



**INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI**

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Dear Colleagues,

As already announced in the communiqué the Secretariat-General of the IAJ spread on 20 April 2020, the IAJ Presidency Committee decided to launch a Survey and Study upon the Effects of COVID-19 Pandemic on Rule of Law, Human Rights, Judicial Independence and Judicial Activity. In this framework President Pagone has already contacted the Presidents of the four Study Commissions in order to ask them to confer together with a view to seeing how best we might learn from this experience in a way that is meaningful and positive.

The Presidency Committee also asked me to send a general message asking the associations to provide information about possible problems in their countries due to corona virus to obtain short answers of general character on the main issues at stake. I am therefore submitting a short questionnaire, asking you to kindly replay within **10 May 2020**.

Kind regards,

Giacomo Oberto

Secretary-General of the IAJ

QUESTIONNAIRE

ON THE IMPACT OF COVID-19 ON RULE OF LAW AND JUDICIAL ACTIVITY

1. What are the main problems the Judiciary experienced at a general level in your country as a consequence of the legal reforms approved in order to cope with the COVID-19 pandemic?

As a result of the COVID-19 pandemic, in general, initially courts across the country shut down for all but “urgent” hearings. The judiciary who were not sitting on these urgent matters were sent home to work remotely. The initial issues were triaging cases that needed to be heard and many judges were involved in these difficult decisions. Judges were then involved in creating a new body of law on what was “urgent” and how the pandemic should affect bail and detention conditions, family law situations such as potential domestic violence, parenting and support, commercial insolvencies, suspension of certain limitation periods etc.

Exceptionally from the general rule, some courts of appeal continued hearing matters on the regular schedule remotely by telephone or videoconference. This has expanded over time so that most appeal level courts are back to hearing all matters remotely.

As the weeks passed, courts became more involved in providing virtual court access to a wider level of matters either by telephone, videoconferencing, or retro fitted courtrooms. This required rule changes, new software training on videoconferencing platforms (Zoom, Webex, Microsoft Teams etc), new management skills at conducting virtual hearings, and considerations of the profession, and public in these hearings. In person hearings have started to open up more recently in some provinces, with new rules about timing of cases, distancing, and retro fitted courtrooms (with plexiglass barriers for instance).

In addition, a new volume of digital information began flowing to judges as courts allowed electronic filing (even at the most basic email level), electronic signatures of Orders and Judgements and electronic desk work (from hearings and applications to divorces, adoptions and probate work). Necessity has boosted the enthusiasm of many judges to learn how to manage digital documents and learn new computer skills.

2. Did the legal reforms approved in your country in order to cope with the COVID-19 pandemic affect Rule of Law and Human Rights principles? If any, pls. enumerate them.

Canadian Chief Justices, their staff, and governments’ court administrators, in conjunction with the various Justice Ministries, have made tremendous efforts to continue to respect the rule of law and human rights principles. The key elements that have been challenged are the delays inherent in hearing only

urgent matters, and the open court principle since the public is by default shut out of remote virtual hearings. Efforts to improve technological support has been accelerated to try and allow the courts to hear matters other than urgent ones and triage cases in new and innovative ways to deal with backlogs that have resulted.

Access to remote hearings has begun mainly by allowing the press to access the remote hearings. Moves to allow full public access – like live streaming - has not yet occurred at the trial level. This was already available at the Supreme Court of Canada level pre-pandemic.

3. As to the judicial organisation of your country, what impact had the legal reforms approved in order to cope with the COVID-19 pandemic? More specifically, what were their effects on the powers of the Minister of Justice, Council for Judiciary, Heads of Courts, Heads of Prosecution Services, Judges, Prosecutors, Court Administrators, Court Managers?

There has not been a change in the respective powers of the various administrators of justice in Canada although there has been a large increase in meetings and cooperation between these bodies to accelerate the necessary changes to accommodate pandemic issues. This has occurred within provinces and nationally in the creation of pandemic committees and task forces focused on the crisis.

