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## Court innovations and access to justice in times of crisis

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### ABSTRACT

**Background:** COVID-19 has disrupted not only the health sector but also justice systems. Courts around the world have had to respond quickly to the challenges presented by the pandemic and the associated social distancing restrictions. This has created significant challenges for the justice system and such challenges are likely to be further compounded in the post-pandemic era as there is a ‘tsunami’ of COVID-19-related disputes predicted.

**Methods:** This study will examine how global court responses have transitioned from being primarily traditional, face-to-face proceedings to online court processes (as supported by internet technology). By adopting a comparative approach, we will analyse how some countries have adapted to this shift to online mode while also maintaining a focus on access to justice.

**Results:** We argue that online modes of dispute resolution, often referred to as Online Dispute Resolution (ODR), can promote resolution while facilitating social distancing in this new COVID-era. The rapid shift from traditional court processes to an online mode has further assisted the public, lawyers and experts to access the justice system in some jurisdictions, even during the crisis. In light of the scale of recent changes, there have been concerns about the capacity of courts to adopt newer technologies as well as issues relating to the impact of a new online model of justice, particularly in terms of the barriers for more vulnerable members of society. Further, the use of disruptive technologies in some courts have posed questions around whether outcomes generated by these innovations reflect the meaning of ‘justice’ in its traditional sense.

**Conclusions:** This article argues that courts should embrace newer technologies that support court services while being mindful of possible tech-related issues that can impact on justice objectives. We argue that by placing further emphasis on alternative dispute resolution methods and ODR into the future, this might offset the likely tsunami of COVID-related litigation which would enable courts, hospitals, medical professionals and patients to settle disputes in a just, equitable and more efficient manner.

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### Introduction

As the COVID-19 pandemic caused mass disruption around the world, health systems and justice systems struggled to cope with new ways of operating and increased demand. Whilst the impact on health systems and workers was the subject of much media attention, this was not necessarily the case in the justice sector where antiquated court systems powered by legacy technologies often struggled to cope with a world where social distancing, remote arrangements and the electronic exchange of documents

were required. The changes that were made across the court sector have not been uniform. This is because some jurisdictions operate ‘modern’ courts (which could more efficiently leverage newer technologies), while in many places courts continue to replicate approaches to litigation that have been present for decades (or even centuries).

In addition, responses varied as some parts of the justice system experienced an increase in workload, whilst others saw a reduction in demand. For example, there was increased demand in the criminal justice sector to reconsider bail and remand arrangements (so that, where possible, prison populations could be reduced) [1], as well as an increased focus on domestic violence and family arrangements including a significant increase in the need for court orders relating to child custody [2]. At the same time, there has been some decline in parts of the litigation system as

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economic activity decreased and takeovers, mergers and new contractual arrangements were not a focus of activity.

It is fortunate that in the shorter term, there was some reduction in the need for court activity as many courts have not been able to shift to a remote style of working. There are two reasons for this. First, many courts are not digitised. Many do not have e-filing and other arrangements in place. Put simply, in many instances there is a continued reliance on paper-based exchanges. Second, before the COVID-19 pandemic, few courts had developed video conferencing facilities as a way of dealing with interlocutory or final hearing processes. In response to COVID-19, many courts rapidly adopted supportive technologies that enabled video conferencing and at times the exchange of documentation using web-based platforms that include *Teams*, *Skype*, *Zoom*, *Google Hangouts* and *WebEx*. Some courts already had existing online filing systems and were, therefore, more prepared for remote working arrangements. Others have however struggled with video conferencing, including data privacy and security-related concerns, and the particular difficulties that arise in relation to jury hearings [3]. Outside courts, where much justice work takes place, online dispute resolution (ODR) arrangements, became an increasingly important focus as delays increased in many court systems.

This article explores how courts and the justice sector have responded to the pandemic and further considers arrangements in relation to healthcare litigation. The second part of the article generally considers the use of technology by courts and its implications in terms of access to justice. This is followed by reference to examples where courts around the world have introduced technologies to support court work, with a specific focus on China and how Chinese courts have responded to COVID-19-related challenges. The authors report that while there has been a significant upsurge in online cases in Chinese courts, the pressures associated with this have been somewhat offset by the country's strategy of building a 'smart court' system. It is further noted that despite the significant progress that courts have made around the world, seemingly overnight, to adopt an online model of delivery, there remain significant concerns from an access to justice perspective. A final matter that is considered is the anticipated 'tsunami' of post-pandemic disputes [4], including in the healthcare field arising from the COVID-19, and the knock-on impacts for countries that have been most affected by the virus.

