



legal aid

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## Legal Brief\*

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### SHARED CUSTODY, SO NO SUPPORT TO PAY?

Raphaël and Maude lived together without being married and a child, Alice, was born from their relationship. When Alice was only 3 years old, her parents separated. Raphaël moved not far from the daycare and, after some discussion, the parents agreed to share custody of Alice equally. Maude agreed to pay support to Raphaël to help him out, because he earned less income than she did.

Four months later, a friend informed Maude that in cases of shared custody, no support needs to be paid. She therefore stopped making payments. Raphaël then went to the legal aid office nearest his home and consulted a lawyer who explained certain principles:

- Support is a personal right that belongs to the child. The custodial parent or the person to whom custody is delegated may apply for support for the benefit of the child;<sup>1</sup>
- Generally, a parent cannot refuse support for the benefit of a child in his or her custody;<sup>2</sup>
- The support for Alice will be established in accordance with the *Regulation respecting the determination of child support payments* (hereinafter the "Regulation"), which applies to all applications concerning the obligation of support owed by parents to their minor child.<sup>3</sup> It establishes a minimum contribution based on the custody time, the number of children involved and the parents' disposable income.

In Alice's case, support must be established, even if there is shared custody, because the parents' income is not identical. The lawyer also explained the following:

- The support covers the child's basic needs: food, accommodation, communications, housekeeping, personal care, clothing, furniture, transportation and leisure activities;<sup>4</sup>
- The support established in accordance with the Regulation is presumed to match the child's needs, but it may be adjusted to reflect certain special expenses required by the child's situation.<sup>5</sup>

Now that the parents have been properly informed about the rules for determining support, they arrive at an amicable agreement that is confirmed by the court and provides for support payable to Raphaël for Alice's needs.

Each situation is different; consulting a lawyer will allow you to find the best possible solution. We therefore invite you to go to the legal aid office closest to your home.

1 Droit de la famille – 152871, 2015 QCCS 5345

2 Droit de la famille - 2934, (C.S., 1998-01-30)

3 Section 1 of the *Regulation respecting the determination of child support payments*, CQLR c C-25.01, r 0.4, <<http://canlii.ca/t/52w4t>> consulted on 2016-05-24

4 Droit de la famille - 152464, 2015 QCCS 4567

5 Articles 587.1 and 587.2 of the Civil Code of Québec, CQLR c CCQ-1991, <<http://canlii.ca/t/52l01>> consulted on 2016-05-24

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\* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.