



**International
Legal Aid Group**

'Legal aid cuts so unfair they are illegal, rules High Court'
– The Independent

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Editorial

The article below is a standalone report but will also form part of a forthcoming study of the use of the internet to deliver legal services to those on low incomes which takes forward the work reflected in *Face to Face Legal Services and their Alternatives: global lessons from the digital revolution*¹ to which it is effectively a second edition, containing some new material and updating on developments that have occurred over the last year. The research was largely funded by the Legal Education Foundation (thelef.org) on whose website the report will be published in December. The speed at which developments are happening is reflected in the speed of this follow up study. The full report will be covered in the next edition of the newsletter but this report covers two cutting edge developments in The Netherlands and British Columbia which aim to produce an end-to-end internet-based service that takes a user from initial diagnosis of a problem to its court-based or, at least, court-recognised resolution. Understandably, this is generating considerable interest around the world. One of the exciting elements of these projects is the international collaboration which lies behind them and which is beginning to emerge around them.

Both of these new initiatives are on the threshold of implementation. Once they go live, they can be properly evaluated. In producing this paper, I have visited both those in the Ministry of Justice in British Columbia and the Hague Institute for the Internationalisation of Law who are driving the projects and had subsequent contact. A tremendous amount of thought and creativity is going into the projects and you have to figure that they represent a major new direction for the provision of integrated services on the web. They present enormous challenges both intellectual in terms of the content and organisational in bringing together historically separate providers: new technology is bursting through previously separate silos both within government and outside. There will undoubtedly be bumps in the road as projects like these are developed but they represent initiatives, which everyone in the field will want to follow with care. Success will depend, not only on high-level imagination, but instead, on the minute detail of how precise ethical and other issues are handled. As ever, contributions to the newsletter on this or any other topic from any quarter are welcome.

From Online Information to Resolution

Roger Smith

The development of the Dutch Rechtwijzer 2.0 and a Civil Resolution Tribunal (CRT) in Canada's British Columbia raise the question of whether the provision of online legal information can successfully morph into online dispute resolution. If so, as recognised in *Face-to-Face Legal*

¹ R Smith and A Paterson *Face to Face Legal Services and their Alternatives: Global Lessons from the Digital Revolution* Centre for Professional Legal Studies, Strathclyde University, 2014, p13.

*Services and their Alternatives: global lessons from the digital revolution*², we might see the application of ‘disruptive technologies’ of some force.³ These, as explained by Richard Susskind, are ‘new, innovative technologies that periodically emerge and fundamentally transform companies, industries and markets’.⁴

The two applications offer the prospect of transforming the process of providing online legal assistance from initial information towards resolution. Thus, a user may come to Rechtwijzer 2.0 in the expectation of getting information, as, indeed, they would under Rechtwijzer 1.0, but will then also have the option to move to the direct resolution of their problem. This would change the nature of assistance through the deployment of expert systems into which the legal structure was invisibly incorporated and the role of professionals morphed into assisting with resolution - though the systems will allow for a range of interventions by third parties, not only potentially lawyers but also, for example, financial planners. The CRT is, from its name alone, oriented towards the resolution of disputes but it plans an opening intake phase to include information, diagnosis and a degree of self-help which might, depending on how this is developed, make it very similar to the Rechtwijzer as a single, stand alone scheme (though there may be practical difficulties with that, see below) taking someone from problem identification to its resolution.

Neither Rechtwijzer 2.0 nor the CRT are yet publicly in operation. Public implementation for both is planned for 2015 (although Rechtwijzer 2.0 quietly began testing in November 2014) so that their final form is unclear and a degree of caution must be exercised about exactly how they will work. Both will represent a quantum leap in the public delivery on online dispute resolution (ODR). ODR has its roots in mechanisms developed for the resolution of disputes in relation to e-commerce, in general, and most associated with e-Bay, in particular. E-Bay started a largely automated ODR system in 1999. It now handles 60m disputes annually, 85 per cent of which are handled by automated processes without human intervention.⁵ The success of the E-Bay’s system will, of course, be aided by the particularly transparent nature of its working systems: there is heavy pressure on repeat traders to settle disputes amicably for business reasons.