### Court innovation and the implications for access to justice

Courts and Judges can use technology to support the judicial role, to engage with the public and users and to support triage, dispute resolution, self-help and case management functions. In addition, courts can use the opportunities provided by technology to change the way in which courts work and function and to alter the way in which reform takes place. To date however, most courts have used technology to replicate existing systems and processes rather than focusing on reforming the structures and processes that exist within the justice system. As a result, many courts continue to closely resemble the courts of the past century (and even the century before that). As one eminent former High Court of Australia Judge noted at the turn of the last century:

'A lawyer from Dickens' time, walking out of Bleak House into a modern Australian court on an ordinary day, would see relatively few changes. Same wigs and robes. Same elevated Bench and sitting times. Very similar basic procedures of calling evidence and presenting argument. Longer judgments: but still the same structure of facts, law and conclusion. Contrast, if you will, the astonishment of a physician from Guy's Hospital in London, from the middle of the last century, wandering into the electronic world of beepers and monitors, of CAT scans, genomic tests and automated diagnosis of a modern Australian hospital. We have made progress

in the law and in the courts, including the past twenty-five years. But not as much as other professions. Will it stay this way?' [5 p143–4].

Whilst the COVID-19 pandemic has resulted in many changes in terms of how courts operate, Kirby's comments still resonate in terms of the way in which many courts operate around the world. That is, the processes that are in place are very similar to processes that have operated for decades (or even centuries). At times, it has been noted that both judges and courts are reluctant to innovate and may be inherently conservative. However, as noted, there are considerable differences between judges and courts in terms of judicial approaches to technology. Sourdin has tracked court responses to the current crisis around the world, as documented in the table below: [Table 1](#)

SOURCE: (Sourdin, 2020) [6]

As shown, a significant number of courts across the world have made an urgent shift to online mode in response to COVID-19. However, despite the general benefits for continued court services, the use of internet and other online technologies in the justice system has presented interesting questions around the impact on the right of access to justice, the right to a fair trial and the administration of justice more broadly. In particular, the right of access to justice is one of the fundamental principles of international human rights law and is integral to the rule of law and the principle of equality before the law [7]. The UN Convention on the Rights of Persons with Disabilities (UN CRPD), for example, sets out the right of access to justice under Article 13 and requires States Parties to provide procedural and age-appropriate accommodations to facilitate an individuals' role as a direct and indirect participant at trial (including as witnesses). The principle of access to justice is seen as an overarching principle which must be read in line with other rights in the Convention [8]. Access to justice has also referred to a number of other rights, including the right to have access to procedures, information and locations used in the administration of justice and also the right to be tried without undue delay [9]. It must therefore be considered across all modes of dispute resolution and be respected in those States which have ratified human rights laws.

In this regard, although this article is primarily focussed on court arrangements, it is important to note in many countries, courts are no longer perceived to be at the epicentre of the justice system. Whilst it is clear that courts play a critical role in maintain the rule of law and also in safeguarding rights, the reality is that most people who are in dispute resolve their differences before commencing court proceedings and often use forms of Alternative Dispute Resolution (ADR) or Online Dispute Resolution (ODR) to do so. Indeed in many countries, processes are mandated before court proceedings can commence and once proceedings do commence, referral to ADR is also often mandatory. Such processes also form part of the access to justice equation and in general, justice system adaptation in the COVID-19-era has been somewhat less problematic in some jurisdictions partly because there was already some development and growth taking place in relation to ODR.

As discussed in the following section, the international court responses to COVID-19 differ drastically and range from the basic digitisation of filing systems, to the adoption of more sophisticated technologies and platforms which are more suited to supporting (or disrupting) the judicial role.

