ms. Feizy's knowledge or understanding, I cannot conclude this essential lack of clarity in the reasons rose to the level of patent unreasonableness.
- [46] The Petitioner's argument is the Arbitrator failed to properly consider whether Ms. Feizy demonstrated it was outside her reasonable knowledge or control at the time of giving the notice that her daughter would not be able to continue to occupy the Rental Unit for six months. Instead, the Arbitrator treated the witness and the landlord as one and the same, imputed Ms. Feizy with her adult daughter's knowledge and intent, and did not consider whether it was appropriate at the time of giving notice in August 2023 that the Landlord could commit to the Rental Unit being occupied by a family member for six months or

longer.

[47] This step is exemplified in the critical paragraph of the decision, excerpted here again as follows:

I find that [Ms. Cheherhpardaz] changed her mind about occupying the rental unit in January 2024, when she applied to and accepted the internship in Korea. It cannot be said that this could not be anticipated or was outside her control, as she applied for the internship herself after the tenancy ended. I find that she did not occupy the rental unit as of April 10, 2024. While it may have been reasonable to be temporarily absent from the rental unit and resume occupancy after the internship, [Ms. Cheherhpardaz] applied to and moved away for law school immediately afterwards, again after the tenancy ended.

[48] In this conclusion, the Arbitrator does not specifically address the Landlord's obligation, her knowledge or understanding, or whether it was reasonable and consistent with the legislation for her to rely on the Notice of Eviction in the circumstances she was in at the time of giving the notice to Mr. Wang. The approach taken, of not considering separately whether the Landlord knew or ought to have known that her daughter could obtain an internship, or be accepted to a program she could afford to intend, was a way of drawing an inference based on the information before the RTB, and I agree it was not transparent.

[49] While this approach merits some criticism for its lack of clarity, I would not conclude it was patently unreasonable. As discussed above, patent unreasonableness is an onerous standard and attracts a high degree of deference. The review turns on whether the Decision sets out:

- a) the legal test to be met;
- b) the findings of fact and the principal evidence upon which those findings were made; and
- c) whether the reasons disclose how and why the Decision was made.

See Moore at para. 33.

[50] It is clear the Arbitrator focused on the appropriate legal test: s. 51(2) of the RTA, as well as the proper burden of proof. The Arbitrator also made relevant findings of fact, particularly those concerning Ms. Cheherhpardaz and her residency in the Rental Unit. The Decision discloses how and why the Decision was made. Given this, I cannot find the Decision to be patently unreasonable.

[51] More broadly speaking, I find the Decision is not openly, clearly, and evidently unreasonable or so flawed that no amount of curial deference can justify letting it stand: Moore at para. 32. Nor is it "unreasonable on its face, unsupported by evidence, or vitiated by a failure to consider the proper factors or to apply the appropriate procedures": Kassam at para. 29. I also cannot describe it as 'bordering on the absurd': Kassam at para. 29.

- [52] The burden was on Ms. Feizy to show she faced extenuating circumstances. She did not persuade the Arbitrator that the information she advanced, through her daughter as her primary witness, constituted such circumstances. It is true the Arbitrator did not expressly grapple with whose knowledge was relevant, or what degree of surprise in Ms. Cheherhpardaz's change of plans would give rise to an extenuating circumstance. But the Arbitrator did apply the relevant provision and guideline, and drew inferences based on the information provided.
- [53] Considering the examples set out in Guideline 50 of what may amount to an extenuating circumstance (e.g., a landlord ended a tenancy so their parent can occupy the rental unit, and the parent dies one month after moving in) and what may not (e.g., a landlord ended a tenancy to occupy the rental unit because they planned to move for work, but they had never been offered a job near the rental unit and, ultimately, chose to take a job in different city), I would also not conclude the decision is patently unreasonable for being inconsistent with the intent of the legislation.

Remedy

- [54] The application for judicial review is dismissed.

"E. Sigurdson J."

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