

Draft Regulations

Draft Regulation

An Act to promote access to justice in family matters (2012, chapter 20)

Regulation

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the application of the Act to promote access to justice in family matters, appearing below, may be made by the Government on the expiry of 45 days from this publication.

The draft Regulation follows the Act to promote access to justice in family matters (2012, chapter 2), which was assented to on 15 June 2012. It is intended to provide for the application of the provisions of the Act relating to SARPA, the child support recalculation service established within the Commission des services juridiques pursuant to the Act.

More specifically, the draft Regulation sets out the case in which an application may be made to SARPA, the application procedure, the information and documents needed for the recalculation that must be provided in support of the application, and the information and documents that may be required from the other parent by SARPA when the application is made by only one of the child's parents. It also specifies the procedure for withdrawing a recalculation application.

The draft Regulation sets out the rules to be used to determine the annual income of a parent who fails to provide SARPA with the necessary information and documents.

In addition, the draft Regulation determines the persons, departments and organizations that SARPA may consult to verify the accuracy of the information or documents provided by a parent for the purposes of the child support recalculation.

The draft Regulation specifies the cases and circumstances in which SARPA cannot recalculate child support, unless there is an agreement between the parents. It also sets out the terms of recalculation, the form of the recalculation notice and the documents that must be attached to the notice.

Lastly, the draft Regulation fixes the fees payable by the parents, in the proportion and according to the terms prescribed, for a child support recalculation. It determines the cases in which a parent may be dispensed from payment and the cases in which and the extent to which the Commission des services juridiques may reimburse a fee paid by a parent.

To date, study of the matter has shown no financial impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Pierre Tanguay, Direction des orientations et politiques, Ministère de la Justice, 1200, route de l'Église, 9^e étage, Québec (Québec) G1V 4M1, telephone: 418-646-5580, extension 20197; fax: 418-646-4894.

Any person wishing to comment on the draft Regulation is requested to submit written comments, before the expiry of the 45-day period, to the Minister of Justice, 1200, route de l'Église, 9^e étage, Québec (Québec) G1V 4M1.

BERTRAND ST-ARNAUD,
Minister of Justice

Regulation respecting the application of the Act to promote access to justice in family matters

An Act to promote access to justice in family matters (2012, chapter 20, ss. 2, 4, 5, 8 to 11, 16 and 19)

CHAPTER I PRELIMINARY PROVISIONS

1. In this Regulation, "SARPA" refers to the child support recalculation service established within the Commission des services juridiques pursuant to the Act to promote access to justice in family matters (2012, chapter 20).

2. For the purposes of this Regulation, "child care expenses", "post-secondary education expenses", "special expenses", "annual income", "disposable income" and "custody time" have the meaning given in the Regulation respecting the determination of child support payments (chapter C-25, r. 6).

In addition, the child support determination form referred to in this Regulation is the form in Schedule I to the Regulation respecting the determination of child support payments.

CHAPTER II

APPLICATION FOR RECALCULATION

DIVISION 1

ELIGIBILITY

3. An application for the recalculation of child support may be made to SARPA provided that

- (1) the child support is payable for a minor child;
- (2) the child support was granted by way of a judgment;
- (3) the child support was determined pursuant to the guidelines applicable in Québec under the Order Designating the Province of Quebec for the Purposes of the Definition “applicable guidelines” in Subsection 2(1) of the Divorce Act (SOR/97-237);
- (4) the child support has not been increased or reduced by a court pursuant to article 587.2 of the Civil Code to take account of the value of either parent’s assets or the extent of the resources available to the child, or to take account of the hardship that the payment of support would entail for either parent;
- (5) the child’s parents ordinarily reside in Québec;
- (6) the disposable income of the child’s parents does not exceed \$200,000;
- (7) the income of either of the child’s parents has not been established by the court pursuant to article 825.12 of the Code of Civil Procedure (chapter C-25);
- (8) the annual income of either of the child’s parents is not below the annual income taken into account to determine the child support to be recalculated because of maternity or paternity leave, adoption leave, sabbatical leave, leave without pay, leave with deferred pay, an alternative work schedule, a resumption of studies, retirement, a change of career, or a voluntary relinquishment of employment occurring since the last judgment determining child support or, if more recent, since the last recalculation;

(9) an agreement has been reached or, when the application is made by only one of the child’s parents, will be reached between the parents in the cases and in accordance with the procedure set out in this Regulation;

(10) no pending case between the parties could have an impact on the child support; and

(11) no judgment has suspended the payment of child support.