### Global court responses

Hit by the pandemic, some courts around the world have been forced to close completely [10], whereas others (including the European Court of Human Rights), have been temporarily reducing

**Table 1**  
Global court responses.

Response	Jurisdiction	Response Details
<b>Supportive Technologies</b>	<b>North America</b>	
	United States Federal Circuit Court of Appeals	All cases scheduled to be heard in April, May and June 2020 were to be conducted remotely, and parties were no longer required to lodge additional hard copy documents where they have been filed electronically. In addition, to facilitate open court principles, the Court also provided live audio access to arguments, with daily access information published on the Court's website. The conferencing technologies used by the Judiciary included 'AT&T Conferencing, Court Call, Skype for Business, Cisco Jabber, and Zoom.'
	United States Supreme Court	Beginning May 2020, the Court heard all oral arguments remotely by telephone conference. The Court also provided a 'live audio feed of the arguments to FOX News, the Associated Press, and C-SPAN' which, in turn, provided 'a simultaneous feed for the oral arguments to livestream on various media platforms.'
	New York City, USA Criminal Court	As of 25 March 2020, the Court conducted all criminal arraignments through videoconferencing technology. A virtual court model was implemented in every county on 6 April 2020, utilising audio-visual and telephone communications as well as the digital exchange of documents. Chief Judge DiFiore stated that virtual operations would remain an integral part of court systems despite the gradual opening of courts from July 2020 onwards.
	State of New York, Court of Appeals	On 11 May 2020 the Court issued a Notice to the Bar amending its Rules of Practice to 'require, for motions and responses to jurisdictional inquiries, submissions in digital format via a Companion Filing Upload Portal.' The Court of Appeals will also accept submissions by mail and electronically. Oral arguments will continue to be webcast live until the September session.
	Ontario Superior Court of Justice	On 2 April 2020 the Court dispensed with the requirement to file documents in hard copy; confirmed acceptance of electronically signed documents; permitted electronic service of documents where personal service is required; and heard matters virtually by way of telephone or videoconference. The Court also made Ministry-funded family mediation services virtually available for parties.
	<b>Asia</b>	
	Supreme Court of India	'Important matters' were heard via videoconferencing and limitation periods were temporarily suspended by the Court.
	Qatar Dubai	Proceedings were heard remotely using videoconferencing technology. As of 19 April 2020, hearings were conducted electronically through Microsoft Teams, allowing parties to be heard via videoconference.
	<b>Oceania</b>	
High Court of Australia	Cases commenced on or after 1 January 2020 were to lodge all documents online using the Digital Lodgement System Portal. Registry services were provided online or via telephone; documents were to be filed electronically with the Court; and the Court temporarily allowed electronic signatures on documents.	
Northern Territory Supreme Court	All pre-trial hearings, mentions and directions were conducted by audio-visual link or telephone conference. Until the Odyssey Integrated Case Management System is implemented in October 2020 all documents in civil matters will continue to be filed electronically.	
New South Wales Supreme Court	From 24 March 2020, there were to be no personal appearances in matters save for 'exceptional circumstances' and all documents were to be provided by electronic means. The <i>Evidence (Audio and Audio Visual Links) Act 1998</i> (NSW) was amended to permit witnesses or legal practitioners to appear via audio visual or digital technology if the court so directs.	
Supreme Court of Queensland	Parties and practitioners were only to make physical appearances where the matter could not be 'practicably dealt with by telephone or video'. In addition, between 1 March 2020 and 30 September 2020, testators were able to 'execute documents in the presence of witnesses via audio-visual link.'	
Supreme Court of Victoria	Civil proceedings were heard remotely using WebEx, Skype or Zoom and criminal hearings were heard via WebEx or existing video link technology. In addition, documents were filed electronically with the Court and, to facilitate remote access, the Court accepted unsworn affidavits, provided they met certain requirements published on the Court's website.	
Family Court and Federal Circuit Court of Australia	Hearings were conducted virtually using Microsoft Teams and/or AAPT Teleconferencing. In addition, to facilitate matters being dealt with electronically, parties were to 'e-file,' 'elodge' or email all documents. The Courts also accepted affidavits (other than where part of a divorce application) and financial statements that were signed without a qualified witness' signature, if the deponent of the document was available via telephone, videoconference or in person at a subsequent date.	
District Court of New Zealand	A Practice Note was issued on 23 April 2020 temporarily enabling judges of the Court to make directions as to the form of participation of any person at hearing or trial (whether by telephone or audio-visual link).	
<b>Africa</b>		
Supreme Court of Uganda	The Chief Justice issued a directive on 19 March 2020 enabling judgments and rulings to be issued to the parties via email or WhatsApp. On 29 April 2020 the Chief Justice issued guidelines pertaining to the judiciary's use of online hearings.	
South African Superior Courts	The Office of the Chief Justice on 27 January 2020 implemented an online cloud-based collaborative solution enabling Digital Case Management and Evidence Management systems for the High Courts. On 16 April 2020 a direction was issued permitting 'unopposed applications already enroled for hearing' to be heard by videoconference and directing parties to opposed applications to 'file their heads of argument electronically.'	
<b>Europe</b>		
The UK Family Court and Family Division of the High Court	The UK created a 'Remote Access Family Court' which allowed hearings to be conducted virtually using, for example, Skype for Business. These remote hearings were supported by 'e-bundling' technology through the implementation of the Cloud Video Platform in July 2020 in civil, family and criminal courtrooms. This platform allows judges and parties to access documents that are filed electronically.	
Italian Supreme Court	Initially, all court activities were suspended. However, as of 16 April 2020 'e-trial measures' were implemented 'for any type of court activity, both civil and criminal'. Consequently, such matters were exclusively held on 'secure online platforms', which enabled parties to appear via videoconferencing technology.	
Republic of Ireland Criminal Courts	Defendants in custody appeared before the Central and Special Criminal Court through videoconferencing technology. The use of remote hearings has been predominantly confined to the Supreme Court, Court of Appeal and High Court until courts reopen in September.	
Hungarian Civil and Administrative Courts	On 31 March 2020 the Hungarian government issued a decree ordering that hearings are to be conducted electronically (viz. through videoconferencing) until the courts reopen.	

