

CONSEQUENCES OF COVID-19 ON FAMILY MATTERS

AMERICAN JURISDICTIONS

On 5 May 202 more than 250.000 people died from Covid-19 worldwide.

We have asked to members of the UIA´s Family Law Commission working in some countries of the American Continent from: Chile, Argentina, Brazil, Mexico and Canada to present a comparative analysis of the consequences of the health crisis in family matters in their jurisdictions and how their law offices are facing these major changes that makes them rethink their practice and the family justice.

The purpose of this work is to help international family law practitioners to assess the consequences of the governmental measures taken of their closest jurisdictions and also to learn from good practices born abroad in this dramatic context.

This study continous the previous one of the European Continent.

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1. CAN APPLICATIONS IN FAMILY MATTERS BE FILED IN FRONT OF YOUR JURISDICTION DURING THE 'LOCKDOWN' AND HOW? HOW ARE PENDING CASES DEALT WITH?

CHILE



Daniela Horvitz Lennon

HORVITZ
Y COMPAÑÍA LIMITADA

You can file every kind of application because legal holiday or court lockdown was never declared in chile, so courts were not closed. But in april 2nd a law was issued that, mainly, suspended the lapse of obligations and give to the supreme court faculties to suspend proceedings and postpone hearings in every court of the country, and also empowered courts to take hearings by remote systems.

That sound quite modern and hard to implement in a short time period but was not since from december 2015 we have an electronical procedings law. So even before covid19 we have almost 90% paperless courts, everything is filed by internet, lawyers signature is electronic and last year even supreme court have been handling remote hearings when lawyers (parties) are not from santiago (the capital).

On april 8th the supreme court gave more specific instructions to each court.

ARGENTINA



Federico Prus
Estudio Juridico Dr Prus

The Argentine Republic, following its Constitutions, adopts a federal government and each province has its own regulations as regards proceedings. In the city of Buenos Aires, facing the pandemic emergency caused by Covid-19, the Supreme Court decreed the judicial recess in all the courts including those of the civil division involved exclusively on family matters. This means that it is not allowed to file new petitions, deeds, or perform hearings. Also, neither the courts nor the courts of appeal are solving pending issues.

Exceptions are those matters related to domestic violence and bank transferences corresponding to lawsuits for child-support that had already been filed.

This system anticipates the possibility that the parties that have some real “urgent matter” that can be proved, could ask for the withdrawal of the restriction with the sole aim of solving it.

This issue must be presented in the authorized court on-call, which can sustain the petition or reject the interruption of recess.

New lawsuits can be filed in order to avoid the running out of the statute of limitations. They will only be filed, and the procedure will be held in abeyance.

BRAZIL



Paulo Lins e Silva



PAULO LINS E SILVA ADVOGADOS

In Brazil, we already use the Electronic system in Justice and the digitalization of documents. Family Justice is in recess, like all the Judiciary Branch, due to the Pandemic. But the progress of the existing processes is being submitted to the “Home Office” regime. The pace was already slow before; now it is even more sluggish. New cases, but only those considered urgent, can be filed. There are the so-called “on-duty judges”. They rarely grant decisions “ad limine” or “in limini litis”. But it is possible to distribute a lawsuit and wait a long time to get an objective decision for a normal progress.

MEXICO



Alberto Roman Palencia

**ROMÁN
CASTAÑEDA**
— ABOGADOS —

The answer is clear. They cannot be filed, except in specific cases.

By agreement Agreement 39-14 / 2020, issued by the Plenary of the Council of the Judiciary of Mexico City, in an ordinary session dated 17 of March 2020, the "Contingency Plan for the Judicial Power of Mexico City, suspending all functions from the March 18th to April 19th, establishing guards only in Family courts of written process, regarding the delivery of deposit alimony and child support checks issued by the government, related to previous lawsuits in order not to affect the rights of their beneficiaries, trying to protect beneficiaries rights.