4. An application for recalculation may be made by only one of the child’s parents, subject to the information and documents obtained from the other parent by SARPA.

DIVISION II

PROCEDURE FOR MAKING AN APPLICATION

5. An application for recalculation is made to SARPA on the date or dates determined by the court. In the absence of such a date, the application may be made, each year, on the anniversary date of the last judgment determining child support or, if more recent, on the anniversary date of the last recalculation. An application may also be made, within one year, in response to a recalculation notice containing a clerical error or calculation error, or in response to a change in the situation of the parents or of their child.

6. The application for recalculation must be made in writing and sent to SARPA via its website or filed with a legal aid office, by both of the child’s parents or by the parent making the application.

The application is deemed to be made on the date on which SARPA receives the application and all the information and documents that must be provided in support of the application.

DIVISION III

INFORMATION AND DOCUMENTS REQUIRED FOR RECALCULATION

7. The information that must be provided in support of an application for recalculation and the information that may be required from the other parent by SARPA, when the application is made by only one parent, is

- (1) the name and address of the child’s parents;
- (2) the name and date of birth of the child; and
- (3) the information needed to complete the child support determination form for the year during which the application for recalculation is made and for the preceding year if the income of either of the child’s parents increased during that year.

The documents that must be provided and the documents that may be required, except if they are already in SARPA’s possession, are

(1) the documents that must be provided with the child support determination form for the year during which the application for recalculation is made and for the preceding year if the income of either of the child's parents increased during that year;

(2) the statement in respect of applications relating to an obligation of support that each party is required to provide pursuant to article 827.5 of the Code of Civil Procedure;

(3) the last judgment determining child support and the child support determination form used by the court to determine child support, unless the judgment was made before 1 December 2012 and the form is not available; and

(4) the agreement between the parents, if such an agreement is required pursuant to this Regulation.

8. The information and documents needed for the recalculation is sent to SARPA using any means of communication.

9. SARPA may verify, with a parent's employer, the Ministère de l'Emploi et de la Solidarité sociale, the Agence du revenu du Québec, the Société de l'assurance automobile du Québec, the Régie de l'assurance maladie du Québec or the Commission de la santé et de la sécurité du travail, as the case may be, the accuracy of the information or documents provided by a parent for the recalculation.

DIVISION IV

ANNUAL INCOME OF A PARENT WHO FAILS TO PROVIDE INFORMATION OR DOCUMENTS

10. For the purposes of the recalculation, the annual income of a parent who fails to provide SARPA with the information or documents needed to determine annual income is the higher of the amounts obtained

(1) by increasing by 15% the annual income of the parent taken into account to determine the child support for which the recalculation is requested or, if more recent, the annual income reported to the other parent during an exchange of information under article 596.1 of the Civil Code; or

(2) by indexing annually the most recent of the incomes referred to in paragraph 1 by twice the rate of increase in the Pension Index determined under the Act respecting the Québec Pension Plan (chapter R-9), from 1 January of the year following the year to which the income relates to 1 January of the year during which the application for recalculation is made.

DIVISION V

RECALCULATION BY AGREEMENT

11. SARPA may not recalculate child support if the income of either of the child's parents is below the income taken into account to determine the child support for which the recalculation is requested by reason of a strike or lock-out occurring since the last judgment determining the child support or, if more recent, since the last recalculation, except if the parents agree on the income resulting from the decrease.

12. SARPA may not recalculate child support if the income of either of the child's parents includes benefits granted under a statutory pension plan that have decreased since the last judgment determining child support or, if more recent, since the last recalculation, except if the parents agree on the amount of the benefits.

13. SARPA may not recalculate child support if the income of either of the child's parents includes a salary from an enterprise, partnership, association or trust of which the parent is a director, senior officer, partner, trustee or majority shareholder, except if the parents agree on the amount of the salary.