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Table 1 (continued)

Response	Jurisdiction	Response Details
<b>Replacement Technologies</b>	<b>North America</b>	
	British Columbia's Civil Resolution Tribunal	The Civil Resolution Tribunal (CRT) is an online dispute resolution tribunal that hears - <i>inter alia</i> - simple personal injury, employment, construction and property matters. Applicants apply online to have their dispute resolved by the CRT. The system then automatically classifies the dispute and provides applicants with the necessary documents to file their claim. Thereafter, parties can lodge submissions and evidence for the tribunal member to assess online. Indeed, if an oral hearing is required, it is conducted via Skype. While the CRT has been in operation before COVID-19, its inherently digital nature has allowed it to 'remain fully operational' since the outbreak.
<b>Disruptive Technologies</b>	<b>Asia</b>	
	Beijing Internet Court	The Beijing Internet Court is one of three 'virtual courts' in China. These Courts engage in what is termed 'e-litigation' procedures, which enables the entire litigation process from 'filing to ruling and mediation' to be conducted online. The system operates 24 h a day and, since the pandemic, has been investigating procedures to 'set protocols of online litigation proceedings in cyberspace'. This Court also has what is termed a 'mobile micro court'. This enables parties to appear via WeChat - China's leading social media platform - and is of especial benefit for individuals who do not have easy access to a computer during the COVID-19 outbreak. 'Case pushing', 'nudging' and 'decision correction' technology is in place in some courts and has not been a COVID-19 addition (see discussion below).

their workload by only dealing with 'essential' or 'high-priority' cases. The meaning of what constitutes an essential case has varied across jurisdictions. In England and Wales, for example, the Royal Courts of Justice classified urgent matters as those cases which required a decision within a week and were 'essential in the interests of justice' [11]. By adopting the use of technology and prioritising cases based on 'immediacy', many courts have been able to continue operating, thereby ensuring the right of access to justice in these urgent cases. However, considerable concerns remain about the increased backlog of cases and lengthy waiting periods for court dates around the world. This is especially concerning in cases where individuals are prevented from seeking appropriate remedies or to assert their fundamental rights, particularly the right to liberty by way of Habeas Corpus or where a prisoner is eligible for early release. Jury trials have also ceased in many jurisdictions and this has had a varying range of impacts. In some jurisdictions, where judge alone trials are more common, the impact has not been as significant. In jurisdictions that include some courts in the USA, the impact has been devastating in terms of the availability of court hearings.

In addition to significant delays and waiting periods, certain groups will also be disproportionately affected by court closures or the shift to online modes of delivery. Women, children, persons in asylum settings or detention centres, and persons with disabilities already face considerable challenges in asserting their rights and these problems are likely to be even more exacerbated in the current climate [12]. Articles 6 and 7 of the UN CRPD are relevant here as these provisions seek to protect the rights of women and children with disabilities. Of note, these rights recognise the multiple modes of discrimination experienced by women and girls, and requires States to take measures to ensure 'the full and equal enjoyment by them of all human rights and fundamental freedoms' [13]. Therefore, in considering the role of technology to support the judicial role and facilitate the functioning of the judicial system, special consideration must be paid to the specific-barriers which may prevent the full inclusion and participation of parties who are required to engage in an online case.