Subsequently, by agreement V-19/2020 of April 28, 2020, the extension in the suspension of jurisdictional tasks was ordered until May 31 of the same year. (Both agreements can be consulted at <https://www.poderjudicialcdmx.gob.mx>)

CANADA (Ontario)



Howard S. Simmons



Cases take place faster, as judges have fewer cases to deal with. Judges are more readily available.

The case can be done by a phone or video conference. Pending cases are all heard the same way. If they are not urgent, they are postponed.

2. WHAT ARE THE MEANS OF COMMUNICATION WITH COURTS IN FAMILY MATTERS DURING THIS TIME?

CHILE



Daniela Horvitz Lennon

HORVITZ
Y COMPAÑIA LIMITADA

Mostly by remote mode, but for emergencies people still can go to the court, where they implement shifts with clerks, technical assistants and judges. Family courts in Santiago are accepting reports or claims even by phone when it is about domestic violence.

ARGENTINA



Federico Prus

Estudio Juridico Dr Prus

Since the Courts and the Courts of Appeal are in recess, only courts on-call are authorized to work and, from the thirteen (13) court rooms that are part of the Court of Appeal, Civil Division, only one (1) is on-call.

Any document that needs to be filed must be presented by electronic means through the web system of the Judicial Power, stamping the digital signature of the attorney that has been previously validated.

BRAZIL



Paulo Lins e Silva



PAULO LINS E SILVA ADVOGADOS

As previously mentioned, we use electronic channels in all processes. Physically, the Family Courts Secretariat is working remotely, with all employees wearing "protective masks". However, it is common knowledge that Family Law is very personal and we miss the possibility to speak or dispatch directly with the Magistrate or even his secretary. In terms of reviews, the Appeals can be judged by the collegiate, electronically, but, if one of the parties objects, the appeal is removed from the agenda and must wait for the regularization of the Pandemic crisis, so that the oral support of the lawyers can be appreciated. It is enough that one of the parties does not admit the electronic process for the process to be put on wait. This has been further hampering the necessary celerity in family cases at the Courts.

MEXICO



Alberto Roman Palencia

**ROMÁN
CASTAÑEDA**
— ABOGADOS —

There are no means of communication with the courts. The assigned guards only know about issues of violence against women and delivery of deposit alimony and child support checks issued by the government. Courts do not receive promotions; they have no communication with the parties and do not respond to requests.

The Judicial Council only reports its agreements by publication of electronic circulars.

CANADA (Ontario)



Howard S. Simmons



To bring any court proceeding, you must explain to a judge in written form that the situation is urgent and cannot wait. Some examples of urgency are a parent refusing access to the other parent, unless there is a valid reason. Parenting is considered as essential service and should continue. Another example is a parent dissipating or hiding assets.

A judge will decide if your request is considered urgent. The cases are handled electronically, not in person and all communication is electronically.

3. WHAT ARE THE CONSEQUENCES OF THE 'LOCKDOWN' ON THE RIGHTS OF THE PARENTS AND IS THERE ANY OFFICIAL GUIDANCE?

CHILE



Daniela Horvitz Lennon

HORVITZ
Y COMPAÑIA LIMITADA

Unfortunately, we have no official guidance and each judge can solve under his own criteria.

We are facing, mainly, 3 big problems: visitation rights (we don't call them visitation anymore, we call it "direct and regular relationship"), child support payment and domestic violence.

- Most of visitation regimes have been suspended and replaced by videos or phonecalls.
- Because of economical crisis and the fact that arrests are not taking place against the debtors, the default percent has incredibly increased.
- Domestic violence rates are rising every week and take the offender out of the house is much more complicated under these circumstances.

ARGENTINA



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Estudio Jurídico Dr Prus Dupré

The lockdown interrupted the contact with children who live with their parents alternately and their communication arrangements. The National Executive Power decreed that they had to stay with the parent with whom they were at the moment, while the social lockdown remains in place. The virtual contact must not be affected.