Public systems of ODR potentially lack such a cultural impetus for settlement and the use of ODR has, until now, been fairly marginal.⁶ Both the UN and the EU are working towards ODR systems aimed essentially at cross-border disputes but they are not yet in force. In this context, British Columbia’s *Civil Resolution Tribunal will be among the first, permanent, publicly administered ODR systems*.⁷ Its jurisdiction is intended to be small claims disputes currently under \$CAN25,000 but intended to rise to \$CAN 50,000 (£27,634 or 34,754 euros) with certain exceptions (e.g. claims against government, which is notably not risking liability in this system) and ‘strata disputes’ (issues relating to flats in shared blocks). Rechtwijzer 2.0 is different: its design allows for on-line judicial determination but, as currently projected, might be seen as more directed to obtaining an agreement.

There has been contact between the Dutch and Canadian teams working on the two projects - and no wonder. They are very similar. First, at the core of each is a reliance on expert systems to identify issues both of dispute and disagreement. Thus, for the BC system:

The initial CRT phase will require users to engage with an online interface in the form of what can be called an “expert system”. The “expert” aspect refers to the specialised content derived from experts in various fields, structured in computer-readable format. Using an intelligent questionnaire style of interface, this expert knowledge is then presented in a user-

² R Smith and A Paterson *Face to Face Legal Services and their Alternatives: Global Lessons from the Digital Revolution* Centre for Professional Legal Studies, Strathclyde University, 2014, p13.

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⁴ R Susskind *The End of Lawyers: rethinking the nature of legal services* Oxford, 2010, p94

⁵ D Thompson *The Growth of Online Dispute Resolution and its Use in British Columbia* Civil Litigation Conference 2014, p 1.1.3

⁶ Thompson reports a Singapore system for e-commerce transactions and New York for some insurance disputes.

⁷ as above, p1.1.4

friendly format. Functionally, the expert system will help users to diagnose their problems or disputes, provide specific information, will offer self-help tools, such as calculators or letter templates, and will then triage and stream disputes into a subsequent phase, if necessary.

[then later when in the negotiation phase]

... If the other parties to the dispute agree to participate, the online negotiation tool (or platform) will guide the parties through a structured negotiation phase, with the goal of facilitating a mutually acceptable settlement. The parties can access the platform through the Internet, at their own convenience. The parties can participate in the negotiations at different times, when and where it is convenient for them. The tribunal will provide templates and time lines and tribunal staff may occasionally provide case-specific suggestions to help the parties with their discussions. However, the parties will be expected to lead the process at this stage. The negotiation will end if no agreement.⁸

Similarly, Rechtwijzer 2.0 will use guided pathways, questions and model solutions to lead users towards identification and settlement of issues. Below is a frame, which, in draft form, sets out the process through which they are about to be taken. The user is on a 'justice journey' in which the system interacts with the answers provided. Advice, information, options and tools (such as a maintenance calculator) are supplied as required. The system is, thus, inherently dynamic. Available to the parties will be supplementary online or in person mediation, adjudication and consultation with advisers in Dutch networks of advice provision of legal 'counters' and a neutral review by a lawyer at the end of the process. The CRT proposal envisages telephone and email assistance for the ADR and adjudication stages: with the possibility of physical representation at a tribunal hearing if one occurs.

Secondly, both systems have an inbuilt bias to settlement. They are trying to encourage a pre-court and out of court negotiated agreement which can then be ratified. This must be correct - though it will have every lawyer tense with anticipation that the system will encourage settlement at the price of lawful entitlement - to the detriment of the weaker party. The practical checks on this will be important. The Dutch system is expressly intended to highlight to the parties to the 'best alternative to negotiated agreement' (in the jargon, BATNA), which sets the parameters for a settlement. It also contains mandatory review of the final agreement by a lawyer. Third, both systems anticipate picking up users at a very early stage. In the Dutch case, this is the very point. The system is a development of legal aid. For British Columbia, this could mark a considerable extension of the traditional role of a court system. BC has a wide range of rather good internet based provision from other providers, notably the Legal Services Society (the statutory legal aid provider), the Justice Education Society (an NGO that actually runs a current small claims online service, see below) and the Courthouse Libraries who publish a range of material on the net. It will be some challenge for the Ministry to devise smarter pathways and approaches than the existing providers and it would seem sensible to co-opt them explicitly into the intake process. A similar issue would arise in England and Wales where it would make sense for any ODR project which emanated from the court to link in with the existing online advice provision - currently provided by a range of organisations, private and not for profit, but notably the two national advice sites: adviceguide.org.uk and advicenow.org.uk.