As with other parts of the world, China has faced the challenges posed by the pandemic and the associated social distancing measures, including how to ensure people's right of access to justice. The need for relatively normal operation of the justice system in the country is highlighted by the distinctive situation of China where judges had already been overwhelmed before the pandemic by the increased case numbers due to the large population and a recent increase in work that has arisen from changed economic

and business conditions [14]. For example, it has been noted that the caseload of judges in regions with strong economic performance is higher than workloads in other areas [15]. In addition, many ODR and ADR services in China are linked to the court system and do not exist on an external basis (unlike the situation in jurisdictions such as Australia).

One of the major measures that have been adopted in China has been to move court processes (including case filing, serving of court documents, evidence exchange, hearing, delivery of judgement and even enforcement) online to promote greater access to justice. Such arrangements are now well developed compared with those in other jurisdictions. For example, according to the Supreme People's Court (the SPC), during 3 Feb. to 30 April 2020, there were 5.579 million cases filed across the country and among those one quarter was e-lodged, up 24 per cent compared with the same period of 2019. Further, 16.60 per cent of 1.51 million hearings during this time were conducted remotely, an increase of 943 per cent compared with the same period in 2019 [16].

It is suggested that the preparedness of Chinese courts for challenges arising from the pandemic is the result of a strategy of building a 'smart court' system by employing technological innovations to provide 'quick' and 'just' services to its citizens [17]. First officially raised by the President of the SPC in 2016, the notion of 'smart court' does not apply to one particular court. Rather the term relates to 'the organisational, constructional and operational pattern of people's courts that is based on advanced innovations with the purposes of achieving fair judiciary and justice for people by means of supporting online intelligent court services throughout the whole dispute resolution process in a transparent environment' [18]. The characteristics of a smart court include 'ensuring the fairness and efficiency of the judiciary and improving judicial credibility, making the most out of technologies including internet, cloud computing, big data and AI, promoting the modernisation of China's trial system and capability, and achieving the highly intelligent functioning and management of people's courts' [19]. It was reported that by June 2019, the Smart Court System had taken shape in China, offering whole-process online services to the public in accordance with the law [20 p61].

A smart court implies that justice is mainly located in a court and can be realised through online portals and these portals mainly take the form of web-based litigation platforms. For example, Zhejiang High People's Court in East China has established a comprehensive online platform to provide parties with online ac-

cess to services with no need to turn up in the court for case filing. This platform also accommodates online hearings (via video conferencing) after parties log in with a 'trial code' assigned to them. As noted above, after the outbreak of COVID-19, remote hearings have accounted for a significant percentage of whole trials in China in the context of social distancing measures. Among them, the first video conferencing trial relating to the pandemic was a fraudulent case that took place in a local court in Jiangsu Province on 7 February. The defendant was accused of falsely alleging that he was able to supply a certain amount of surgical face masks to the victims and then making profits from his fabrication. The trial was conducted remotely with judges, prosecutors, the defendant and the defending lawyers sitting at four different venues. Clearly, an online hearing approach enabled this case to be concluded in a timely manner while avoiding the unnecessary prolonged detention of the defendant.

In addition to web-based platforms, Chinese courts have also developed justice applications ('apps') which have provided easier access to justice, particularly for the young who are used to using mobile phones to carry out various daily activities. For example, the SPC has developed a 'Mobile Micro Court' app and rolled out to all courts in the country since August 2018. This app supports users to carry out online filing, remote trial, online evidence exchange and other related litigation functions. According to the SPC's data, during the pandemic (and by 31 March), the total users of this app reached 1.39 million and there were 390,000 new users in March alone, representing a growth by 86.78 per cent compared to February [21].

As noted above, the pandemic has changed the way Chinese courts operate during the global health crisis and the Chinese justice system responded to the challenges by further encouraging online court processes, thereby minimising the disruptions and maintaining the right of access to the courts. On the other hand, however, there have been concerns about these approaches. For example, due to the budgetary issues, some local courts have lagged behind in terms of infrastructure and they have not been able to provide 'effective' online services as anticipated. This raises the question of whether 'everyone' in China enjoys 'equitable' access to justice [22]. The similar issue of 'unevenness' has also exacerbated the 'digital divide' which exists between urban and rural areas, and also amongst older and younger generations. For example, Cyberspace Administration of China has noted that, as of March 2020, there were 496 million people (mostly residing in remote areas and are within the age group of 50 and above) in the country who were not using internet due to literacy and other reasons [23].

