



Family Law Mediation/Arbitration

as of May 2025

Ken aims to provide a process which is faster, flexible, less expensive, less frustrating, and less arbitrary than court. By hiring Ken, your matter will be decided by the instructor of the University of Alberta Faculty of Law's Advanced Family Law course, rather than a judge who might not have any family law experience.

Mediation is where Ken is a neutral facilitator who guides the conversation, helps brainstorm options, provides neutral legal information, and if asked, provides a rough preliminary opinion. **Arbitration** is where Ken makes a decision as a court would. **Med-arb** is the combination of both: we first try to resolve a dispute through a group discussion, and then Ken decides any remaining issues. Med-arb tends to be the most satisfying process as it helps to keep you in control of your lives, and only has Ken make decisions where absolutely necessary, providing finality. Med-arb also helps to reduce the cost of arbitration by limiting the number of issues Ken is asked to decide.

About Ken Proudman

Ken is a partner at BARR LLP. During the day, he leads the firm's Family Law Department. At night, he teaches the Advanced Family Law course at the University of Alberta Faculty of Law. He also teaches a course at MacEwan University's School of Business. He has taught hundreds of lawyers through dozens of seminars, and several manuals and publications which he has written for lawyers. He has received arbitration training from the ADR Institute of Canada, and mediation training from the Legal Education Society of Alberta.

Cost

We recognize that one of the historical barriers to arbitration has been the cost. In order to address that barrier, Ken aims to provide the option of a flat rate for most matters. For example, for simple separations where everyone has a lawyer and everyone agrees to certain relaxed procedural rules for a one-day hearing (or one day of combined mediation and hearing in the case of med-arb), we've offered a flat fee of \$5000 plus GST paid by each spouse. That flat fee is subject to increases in scope, which are each listed very clearly in the Med-arb or Arbitration Agreement (for example, interim decisions and separate costs hearings are an additional fee).

We may not be able to offer a flat rate for matters where one or both spouses don't have a lawyer (because we typically have to spend more time guiding the process along), or for complex matters such as where there is a business involved, in which case Ken charges a reduced hourly rate. While his rate is ordinarily \$550 per hour plus GST and disbursements, he has reduced his mediation and arbitration rate to \$375 per hour plus GST. Where an hourly rate is used, the overall cost usually

depends primarily upon the number and complexity of issues Ken is asked to address, the volume of materials he is asked to read, and how often Ken is asked to address interim or procedural issues before or after the hearing. Costs may be minimized by agreeing to rules such as page limits, highlighting relevant portions of materials, the evidence being the contents of the briefs rather than each witness presenting their case in a hearing, and foregoing a court reporter.

Ken is able to minimize the cost by leveraging his existing knowledge and resources, for example he has compiled hundreds of pages of highly-organized notes about the law throughout his career, which helps him to quickly review applicable factors and address rare legal issues. He's also used to dealing with complex issues, as his ordinary practice outside of mediation and arbitration consists of divorces involving businesses, farms, complex property, or tax issues. We'll discuss the cost further when we have our initial teleconference.

Initial teleconference

The initial teleconference or video conference is an opportunity for us to address the process. We'll discuss what issues need to be resolved, timelines, which procedure to implement, and the anticipated cost. It can be helpful to come prepared to discuss what needs to happen prior to the hearing, such as what financial documentation you need from the other spouse/parent. We will then incorporate the chosen procedure, deadlines, and cost into an Arbitration Agreement or Med-arb Agreement. That Agreement will also address Ken's deadline to publish any decision, which is typically within a month after the hearing.

Optional: Chambers / Interim Decisions

Because the arbitration hearing and the release of Ken's decision will occur within a specified timeline, we can usually skip having to address interim decisions. However, if there are urgent decisions that can't wait, or procedural directions are required, we can address those interim issues.

We can tailor the process to the circumstances, for example having an informal videoconference conversation, conducting an appearance similar to a Regular Chambers application at the Court of King's Bench, or for simpler issues, having Ken determine them on the basis of brief letters/emails.

Optional: Mediation

In the case of med-arb, we can either schedule the mediation and arbitration on the same day, or split them into separate days where time is needed or there may be steps to address in the meantime. Mediation can continue until either spouse feels that we've reach an impasse.

One fairly popular approach is to only address the arbitration process if there are any remaining issues following mediation. That way we can tailor the process to what's left to address. It can also save costs by avoiding expert reports or more detailed Briefs if enough is resolved in mediation.

