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An Introduction to British  
Columbia's Civil Resolution Tribunal

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## **Introduction**

This year, residents in British Columbia will have a new forum for resolving Small Claims (i.e. claims under \$25,000) and strata property disputes. The Civil Resolutions Tribunal (the "CRT") is an online dispute resolution forum that will allow participants access to legal services and tools with processes that focus on early resolution of cases through consensual agreements. The CRT was developed by the Ministry of Justice as part of the BC Government's Tribunal Transformation Initiative, which responded to data from a large public consultation. In particular, this dispute resolution model is intended to address the need for the quick and easy resolution of strata disputes, which can persist for a long time in the court system and cause community harm.

The CRT intends to provide parties with interactive information pathways, tools and a variety of dispute resolution methods including negotiation, facilitation and, if necessary, adjudication. It is designed to allow access to all of these services over the internet; however, it will still provide paper and phone-based services for those who do not have access to technology or who choose not to use it. The development of the CRT is ongoing and its evolution contemplates incorporating public feedback and involving an advisory council. The CRT represents an innovative change from traditional dispute resolution models and, as it develops, may eventually grow to be the primary forum for Small Claims and strata disputes.

### **Why was the CRT created?**

The goal of the CRT is to use technology and alternative dispute resolution to increase access to justice for British Columbians on certain matters. The CRT aims to find a way around the onerous processes of the traditional court system, which require citizens to finance court and legal fees, schedule time off work and incur additional costs such as childcare. It also addresses the problem of court accessibility for people who live in rural communities or have mobility issues making court house attendance difficult. The CRT envisages a solution to backlogs in BC courts by diverting a portion of Small Claims matters and strata disputes into this online forum. Small Claims matters and strata property disputes in BC can take several months if not years to resolve. The goal of the CRT is to have most issues resolved within 60 days.

With the CRT, there is a particular focus on having matters determined in a cost-efficient manner by individuals with a specific background and experience in the subject matter of the claim. As strata disputes present a unique situation in which the disputing parties share a common living space, the CRT recognizes the need for quick resolution by front loading the dispute resolution process to cultivate a respectful communal living environment. Currently, many strata matters must be heard in Supreme Court, sometimes causing the parties to invest substantial time and resources in a drawn out conflict with their neighbours.

In addition, the creators of the CRT specifically hope to address the problem of the high cost of accessing civil justice, which is often not proportionate with the litigation process and eventual outcome. Less than 3% of BC Supreme Court civil cases make it to trial and the cost of proceeding is often a determining factor for a party. When trials do occur, they may heard by decision-makers with limited or a fairly generalized knowledge of the subject matter.

The CRT process is intended to increase access to justice by limiting the cost for the parties involved. The aim is have the whole process, from beginning to end, cost an amount similar to the current filing fees for Small Claims in the Provincial Court. It is specifically designed to be user-friendly so that parties can take advantage of the system without the assistance of a lawyer.

### **How does it work?**

The first tool that is presented to a CRT user is the online Solutions Explorer. The Solutions Explorer is a free guided pathway that asks a series of questions about the user's problem. It then presents information and resources in order to assist that person with his or her dispute. For example, a party may input that he or she is claiming a debt owed. The Solutions Explorer may provide the applicable collections law in British Columbia, as well as a template demand letter to edit and send to the debtor. At the end of the process, the Solution Explorer will provide a summary of the person's claim, as well as recommendations for the next steps to take.

Once a person has navigated through the Solutions Explorer, he or she then has the opportunity to invite another party to engage in the dispute resolution process via the CRT platform. Normally, this would be in the form of sending an email to the other party. If the respondent decides to engage, the negotiation phase will be initiated. At this point, the CRT may provide some resources to assist the parties in their discussions, but it is generally a low intervention process.

If the negotiation is not successful, the parties enter a Case Management phase, in which they receive the help of an expert facilitator whose aim is to guide the parties in discussing their issues in order to reach a consensual agreement. The CRT will provide various platforms for this communication including email, text, phone and mail. If the parties come to an agreement, the facilitator can ask a tribunal member (adjudicator) to convert the agreement into a binding order of the tribunal, which can be enforced in court. As a result, the parties will not have to sue for breach of the agreement if the terms of the resolution are not carried out.

If the parties cannot reach an agreement at the Case Management phase, the facilitators role shifts to preparing the parties for adjudication. The facilitator will assist the parties in narrowing issues and organizing their claims. The dispute then falls into the hands of an arbitrator who will hear the parties' arguments, most often in written form. The arbitrator will consider the evidence and issue a binding decision, which is subsequently emailed to all parties involved.

The CRT's arbitrators will have specialized expertise in Small Claims or strata disputes. The tribunal will consist of mostly part-time tribunal members located all over the province. While most of these hearings will be in written form, telephone and video hearings will also be an available option.