Another concern relating to technological innovations is beyond the level of 'access' to justice and is inherently relevant to the quality of judicial services. Essentially, the question is whether the use of artificial intelligence technology and algorithms in court systems could produce 'just' outcomes. For example, Beijing High People's Court has developed an app titled 'Beijing Court Micro Litigation' by which users can assess whether they will be likely to win in 15 types of case (including separation, inheritance, tenancy, employment etc.) in litigation by putting into some 'basic' information about the disputes. The system will then evaluate the data provided together with other factors, including costs, potential reputational loss if proceeding with litigation etc. and generate a recommended report as to whether the users should go with litigation or other dispute resolution processes. Though useful in terms of 'educating' or 'informing' users of basic legal knowledge, it remains unclear how the provided information is used and calculated by the embedded algorithm and therefore the credibility of the recommendation is questionable [24].

In conclusion, different jurisdictions have been forced to manage a number of competing rights and interests in their response

to COVID-19, including the right to enjoy the highest attainable standard of health and the right of access to justice. In some jurisdictions, the availability of ODR options together with a rapid shift to video conferencing has meant that delays in those jurisdictions have not been as significant. In jurisdictions where online courts already exist which may incorporate ODR, digitisation and online hearing options (such as China) there has been increased take up and use of such options. However, in some places, antiquated court systems and a lack of developed ODR (and ADR) has meant that proportionate and reasonable responses have not been possible [25].

In courts, where technology has been available and appropriate for use, judges have not necessarily been supported to perform their role online. This requires appropriate training for members of the judiciary to enable them to use these technologies appropriately and conduct hearings without disruption [26]. Judges may also need to understand the issues that emerge with newer technologies and how to support more vulnerable litigants who may have particular issues in accessing and using technology (including supporting access to legal advice and the 'free assistance of an interpreter' in cases where an individual cannot understand or speak the language of the court [27]).

#### *Healthcare dispute resolution and justice in the post-pandemic era*

As discussed, the term 'access to justice' incorporates the notion that there will be access to courts and judges without unreasonable delay. To respond to the possible 'case boom' in the post-pandemic era, there is an urgent need for courts around the world to develop corresponding strategies. Apart from the widespread use of technology to support court services, it might be an appropriate option for jurisdictions to reduce delays by further encouraging citizens to engage in alternative dispute resolution (ADR) processes instead of pursuing traditional litigation in courts.

Although there still has been some discussion around whether ADR processes can lead to 'just' outcomes in the same way that traditional litigation is perceived to [28], some countries (including Canada) have already encouraged people to consider ADR to avoid significant delay and cost [29]. There are considerable benefits to this as the use of technology is much more widespread in ADR and ODR settings. Moreover, most ADR processes offer greater flexibility than traditional court hearings, and can be more cost-effective and efficient. It has long been clear that adversarial models of justice which favour traditional court settings are outdated. It is therefore suggested that ADR and ODR can offer significant advantages and benefits in this new world, particularly as a means to respond to the likely rise in healthcare-related disputes [30].

Several commentators have forecast that a tsunami of disputes is likely to occur in the post-pandemic period, closely following the 'waves' of infection, and there is some evidence that this is already taking place [31]. For example, in the United States, health insurance disputes and health care disputes have already increased, perhaps owing to pre-existing health inequalities such as the lack of a free public healthcare system or adequate insurance coverage. While the extent to which such inequity correlates with increased lawsuits is unclear, the cost of medicine and healthcare in the US is said to be one of the main reasons for personal bankruptcy claims. This is further exacerbated in the current context by the historic unemployment rates in light of COVID-19 and the knock-on effects for those who lost medical insurance coverage through their employers. In the event that they require hospital care or treatment, there is a risk that they may suffer considerable economic hardship and may be forced to file for bankruptcy, or seek alternative courses of action in law where appropriate.