Fourth and crucially, both systems are designed ultimately to be self-financing because users will be willing to pay (with reductions for those only incomes) for elements of service - particularly those that involve human interaction. So, for the Rechtwijzer, there are currently intended to be (though all this could still change in the final product) the following seven stages which move from being paid for and free: (1) diagnosis and Information (intended to be free); (2) Intake (intended as fee-based); (3) Dialogue between the parties (free - included in the entry fee); (4) 'Trialogue' - an opportunity for

⁸ *Dispute Resolution Model for the Proposed Civil Resolution Tribunal:*
<http://www.ag.gov.bc.ca/legislation/shareddocs/crta/CRT-Business-Model.pdf>

online mediation (fee-based); (5) External online adjudication if required (also fee based and conceived as part of the dialogue process); (6) External online review (fee based) and (7) Aftercare.

The proposed CRT procedure is very similar although Rechtwijzer's two first stages are collapsed into a free first stage of 'information, problem diagnosis, self help'; the second phase would be fee-based (but 'nominal and set at cost recovery level') party to party negotiation (but monitored); the third stage would be fee-based, case management facilitated ADR to which the parties (other than strata corporations) would have to consent; the final stage would be adjudication by a tribunal member - conceived of as generally online - though possibly with a telephone or video hearing - and with a rare option of a conventional hearing: *'additional fees will be charged as the dispute moves into the case management and adjudication phases, which may encourage parties to settle earlier in the process. Those fees will be lower than equivalent small claims fees, providing some cost recovery, while deterring frivolous cases. fees can be recovered by the successful party.'*⁹

A twist to the BC scheme is that the case managers steering negotiations would, it seems likely, in part be funded by savings from the cost of tribunal members - something on which judicial controversy may yet emerge.

The differences between the two schemes are also worth explicitly noting.

First, the CRT has a statutory framework - as befits a tribunal-oriented scheme - but the Rechtwijzer does not.¹⁰ By contrast, the Rechtwijzer is part of a legal aid scheme and comes with user access to a national network of 'law counters' as a package. This wider context of available help is not (and could not be) apparent in the CRT design - though, as stated above, BC has a number of organisations that provide assistance in the fields of the CRT.

Second, the two schemes focus, in the first instance, in what are effectively diametrically opposite areas of law: the Rechtwijzer boldly goes for family cases because that is the need in relation to legal aid even though they raise difficult emotional issues: the CRT focuses on strata disputes and small claims, which might be regarded as more marginal areas of the tribunal/court system. In the long term, this is not necessarily important because, clearly, the approach is transferable within, ultimately, almost any area of law. Indeed, the Rechtwijzer is already planned to move onto landlord and tenant cases.

Third, the Dutch are intending to redeploy lawyers as non partisan roles as, potentially, mediators, adjudicators or reviewers, and the Canadians are planning to re-orientate the work of tribunal staff. But, again, this is not a major difference - it just explains where costs might be shifted.

Finally, there are a set of common questions for both schemes where the answers will only emerge in practice. What realistic assumptions can be made about digital literacy in these two jurisdictions and, therefore, about those for whom this procedure is suitable or not? My own view for the UK is, as set out in previous papers, that we can probably assume that about two thirds of the population overall have the skills and the willingness to use the internet: among those with the lowest incomes, this probably reduces to about half. This will, however, rise but, nevertheless, remains a qualification on any compulsory (or too favoured) use of digital provision. There is also the simple question of whether people will pay for the kind of online services provided - which raises issues both about financial willingness and cultural acceptance. It is true, of course, that in the Netherlands as elsewhere (and as documented in Paper 3), there are already providers of low cost online family services. More cynically, to what extent will these systems attract, and survive, judicial and professional attack if they are seen as threatening existing interests? Will the chance of redeployment into the different roles on offer in Rechtwijzer 2.0 appeal to lawyers? Both the systems plan on moving from the provision of information to the determination of dispute without