The exceptions to this system include cases where the parent with whom they are living gets ill, situation that authorizes the children to move to the domicile of the other parent, or if one of the parents has to go to work.

In a recent petition presented by both parents, a judicial modification to the system was accepted, allowing a four-year-old boy to spend one week with each parent.

BRAZIL



Paulo Lins e Silva



PAULO LINS E SILVA ADVOGADOS

This is a big problem. Not only in Brazil, but throughout the world. The legal ratification of the agreements has to be enforced. However, what about the child's interest and protection? Often, the parent who was not exercising physical custody of the child at the time when the Judiciary Branch recess started, was somehow harmed. It has been encouraged that the parent who has not the physical custody exercise it through the "SKYPE" system, thus talking and keeping in contact with the child in some way.

MEXICO



Alberto Roman Palencia

**ROMÁN
CASTAÑEDA**
— ABOGADOS —

Undoubtedly, the breach of obligations related to minors has increased, mainly in terms of visits and coexistence; compliance with the co-survival return schedules and alimony payment.

The courts have not issued any guiding criteria to protect the rights of non-custodial parents and custodians and minors.

CANADA (Ontario)



Howard S. Simmons



The rights of parents have not changed. The only thing that has changed is the enforcement of the rights of a parent. There is no official guidance. Recent court decisions state that existing agreements and court orders should be followed.

With respect to access to a child, ... COVID-19 is a health emergency, but of itself is not sufficient reason to change custody orders or access rights. The result may be different if one of the parents exhibits symptoms of COVID-19.

4. ARE ALTERNATIVE DISPUTE RESOLUTION METHODS USED DURING THIS TIME AND ARE THEY EFFICIENT TO REPLACE THE SLOWING DOWN OR CLOSING OF YOUR JURISDICTION?

CHILE



Daniela Horvitz

HORVITZ
Y COMPAÑÍA LIMITADA

In Chile mediation is mandatory to file child support/alimony, custody and visitation cases, but now can't be required to file. Public mediations (provided by the government) by remote systems are forbidden.

In practical terms, lawyers are trying to negotiate as much as possible and if clients accepted, remote mediations are taking place.

ARGENTINA



Federico Prus

Estudio Juridico Dr Prus

During the first stage of the lockdown all mediation hearings were suspended. Only those hearings that had been previously started could continue the exchange between both attorneys informally, with the assistance of intervening mediators in order to move forward with the negotiations. If an agreement was reached, it could be expressed in a pre-agreement document, subject to the writing of the final closing agreement with the corresponding formalities once the system is reinstated.

Since April 27th, 2020 pre-trial mediations can take place by electronic means, videoconferences or other analogous means of voice/image transmission, coordinated with e-mails and phone calls, taking the necessary measures as regards the identity of the participants involved.

BRAZIL



Paulo Lins e Silva



PAULO LINS E SILVA ADVOGADOS

Attempts are being made, but their practical implementation is very complicated. Until it is requested electronically and an objective decision is made to put these alternatives into practice, in addition to the eventual organization of these meetings, more than 30 days elapse, before anything is concretely achieved. This makes the parties impatient and impairs the good relationship with their children.

MEXICO



Alberto Roman Palencia

**ROMÁN
CASTAÑEDA**
— ABOGADOS —

Alternative methods are not used now. Some attorneys have attempted to conduct private mediations with interested parties electronically, but the court's alternative justice center (which has them) is also closed. No agreement can be signed or approved through the courts, but it can be ratified before certified mediators or public notaries to attest to the will and commitment of the parties concerned.

Those are very exceptional cases.

CANADA (Ontario)



Howard S. Simmons



There are starting to be some mediations by video conferencing. There are not many now, but this may change the longer there is a problem. This has so far had a minor effect on the slowdown.

