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# Homologation Assistance Service - HAS

## CUSTOMER GUIDE

2020 - ENGLISH VERSION

 **AIDE  
JURIDIQUE DE  
MONTRÉAL | LAVAL**  
Centre communautaire juridique de Montréal

## 1 - WHAT IS THE HAS?

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The HAS is a legal service available within Legal aid which allows parents to request the mutually agreed-upon modification of a preexisting judgment concerning family matters (i.e., child custody, child access rights, child support, or child support and alimony).

This service, available to all parents regardless of income, is available at a low fee, rendered within a short delay and without having to go to court, therefore allowing better access to justice.

This service has been available since October 10, 2013, and is offered at Legal aid offices across Quebec.

## 2 - WHO CAN BENEFIT FROM THE HAS?

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To benefit from the HAS, candidates must meet the following criteria

You hold a Superior Court judgment (Family Division) of which you are the concerned parties. This judgment, rendered by a judge or special clerk, must pertain to custody of children who are minors, access rights, child support, or child support combined with alimony paid to a spouse or former spouse.

### PLEASE NOTE

If the judgment pertains to the payment of alimony, in the absence of payment of child support, you cannot benefit from this service.

You and your spouse agree to the modifications to be made to the existing judgment.

Your agreement conforms to laws and regulations, particularly with respect to the Child Support Guidelines. An agreement that does not adhere to laws and regulations may be refused in court.

### PLEASE NOTE

Only parents who agree on the modifications to be made to the judgment may benefit from the HAS. In the event of a disagreement, the process of the service cannot be completed.

### 3 - EXAMPLES OF ADMISSIBLE HAS SITUATIONS

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#### The parties hold a judgment rendered by a judge at the Superior Court.

On November 19, 2010, following a hearing, a judge determines that the parties, who were common-law partners, would share custody of their 7 year-old child. The mother would have to pay child support to the father since her income was \$75,000 and the father's was \$55,000. In October 2013, the child who was now 10 years old, requested that his father have exclusive custody of him, and that the mother's access rights be determined amicably between his parents. The parties accepted to come to an agreement to this effect.

#### The parties hold a judgment from a special clerk who homologated their agreement.

On May 14, 2012, the parties, who were common-law partners, asked the special clerk at the Civil Practice Division of the Superior Court to homologate the agreement that was reached between them during mediation sessions. The consent stated that custody of their two children, ages 4 and 6, would be granted to the mother, and the father, who was unemployed and without income, would not have to pay child support. In September 2013, the father found a job that paid him a gross annual salary of \$40,000, and the mother decided to return to school to pursue her studies. The parties agreed to exercise joint custody and the father would pay child support in accordance with the model established by the Regulation Respecting the Determination of Child Support Payments.

#### The parties are divorced.

On November 19, 2010, the parties, who had been married for six years, obtained a divorce judgment in which custody of their two children, ages 15 and 17, was granted to the mother, and extended access rights were granted to the father. Child support payments were in accordance with the model established by the Regulation Respecting the Determination of Child Support Payments. In November 2013, one of the children, who had reached the age of majority since the original judgment, was no longer a dependent since he worked full-time and lived in an apartment with his girlfriend. The parties agreed to modify the child support and establish support payments only for the second child, who had also reached the age of majority, but was still a full-time student.

#### PLEASE NOTE

When an agreement implicates the cancellation of support payments for a child who is over the age of majority and financially independent, said child must also sign the agreement as a former recipient of support.

The parties are divorced.

On November 20, 2001, the parties obtain a divorce judgment in which it is ordered that the wife pay monthly alimony of \$625 to the husband and monthly child support payments of \$500 for their minor child.

On November 20, 2013, both parties agree to modify the child support payments for their minor child and to cancel the alimony payments since the ex-husband is now financially independent.



#### 4 - HOW DO I ACCESS THE HAS OFFERED BY LEGAL AID?

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You must make an appointment at the Legal aid office that serves your place of residence in your local region and sector.

Before making an appointment, it is recommended to complete the necessary information form (Form H – Application for assistance in homologation of an agreement) to have the eligibility of the case verified. This form is available online via the website of the [Commission des services juridiques \(CSJ\)](#) under the tab Legal labeled « Homologation / Documents», or in person at legal aid office.

#### 5 - WHAT DOCUMENTS ARE REQUIRED?

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- A copy of the judgment you wish to modify.
- The joint child support determination form (Schedule 1) which was used to calculate support payments.
- Parties who wish to verify their financial eligibility for legal aid must provide proof of employment, income, liquid funds and assets.
- The duly completed Form H – Application for assistance in homologation of an agreement. This form is available online via the website of the [Commission des services juridiques \(CSJ\)](#) under the tab [Legal](#) labeled « Homologation / Documents», or in person at legal aid office.