⁹ *Dispute Resolution Model for the Proposed Civil Resolution Tribunal:*
<http://www.ag.gov.bc.ca/legislation/sharedocs/crta/CRT-Business-Model.pdf>

¹⁰ Civil Resolution Tribunal Act 2012

passing over the line of providing advice and assistance in a partisan way to one or both of the parties. How realistic is that? If it is not, then that is not necessarily fatal to the concept but it will require some reconsideration. And, to what extent can the existing court and tribunal systems of The Netherlands and British Columbia accommodate to these proposed upstart modern systems? We might bear in mind that, in England and Wales, apart from money claims we are somewhere away from electronic filing - something that creates an awkward end point for the Royal Courts of Justice CAB's CourtNav system where, at the end of an electronic system, the user has to print a form and somehow find their way to filing it. Some way down the line may emerge a further difficulty of reconciling a constitutional duty to open justice with internet-based systems of justice.

For all these as yet unanswered questions, these two schemes represent the cutting edge of the delivery of legal services on the net. They need to be observed by outsiders and evaluated by insiders, as hopefully they will - because, potentially, we could be looking at a development that could herald a revolution in the convergence of currently separate provision - information, advice, legal aid, assistance for self representing litigants, lawyers and the courts. We need some agreement on indices of success. Presumably, we want to see an upturn in the number of users entering the system as compared with current proceedings; an upturn also in the number of agreements prior to trial; and a downturn in the number of trials, which reflects better satisfaction with pre-trial, offers of settlement. We might also want to see a reduction in appeals. We want to see higher satisfaction ratings than currently. We want costs to government to remain static or reduce. We want acceptance by judiciary and the legal profession.

Both Rechtwijzer 2.0 and the CRT are extremely ambitious. They represent nothing less really than shifts of paradigm. It might be worth just noting that while the Ministry of Justice in BC is proceeding with its statutory backed CRT scheme, the province's Justice Education Society is already running a home-made, low profile, low cost, voluntary, online system described thus:

This website provides people in dispute with tools to help them settle online, without going to court. SmallClaimsBC.ca provides a secure Online Dispute Resolution platform. Similar technology is used by EBay each year to settle more than 60 million disputes online. It's fast. It's free. It works!

Resolve your dispute without spending time and money on a trial. On average, it takes 14 months to get a trial decision in BC Small Claims Court. Save hundreds of dollars in court fees and reach a settlement within one month. Negotiate with the other party online. It's easier, faster and more convenient.

Almost 90% of Small Claims Court cases settle before going to trial. If your case does not settle, you can still pursue the matter in court. Get started now.¹¹

The scheme has, so far, achieved only modest numbers. Between March and September 2014, with no promotion at all, only 103 cases completed the opening process and only 21 per cent managed to obtain a response from the other party (compared with 50 per cent from the court). However, this happened with no mediator or moderator. In November 2014, the platform will begin to use members of MediateBC to take cases forward. So, even if these bold and expansive schemes, backed by governments and statutory bodies, do not work then something less ambitious may still be available. That would not affect the advantages of revolutionising through the internet either the processes of advice or of the court: it would just mean that we might be careful about eliding the two together.

¹¹ <http://www.smallclaimsbcc.ca/how-it-works>

News

The news items shown below are largely compiled from articles on the internet, found on the basis of a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will obviously fail after a period of time.

The news is collated by Paul Ferrie - ILAG's Researcher and Online Editor. Paul, a graduate of the University of Strathclyde Law School, is also a Trainee Solicitor with Scottish based firm TCH Law, undertaking mainly civil litigation work.

If you would like to suggest or write an article for inclusion in this newsletter or the ILAG website, please contact Paul by emailing paul.s.ferrie@strath.ac.uk. Paul can also be contacted via Twitter (@psferrie) – and LinkedIn (<http://goo.gl/I9cmNd>).

