

What should I do if our child custody arrangements for the holidays are not working?

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It is common for separated or divorced parents to have a specific parenting schedule that governs their parenting time with their children over the Christmas holidays each year. For example, some parents follow their regular parenting schedule but ensure that both parents have parenting time on either Christmas Day, or sometimes Christmas Eve or Boxing Day.

Other parents split the schedule - with one parent having parenting time for the first week of the holidays and the other parent taking on the second week. This allows children to spend time (and make holiday memories) with each of their parents during these special times. Many divorced parents take a flexible approach to their parenting schedule over the holidays, so they are able to communicate with each other to make plans for their children and to account for other family commitments that change year-to-year.

Before significant changes to the family law legislation occurred a few years ago, parents who were unhappy with their parenting time over the holidays could file a “motion” (i.e. request) with the Court to seek specified time with their children. A Judge would then hear the motion and make an order regarding the parenting schedule for the said period.

The option to file a motion and have a Judge decide the parenting holiday schedule is no longer an option since the changes to the family law legislation came into effect. Under the current legislation, a Judge can only hear a motion regarding parenting matters in case of an emergency, such as when a child is in danger of harm, or when a child has been removed from the province without the consent of the other parent. A disagreement regarding the Christmas holiday parenting schedule is not grounds for an emergency motion.

A Judge may make an order with respect to the Christmas holiday schedule at the conclusion of a trial. A Judge may also suggest that parents follow a certain parenting schedule over the Christmas holidays if the parents are far along in the family court process to participate in a case conference with a Judge. However, for parents who are not at that stage, the only way to address issues regarding the Christmas holiday parenting schedule is directly with the other parent, or through lawyers.

If you and your co-parent have not yet engaged lawyers or the family court system, and if you are comfortable doing so, you can talk with your co-parent directly to see if you can agree upon changes to the Christmas holiday parenting schedule. You can confirm the agreed upon arrangements through emails or text messages exchanged between the two of you.

If you have already engaged lawyers, you should talk to your lawyer about what you would like to see for a parenting schedule over the Christmas season so that they can incorporate the issue of the holiday parenting schedule into the overall discussions and negotiations with your co-parent's lawyer. Since it is no longer an option to have a Judge decide the holiday parenting schedule, you should raise any concerns you have about the schedule well in advance of the Christmas holiday season so that you and/or your lawyers have time to work out arrangements.

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