Arbitration hearing

The arbitration hearing is an opportunity for each of you to explain your evidence and position, highlighting any items or issues that you feel are important for Ken to pay particular attention to. Sometimes that's very short where there are already thorough briefs and you have nothing else to add, or it can be several days where there is a lot to respond to or clarify, or there are many questions for the spouses/parents or experts.

During our initial teleconference call, we'll discuss what this will look like, and then the process will be recorded in the Arbitration or Med-arb Agreement. Or, as discussed above, we may defer this to after mediation has concluded. While it's certainly possible to operate the arbitration similar to a trial, most spouses will instead agree to a relaxed procedure, as a full trial usually isn't necessary or cost-effective. That relaxed procedure might mean using written briefs with attachments, instead of affidavits, witnesses, and entering individual exhibits. It might mean we meet in a less formal manner to discuss each issue, and where questions can be asked informally rather than through an intense cross-examination. You may choose to forego the cost of a court reporter who would type a transcript. We might have any experts appear at the beginning of the hearing in case anyone has questions or simply be on-call, rather than have them explain the entire report, given that Ken has read many expert reports relating to family law. These issues are usually discussed at the initial conference.

While Ken isn't strictly bound by the rules of evidence, onuses continue to apply. For example, we expect each of you to exchange the necessary financial documentation where support or property division are at stake. Those who own or control a business will still be bound by the various onuses which they must meet. We recommend that you consult a lawyer if you do not have one. A directory of legal coaches can be found at www.AlbertaLegal.org

Ken is still bound by the laws which apply to family property division, support, and parenting. Ken isn't able to substitute his own personal morality, even if he dislikes a rule. Ken tries to decide as a judge would, except that upon agreement he can also weigh in on some tax or business issues which judges may not be able to address (although Ken is not a Chartered Business Valuator or accountant).

Communicating with Ken

Each spouse/parent, or their lawyers where they have hired counsel, must be part of any conversation with Ken. It is inappropriate to contact Ken regarding this matter without CC'ing the other lawyer or including them in the conversation (or the spouse/parent, if they don't have a lawyer). It is not appropriate to pass messages to Ken through his paralegal when the other lawyer is not CC'd. If you have questions before the other lawyer is involved, Ken can discuss procedure and costs with you, but do not tell Ken any of the facts, settlement discussions, or your arguments. Ken will not be able to discuss some topics without their involvement, as it's important that he maintains his neutrality.

Ken asks that you each be cognizant of his time and continue to attempt to resolve disputes between yourselves before contacting me. Even where Ken has provided a fixed quote, the Arbitration or Med-arb Agreement will set out specified circumstances where Ken may charge an additional amount, for example each time that Ken is required to make interim determinations or directions. While arbitration is intended to result in a significantly lower cost than trial, it may not be suitable for very high conflict disputes where a multitude of interim directions are sought, or letters are repeatedly written to the adjudicator. As Ken's focus is on financial issues, there are other arbitrators who can better handle high conflict parenting disputes.

Formalizing decision, non-compliance

An arbitration award is binding once Ken releases his decision. It is typically more difficult to appeal an arbitration award than a court decision.

There is a 2-year limitation period (deadline) to enforce the award which runs from service of the award or the expiry of appeal periods. In some cases, you may want to consider incorporating the terms into a court order, which the Arbitration Agreement might require that everyone do.

Sections 49 and 51 of the *Arbitration Act*, says that where there is notice of the application, the Court of King's Bench must give a judgment enforcing an arbitration award, save for some very limited exceptions such as where there is an appeal or one of the very rare conditions in sections 45 and 47 are met. It is generally not possible to oppose an arbitration award from being converted into a court order simply because a judge might have decided differently. The Covid-19 pandemic brought about a simplified written desk application process to convert an arbitration award into a court order: <https://www.albertacourts.ca/qb/resources/announcements/alternative-dispute-resolution-consent-orders-and-applications-to-enforce-arbitration-awards>

Ken is empowered by the *Arbitration Act* to make procedural directions, unless curtailed by the agreement of both spouses. That means that Ken can resolve most impasses, and make determinations designed to compel compliance (except incarceration).

We look forward to working with you both to bring your matter to a resolution.

A handwritten signature in blue ink that reads "Ken Proudman". The signature is written in a cursive style with a blue underline.