Afghanistan

[Undp Supports Initiatives To Provide Legal Aid In Helmand - Undp](#)

Australia

[Access To Justice For Disabled Key For Wa Budget – Pro Bono Australia](#)

[Alrc Urged To Examine Impact Of Legal Aid Funding Cuts On Disability Sector – Law Council Of Australia](#)

[Greens Say Auditor Reveals Tough Challenges For Legal Aid – The Greens](#)

[Greens Say Legal Aid Surplus Should Be Directed Back Into Services – The Greens](#)

[Legal Aid Adjusts To Cuts – Ps News](#)

[Legal Aid Wa Warns Of Funding Shortfall – Abc News](#)

[Released Review Shows Legal Services Need Funding Boost, Not Federal Budget Cuts Or Further "Efficiencies" - Community Law Australia](#)

[Tasmania's Lawyers Anxious About Possible Funding Cuts To Legal Aid – Abc News](#)

[Victorian Legal Aid Cuts Hurt Services: Aq – The Australian](#)

Bangladesh

[Adr Introduced In Legal Aid Services – News Age](#)

[Hotline For Bd Expatriates – Prothom Alo](#)

Canada

[Additional \\$5.5m For Alberta Legal Aid A Good First Step: Lawyers – Beacon News](#)

[Alberta Judges Order More Cases Covered By Legal Aid – Cbc News](#)

[B.C. Lawyers Set To Resume Protest Of 'Lack Of Funding' For Legal Aid – Global & Mail](#)

[Legal Aid Alberta Funding Crisis Continues With New Court Decision – Edmonton Journal](#)

[Legal Aid Funding To Increase In Alberta](#) – Cbc News

[Legal-Aid Lawyers Take Action Over Funding](#) – Global News

[Legal Aid Tops Agenda At Provincial Justice Ministers Meeting](#) – Global News

[More Lao Improvements Coming As Family Services Boosted](#) – Law Times

[More Ontarians To Qualify For Legal Aid Funding](#) – Cbc News

[New Canadian Support Helps Improve Legal Aid Services In Ukraine](#) – Relief Web

[New Group Forms To Oppose Toronto Legal Clinic Mergers](#) – Law Times

China

[China's Top Judge Says Foreigners To Be Allowed Into Chinese Courts](#) - Reuters

[Foreigners Using Free Legal Aid Services On The Rise](#) – China Daily

[Hong Kong Lawyers To Offer Pro Bono Aid To Pro-Democracy Protesters](#) – The Wall Street Journal

[Legal Aid For Inmates To Go Nationwide](#) – China Daily

[Legal Aid Policy Dialogue Event Held In Beijing](#) – British Council

England & Wales

[Chris Grayling's Legal Aid Cuts 'So Unfair They Are Illegal', Rules High Court](#) – The Independent

[Criminal Lawyers Asked To Take 4% Pay Cut As Legal Aid Reforms Bite](#) – The Guardian

[Family Justice Minister's 'Plan' For Litigants In Person Is A Recipe For Pandemonium](#) – Marilyn Stowe

[Government To Pursue Controversial 'Residence Test' For Children's Legal Aid](#) – Children & Young People Now

[Government 'Washing Its Hands' Of Legal Aid Problem For Vulnerable Parents](#) – The Guardian

[Judge Attacks Legal Aid Cuts As Couple Fight To Keep Their Son](#) – The Independent

[Judge Halts Shropshire Trial Over Legal Aid Red Tape](#) – Shropshire Star

[Latest Exceptional Funding Statistics Released](#) – Legal Aid Handbook

[Legal Aid Agency Announces Family Mediation Tender](#) – Family Law

[Legal Aid Cuts: 'The Forgotten Pillar Of The Welfare State'](#) – A Special Report – The Guardian

[Legal Aid Firm In Shock Closure](#) – Law Society Gazette

[Legal Aid In England And Wales: What Is Changing?](#) – The Guardian

[Legal Aid Squeeze Hindering Young People's Ability To Get Justice, Warns Children's Commissioner](#) – Community Care

[Plans To Cut Criminal Legal Aid In Doubt After Court Ruling](#) – The Guardian

[Retired Judge Sir John Royce Criticises Legal Cuts](#) – Bbc News

[Solicitors Win Legal Aid Challenge](#) – South Wales Guardian

Europe

[Un Expert Urges Member States To Consider Justice As Pillar Of Development](#) – Un News Centre

Gambia

[Foreign Minister Showcases Gov't's Scores In Legal Services Decentralisation](#) – Daily Observer