The same applies if the parent's spouse, or a person who is a relative or allied of the parent or spouse, including a de facto union, up to the degree of cousin-german inclusively, is a director, senior officer, partner, trustee or the majority shareholder.

14. SARPA may not recalculate child support if the income of either of the child's parents includes income other than a salary, support paid by a third party and received for one's own needs, employment insurance benefits, parental insurance benefits or other benefits granted under a statutory pension or compensation plan, except if the parents agree on the amount of the income.

15. SARPA may not recalculate child support if, at the time of the judgment determining support, the parents agreed on a level of child support that departs from the level which would be required to be provided under the rules provided for in the Regulation respecting the determination of child support payments, except if the parents agree to allow SARPA to recalculate the child support on the basis of those rules.

DIVISION VI

APPLICATION FOR WITHDRAWAL

16. An application for withdrawal must be made in writing and sent to SARPA via its website or filed with a legal aid office, by both of a child's parents or by the parent making the application.

CHAPTER III RECALCULATION

DIVISION I RECALCULATION TERMS

17. SARPA recalculates child support taking into account the expenses granted by the court for the child or, if more recent, the expenses taken into account by SARPA at the last recalculation. However, if there is an agreement between the parents to change the amount of the expenses or if the amount of the expenses must be changed because of the withdrawal, addition or modification of an advantage, subsidy, deduction or tax credit having an impact on the expenses, SARPA adjusts the child support taking into account the amount of the expenses as agreed on by the parents or as changed.

SARPA also recalculates the child support for a child taking into account the custody time granted by the court to each parent or, if more recent, the custody time taken into account by SARPA at the last recalculation. However, if there is an agreement between the parents to change the custody time, SARPA recalculates the child support taking into account the custody time agreed on by the parents, provided that the agreement between the parents does not change the type of custody and that the determination or last change of custody time is based on an agreement between the parents that was the subject of a judgment or that was taken into account by SARPA at the last recalculation following such a judgment.

DIVISION II RECALCULATION NOTICE

18. The recalculation notice from SARPA contains the following information:

- (1) the name of the child's parents;
- (2) the number allocated by SARPA to the application for recalculation;
- (3) the number of the court record;
- (4) the date of the notice;
- (5) the amount of child support following the recalculation, including, where applicable, the expenses for the child taken into account by SARPA in making the recalculation; and
- (6) the date on which the recalculation takes effect.

The child support determination form used by SARPA to recalculate child support must be attached to the notice.

CHAPTER IV FEES PAYABLE, EXEMPTIONS AND REIMBURSEMENTS

19. Subject to the exemptions provided for in section 16 of the Act and section 20 of this Regulation, the fees payable for the recalculation of child support are \$275. The fees are charged by SARPA in equal shares to both parents of the child when both parents apply for recalculation.

The fees are payable as of the day on which the parents are notified by SARPA that it can proceed with the recalculation of child support, or, when the application is made by only one parent, as of the day the parent is notified by SARPA that it can proceed with the recalculation subject to the information and documents obtained from the other parent. The fees must be paid within 20 days of the notice, failing which a new application must be made to SARPA, according to the procedure prescribed by this Regulation.

20. No fee is payable under this Regulation when the application for recalculation is made in response to a recalculation notice containing a clerical error or calculation error that is not rectified within 30 days of the date of the notice, provided that the application is made within 90 days of the date of the notice.

21. The Commission des services juridiques reimburses half of the fees paid by a parent when the application is made by only one parent and SARPA notes, after examining the information and documents obtained from the other parent, that it cannot recalculate the child support because the recalculation applied for requires a judicial assessment.

The Commission also reimburses half of the fees paid by a parent when SARPA notes, following a change in the situation of the parents or of their child, that it cannot recalculate the child support because the recalculation applied for requires a judicial assessment.

CHAPTER V FINAL PROVISION

22. This Regulation comes into force on the date of coming into force of sections 1 to 28, 42, 45, 51, 53 and 56 of the Act to promote access to justice in family matters (2012, chapter 20) or, if they come into force on different dates, on the last such date. However, it may only apply to child support payable following a divorce from a date that cannot be earlier than the date on which the agreement provided for in section 25.1 of the Divorce Act (R.S.C. 1985, c. 3 (2nd Supp.)) is entered into.