4. As far as Court activity, Court proceedings and trials are concerned, what was the impact of legal measures adopted? Pls. provide relevant information distinguishing between civil, criminal and administrative cases.

At the trial level, the largest impact was the shut down of live witness trials and jury trials especially in the civil, criminal and family areas. Matters that involved mainly documents in appeals or initial determinations either continued soon after the initial shut down or are beginning to be accommodated by technological improvements allowing more digital document filing and remote hearings. Further, determinations by written argument only are being allowed and encouraged. Jury trials remain a challenge and have all been postponed in Canada. Live witness trials (judge alone) are only now starting in some provincial jurisdictions with new measures in place.

5. Did “urgent” cases receive a different treatment and in this framework was a special legal definition or specification of “urgency” introduced for Court proceedings and trials?

Urgent applications received different treatment and a large body of law has emerged across Canada over the last few weeks about what is “urgent” or not. Urgent hearings in criminal law dealt mainly with release conditions after arrest (bail), early release from prison issues, and some sentencing issues. In family law, urgent applications were heard in domestic violence cases, denial of parenting cases, and some about dire financial support problems. Many insolvency cases have been heard remotely across the country – by their nature the initial applications at least, are often “urgent”. Most civil cases were adjourned and are only now starting back on a very limited basis.

6. Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?

Generally, the amount of money at stake did not play a role.

7. As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?

Cases concerning arrested defendants generally take precedence over other cases and during the pandemic this has not changed. In terms of any “restart” of live trials for instance, these generally will take precedence over family and civil matters. Family matters where children are involved are a close second.

8. What was the impact of such legal reforms on legal deadlines and procedural timeframes?

Legal deadlines and procedural timeframes have been extended during the pandemic for the most part. The limitation period for initiating of a proceeding on the other hand has not been suspended universally.

9. What is the role played in your country by IT, e-filing, smart and remote working in the management of cases as an effect of legal measures approved in order to cope with the COVID-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?

The approval and implementation, of software tools to allow remote working have been invested in and implemented in haste as a result of the pandemic.

Limited courts had some e-filing abilities before the pandemic (British Columbia courts, some appeal courts and the Supreme Court of Canada for instance). Generally, though, Canada is behind in terms of e-filing and this has been highlighted as a concern by legal writers since the pandemic has exacerbated and highlighted the problems of relying on paper filing systems. In the interim, to stop gap, many jurisdictions are allowing email filing of documents and some are opening up websites to allow parties to upload documents. The flow of emails with documents attached has overwhelmed many courts and judges. The solutions are only now starting to happen.

10. What is the role played by your Association in the drafting of such legal reforms? Was your Association consulted by the Government before adoption of the aforesaid measures?

The solutions that have been implemented are mainly at a provincial level so our Canadian Association has not been directly involved in these reforms or solutions. Many of the members of our Association have been involved in helping at the provincial levels. Many of the other projects that our Association has been working on with the Federal government have been postponed in light of the pandemic.

11. Did the Government consult the High Council for the Judiciary and/or other judicial institutional instances or representatives before adoption of the aforesaid measures?

As noted above, there has been intense consultation between governments and the Chief Justices across the country in terms of adopting new measures to deliver justice in light of the pandemic. A Task Force with the Federal Minister of Justice, the Chief Justice of the Supreme Court of Canada and other Chief Justices across Canada, has recently been set up and has started meeting specifically about the issue of opening up in light of the pandemic health concerns.

12. What is the attitude of Bar Associations and Lawyers vis-à-vis such legal reforms?

Generally speaking the attitude of the Bar Associations and lawyers have been positive about the changes.

Much of the earlier resistance to change (especially with respect to increased use of remote hearings and testimony and the use of digital documents) has disappeared in light of the present exigencies. Some reluctance is present wherein parties would prefer to wait and conduct their matters “live”, but this resistance is waning as the pandemic continues.