5. HAVE YOU OBSERVED CHANGES IN YOUR RELATIONSHIP WITH CLIENTS AND WHAT TOOLS CAN BE USED?

CHILE



Daniela Horvitz

HORVITZ
Y COMPAÑIA LIMITADA

New consultations have decreased in maybe a 30%. Meetings take place by zoom and personal mobiles phones and whatsapp become the regular way to communicate.

ARGENTINA



Federico Prus

Estudio Juridico Dr Prus

Even though the video conferences through different means –WhatsApp, Zoom, etc.– allow for a direct contact, avoiding wasting time moving to the place of the meetings, the truth is that human proximity is lost, reducing the spontaneity and fluency in the relationship with the client.

BRAZIL



Paulo Lins e Silva



PAULO LINS E SILVA ADVOGADOS

In our firm, we are working remotely, on “home office” basis. Employees are taking turns, going to the office when necessary. Even when the staff is not present, the electronic telephone answering system remains turned on 24 hours a day. The WHATSAPP channel is being frequently used, as well as e-mails or appointments by SKYPE. We try to provide personal assistance to clients, but the daily routine of service and new clients’ demands are greatly reduced.

MEXICO



Alberto Roman Palencia

**ROMÁN
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No, there have been no changes with them, except the possibility of maintaining electronic communication and not face-to-face, through the use of computers, cell phones and video conferences.

CANADA (Ontario)



Howard S. Simmons



Yes, many clients are more understanding, more appreciative and less demanding. Also, the lawyer has more time available. Some other lawyers are more reasonable to deal with. Some clients like using video conferencing as it saves time coming to your office.

6. WHAT DO YOU THINK THE CONSEQUENCES OF THIS CRISIS WILL BE ON THE PRACTICE OF FAMILY LAW LAWYERS?

CHILE



Daniela Horvitz

HORVITZ
Y COMPAÑIA LIMITADA

We will be forced to have a more negotiated approach to the cases, since courts will have enormous delays.

In one hand we will have tons of cases to decrease child support and alimony and in the other hand probably much more divorces than in a regular period but with hard times to get a good financial agreement.

ARGENTINA



Federico Prus

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As in every crisis, there also appear positive elements and attention is drawn to the shortcomings that need to be remedied. In every-day practice, the technological tools could be adopted to make the contact between client-attorney more fluent; also the contact between the judicial system and the mediators could be improved, so that other parties that might not be present, such as teenagers, can be involved or to require the opinion of other professionals or expert witnesses, such as doctors, psychologists or accountants in a specific moment of a hearing or mediation.

Moreover, I hope it is also useful to improve the system of electronic judicial files, in a more secure way so as to ensure transparency and dynamic, shortening the conflict resolution time periods.

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Paulo Lins e Silva



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It is hard to give a precise answer. We do not yet know the duration of the pandemic and the risks of contamination. The family is the oldest fundamental institution of the human society. Families will always exist and, as a result, so will Family Lawyers, constantly working to assist and to resolve all cases of conflicts that arise. The specialization will initially suffer a need for adaptation, but later it will return with at full speed. At the international level, we see that all lawyers devoted to this field (the most human of all areas of Law practice), remain in permanent contact, exchanging ideas and providing mutual assistance in their respective jurisdictions.

MEXICO



Alberto Roman Palencia

**ROMÁN
CASTAÑEDA**
— ABOGADOS —

There will be a collapse in the courts of law. The judiciary has not worked on the cases that existed and the previous lag, which is a lot, and that is going to increase it with the number of new claims and with the large number of claims for non-compliance with previous proceedings. A historic opportunity to equip courts with technological tools; prepare the systems for online trials; and to resolve the backlog and be prepared for the resumption of judicial activities, has been missed.

CANADA (Ontario)



Howard S. Simmons



Now there is enormous delay. When the problem is over, the courts will be overwhelmed with the backlog.

There will be more video conferencing of court cases where there are only documents, not witnesses. Longer the problem lasts the more video conferencing will take place.