Health systems have been forced to adopt sweeping changes in response to the current crisis, and in some cases, continuity

of patient care and treatment has been affected, including access to IVF and other fertility treatments, access to biological therapies and the suspension of life-saving transplants. In other jurisdictions such as Ireland, routine health screenings have been suspended for the foreseeable future, including breast checks, cervical cancer and bowel screenings [32]. This could lead to a surge in future disputes amongst those who experience delayed diagnoses and treatments, thereby leading to poorer outcomes and increased mortality rates.

Further cases are also possible in countries which have experienced severe spikes in COVID-19 hospitalisations. It is difficult to speculate on future (possible) cases, however, negligence claims, access to treatments (including access to ventilators and the removal of same), and the reported rise in ‘Do Not Resuscitate’ orders being imposed on people with disabilities and the elderly [33], all raise serious legal and ethical concerns and could be the topics of future disputes. In this respect, potential and actual compensation claims for medical negligence or related failures in respect of duty of care issues may place frontline professionals under greater uncertainty and stress and further undermining the communities’ efforts to combat the virus [34]. In addition, hospitals may be subject to legal action, including workers compensation actions that could be launched by doctors and nurses in respect of workplace arrangement or a lack of personal protective equipment and training [35].

Although this article does not address specific medical negligence and other liability issues arising from COVID-19, it is noted that some jurisdictions have already enacted legislation to preemptively respond to a projected rise in negligence cases. For example, the UK has introduced legislation which seeks to indemnify the National Health Service for all future negligence claims in respect of the care or treatment of patients with COVID-19 [36]. The case law in the UK also appears to support liability exemptions for health care institutions and professionals as long as they have followed relevant clinical guidelines in treating COVID-19 patients [37]. Similarly, in the US, the State of New York and some other states, have also provided immunity from liability to all health-care workers who have supported the response to the virus [38]. At the federal level, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was introduced on March 27 to provide additional federal liability protections for volunteer health care professionals during the COVID-19 emergency response [39]. Such responses may offset significant increases in negligence claims, however, it may still be possible for patients to seek other remedies in respect of their care or treatment, including by way of ADR and the authors note that legal actions may be reduced by jurisdictional responses that already include ‘no fault’ arrangements (as in New Zealand), national disability schemes and also universal free health care arrangements which generally limit medical negligence claims.

To date, the American Bar Association has tracked thousands of disputes relating to COVID-19. Whilst many involve employment and business-related issues (for example the efficacy of hand sanitisers or travel disruption), a considerable proportion are linked to healthcare and in particular health insurance arrangements, as well as care arrangements in nursing homes and other environments. Into the future, it is likely that litigation work expands even further as bankruptcy, breach of contract and associated matters become an increasing area of focus. In the health law area, this means that there will be more litigation and attendant uncertainty as courts continue to struggle with increasing caseloads often using legacy technologies that may not be fit for purpose. It is therefore argued that ADR and ODR (for example, online mediation) offers a viable solution to respond to the likely surge in these cases, and such alternatives must be examined in line with the right of access to justice and other fundamental human rights guarantees of due process and equality before the law.

## Conclusion

The current scale of the public health crisis has required countries to develop innovative responses to protect people’s right to health by establishing social distancing rules, while also ensuring respect for other human rights including access to court services and justice more broadly. Courts have been forced to adapt to this new landscape quickly, and in many countries, newer technologies have been relied upon with a view to ‘support’ courts’ work and dispute resolution processes. Despite the benefits of providing greater access to justice brought by technological innovation, there are concerns about the use of such technologies in justice system, including how to safeguard the rights of vulnerable social groups and manage the disruptions to justice caused by some innovations. Further, there is a need for judges to access support or resources to continue to undertake their work in a digital time which is complicated by the global health crisis. Susskind has previously observed that we must decide if court is a place or a service and this question proves more relevant now than ever [40]. Looking ahead to the post-pandemic age, there will likely be a dispute boom arising from COVID-19 and jurisdictions may need to consider, apart from the introduction of liability immunity and medical negligence specific legislation, ADR and ODR approaches and technological innovation to ensure that people can access justice services, especially in COVID-related disputes.

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Not required.

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- and all deadlines provided for by laws are suspended. Exceptions apply to certain urgent cases. From 16 April 2020 through June 30, other measures can be taken which comply with the health safeguards concerning COVID-19, for example court access can be limited. The Court of Cassation uses video technology to decide appeal cases. It required an adaptation of the procedural rules to allow video connection for the judges unable to travel due to the COVID-19 crisis.
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