#### PLEASE NOTE

In order to expedite the application process, make sure to have all necessary documents in hand during your appointment with the legal aid lawyer.



## 6 - HOW DOES THE HAS WORK?

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The HAS can be ensured by a permanent legal aid lawyer.

During your appointment at the Legal aid office, you will complete a Legal aid request form, and a Legal aid lawyer will determine the eligibility of your file to HAS. To this effect, you must have all necessary proof/documents in hand at the time of your appointment.

The lawyer responsible for your file will ensure that the clauses of your modified agreement respect laws and regulations, particularly with respect to the Child Support Guidelines. Should the legal requirements not be met, the lawyer will warn you if it is unlikely that your agreement will be homologated in court within the HAS framework.

Once it has been ascertained that the agreement fulfills court standards, particularly with respect to the Child Support Guidelines, the lawyer responsible for your file will draft your agreement and attach it to the joint application for homologation along with the other required documents.

Documents will be sent to the Registry of the Court and remitted to the special clerk who will homologate the agreement. Once homologated, the agreement becomes the new judgment in effect for all concerned parties.

The Court Registry will send a copy of the judgment to the lawyer responsible for the file, who will then forward it along to concerned parties. In addition, the new judgment will be sent by the Registry to the Department of Child Support within Revenu Quebec, who is responsible for the collection of child support when the parties do not opt for the exemption provided for in regulation.

### PLEASE NOTE

If one of the two parties receives last-resort financial assistance (welfare), a notice must be sent to the Ministère de l'emploi et de la solidarité sociale a minimum of ten (10) days prior to sending the documents to the Registry of the Court. The lawyer responsible for the file will be the one to forward the agreement to the Ministère. The Ministère representative may be opposed to the homologation if, for instance, the agreement involves a cancellation of arrears that are owed to the Minister.

## 7 - EXAMPLES OF SITUATIONS WHERE THE LAWYER RESPONSIBLE FOR A HAS FILE MUST REFUSE ACCESS TO THE HOMOLOGATION SERVICE.

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The parties agree to stray from the model established by the Regulation Respecting the Determination of Child Support Payments.

### EXAMPLE 1

The parties agree that the paying parent who has an annual income of \$35,000 will not pay child support for the two minor children since the receiving parent has an annual income of \$40,000 and receives Canada Child Tax Benefits as well as Quebec Child Assistance benefits. Based on the model established by the Regulation Respecting the Determination of Child Support Payments, the parent that assumes custody of the children must receive child support.

### EXAMPLE 2

The parties wish to change the exclusive custody rights of the mother to joint custody instead, alternating every week. The mother's annual income is \$25,000, while the father's is \$50,000. The parties agree that no child support will be paid to the mother by the father since they are exercising joint custody. According to the model established by the Regulation Respecting the Determination of Child Support Payments, the father should pay child support to the mother.

### PLEASE NOTE

In order to establish a support payment that differs from the amount listed on the model established by the Regulation Respecting the Determination of Child Support Payments, serious reasons must be provided in order for the Court (special clerk) to accept. The Law offers the possibility to stray from the model if the paying parent (debtor) has other dependent children. This parent must prove that the support payment listed on the model will cause him/her financial difficulty.



## 8 - WHAT ARE THE COSTS FOR THE HAS?

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The service costs \$558, comprised of \$400 for judicial fees and \$158 for legal costs. Judicial fees are imposed by the Minister of Justice and are indexed on January 1st of every year, as of January 1, 2020.

Both parties must equally cover the cost, be it \$279 each.

The individual who is entitled to Legal aid does not have to cover any part of the cost. The individual who is entitled to Legal aid with contribution will pay the amount of his/her contribution if this is less than \$279 or the full rate of \$279 if the contribution is greater than this amount.

## 9 - WHAT HAPPENS IF THE PARTIES NO LONGER AGREE?

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If there is discordance, the HAS is no longer available to you. You must return to court and file a new motion to obtain a modification to the existing judgment.

### PLEASE NOTE

If there is a dispute, the lawyer who consulted with you and your former spouse for the HAS cannot represent either party in the future since the lawyer would find himself/herself in a conflict of interest.

## 10 - IS THERE ANY OTHER ADMINISTRATIVE SERVICE AVAILABLE FOR THE MODIFICATION OF CHILD SUPPORT?

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The SARPA (Service administratif de rajustement des pensions alimentaires pour enfants) is Quebec's child support recalculation service. It allows the modification of child support for minor children only, and thus, even if there is no agreement reached between both parents. Access to this service has been available since April 1, 2014.



## AVAILABLE RESOURCES

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[Legal Services Commission](#)

[Aide juridique de Montréal | Laval](#)

[Quebec Bar](#)



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