[Nala Is An Independent Body, Says Unv Legal Aid Expert](#) – AllAfrica

Ghana

[Judicial Processes In Ghana Are Cumbersome-Minister](#) – Spy Ghana

[Legal Aid Scheme Established Five Legal Aid Offices](#) – Vibe Ghana

India

[Kelsa, Dlsa To Start Legal Aid Clinics](#) – New Indian Express

[Legal Services Clinic For The Needy Launched At Tiss](#) - Indian Express

Kenya

[Cj Willy Mutunga To Lead Lawyers In Providing Free Legal Services To Kenyans](#) – Standard Media

[Kenya Mulls Partnership With England In Free Legal Aid Project](#) – Business Daily

[Public To Benefit From Free Legal Services](#) – Standard Media

Liberia

[Community Justice Teams Mediating Disputes Around Ebola In Liberia](#) – Innovating Justice

Malaysia

[Bar Council Urges Government To Extend Legal Aid To All Refugees](#) – The Star Online

Morocco

[Legal Aid Key In Strengthening Rule Of Law In The Sahel Region](#) - Unodc

Mozambique

[Mozambique Sets Up Legal Aid Body](#) – Law Society Gazette

New Zealand

[Legal Aid Payments On Down Trend](#) – Manawatu Standard

[Legal Services Commissioner Releases Criminal Legal Aid Payment Guidelines](#) – Ministry Of Justice

Nigeria

[Criminal Justice Delivery: Legal Aid Council Tackles Mental Ill-Health](#) – Blue Print

[Developing Legal Aid Strategy For Poor Nigerians](#) – Daily Trust

[Legal Aid Council Boss Laments Nigerians' Inaccessibility To Justice](#) - Nigerian Tribune

Northern Ireland

[Justice Minister David Ford Has Launched A Public Consultation On The Scope Of Civil Legal Aid In Northern Ireland](#) - Department Of Justice

[Legal Aid Staff 'Need Pay Privacy'](#) – Belfast Telegraph

Norway

[Norway Tops European Legal Aid Spending Table](#) – Law Society Gazette

Pakistan

[Improvement In Access To Justice For Survivors Of Gender-Based Violence Urged](#) – The International News

Republic Of Ireland

[Criminal Assets Bureau Could Be Used To Cut Legal Aid Bills, Department Suggests](#) – Irish Times

Scotland

[Further Scottish Legal Bill Savings Needed, Says Legal Aid Board](#) – Stv News

[Lawyers Criticise Legal Aid Cuts](#) – Herald Scotland

[Legal Aid Cuts Having "Major Effect" In Extradition Cases, Faculty Submits](#) – Faculty Of Advocates

[Legal Aid – The Hidden Catches](#) – The Journal Of The Law Society Of Scotland

[Renewed Calls To Speed Up Access To Justice For Cyclists' Families](#) – Press & Journal

[Slab Reports Static Cost Of Legal Aid In 2013-14](#) – Journal Of The Law Society Of Scotland

South Africa

[750 000+ Helped By Legal Aid Sa](#) – News 24

[Sca Dismisses Legal Aid Sa's Appeal In Marikana Funding Case](#) - Constitutionally Speaking

Thailand

[Justice Ministry's Local Centers To Provide Better Access To Justice Process](#) – National News Bureau Of Thailand

United States Of America

[Access To Justice: Free Legal Aid Desks Opened](#) – The Express Tribune

[Attorneys Volunteer Services For Free Legal Clinic](#) – Casper Journal
[Justice Department Announces New Head For “Access To Justice” Initiative](#) – Buzz Feed News
[Legal Aid Appoints Criminal Practice Head](#) – New York Law Journal
[Legal Aid Out Of Reach For Many In Massachusetts](#) – South Cost Today
[Nyclu Trial On Legal Aid Suit Pushed Back](#) – Whhec Rochester
[Piloting Sms For Legal Aid](#) – Frontline Sms
[Underfunded Legal Aid In Ma Leaves 2/3 Of Those In Need Unrepresented](#) – Non Profit Quarterly
[U.S. Government To Provide \\$9 Million For Legal Aid To Child Migrants](#) – The Wall Street Journal
[We Must Ensure Everyone Has Access To Equal Justice](#) – Boton Globe
[With Funding Low, Many Legal Cases Going Un defended](#) – Boston Globe

Vietnam

[Community Legal Aid: Worker Access To Labour Rights In Innovative Way](#) – Udnj

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