### **Appeals**

The CRT's adjudicative process is very similar to that of other administrative tribunals. The CRT tribunal will be subject to the same procedural fairness requirements that govern all administrative tribunals. If a party is not satisfied with an arbitrator's decision, he or she has the option to appeal to either the Provincial Court or the B.C. Supreme Court depending on the subject matter of the dispute. For Small Claims matters, the appeal must be brought in front of the Provincial Court, at which point the parties will receive a trial *de novo* (a new hearing). The parties may face cost consequences for bringing an appeal on a Small Claims matter. For strata disputes, the dissatisfied

party may appeal to the BC Supreme Court, but only when he or she have been granted leave to do so. Finally, the appeal must be on a question of law.

## **Jurisdiction**

The CRT is voluntary for parties with Small Claims disputes as well as strata owners and tenants. The initiating party will have to choose whether he or she wants to use the CRT or the traditional court system. In order to continue using the CRT platform, both parties must agree to resolve their dispute using that forum. However, if a party decides to use the CRT to resolve a dispute with a strata corporation, the strata corporation will have no choice but to participate in the CRT process. As stated earlier, pursuant to the Amendments, it will be mandatory, after one year, to take strata disputes in the tribunal's jurisdiction and Small Claims under \$10,000 to the CRT platform.

The CRT's specific jurisdiction is as follows:

### *Small claims*

The CRT will have authority to handle matters up to \$25,000, including debt or damages, recovery of personal property, specific performance of an agreement relating to personal property or services, and relief from opposing claims to personal property.

### *Strata disputes*

The CRT will have jurisdiction to deal with a wide variety of matters relating to strata property including:

- non-payment of monthly strata fees or fines;
- unfair actions by the strata corporation or by people owning more than half of the strata lots in a complex;
- unfair, arbitrary or non-enforcement of strata bylaws (such as noise, pets, parking, rentals etc.);
- issues of financial responsibility for repairs and the choice of bids for services;
- irregularities in the conduct of meetings, voting, minutes or other matters;
- interpretation of the legislation, regulations or bylaws; and
- issues regarding the common property.

Significantly, there is **no monetary limit** to the authority to handle strata disputes.

The CRT does NOT have authority to deal with the following:

- certain claims such as:
  - claims over \$25,000;

- claims for defamation; and
- claims against the government;
- matters that affect land, such as:
  - ordering the sale of a strata lot;
  - court orders respecting rebuilding damaged real property;
  - dealing with developers and phased strata plans; and
  - determining each owner's percent share in the strata complex;
- significant strata issues:
  - appointment of an administrator to run the strata corporation;
  - orders vesting authority in a liquidator;
  - application to wind up a strata corporation;
  - allegations of conflicts of interest by council members; and
  - appointment of voters when there is no person to vote in respect of a strata lot.

## **Challenges**

Several challenges to this form of dispute resolution have been identified, both by the creators of the CRT and members of the legal community.

### *Technology*

Perhaps the most obvious challenge to the CRT platform is the technology requirement. In developing the CRT format, creators conducted a survey which showed that, among BC residents aged 18 to 34, smartphone ownership is nearly universal at 93%. For those aged 35 to 54, smartphone use was prevalent in 75% of the population with 93% having broadband connectivity. For those who do not wish to use technology or who do not have access to computer and internet services, the CRT will be able to provide telephone or paper-based services. In addition, some information will be available in video and audio format for those who have difficulty with written information. The CRT is also currently looking into ways to support participants for whom English is not a first language.

The CRT has also identified the risk of using online services in the event of a technology breakdown. The platform that is used by the CRT has been used successfully by private and public organizations, and the scale of the platform means that support and updates will be readily available in the event of a problem. Additional technology risk mitigation strategies include temporarily reverting to phone or paper-based services, triaging claims, and escalating claims to adjudication if necessary to avoid backlog.

### *Evidence*

There are issues that relate to evidence when disputes are heard solely through written submissions. It is not unreasonable to assume that many of the disputes, especially with respect to Small Claims, will involve "he-said/she-said" arguments. Determining credibility may pose a challenge in the beginning phases of the CRT model as communication is conducted over email and in writing. It may be that, unless a consensual agreement can be achieved, these cases will be destined for the adjudication stage. Even then, the adjudication process may require in-person hearings and video conferencing. The CRT does provide these tools; however, they seem to be the exception to the rule. Similar problems may arise with respect to physical and video evidence. It does not appear that the CRT has a process in place to facilitate the admission of these types of evidence.

### *Customer Satisfaction*

The CRT envisages that most claims will be resolved within a 60-day time frame. It will be interesting to see how litigants respond to having their claims resolved in such a short time. While drawn-out litigation can cause stress and inconvenience for the parties involved, there is also the possibility that litigants may feel that they did not get their "day in court" if their problems are handled in such a short amount of time. The short time frame may also prevent parties from being able to collect all available evidence in order to make out their case as this is often a difficult task that takes time. Since the process is free, there is very little to stop a party from launching an appeal if they do not like the tribunal's decision. In that respect, the CRT may become one more hurdle to overcome before a matter inevitably ends up in front of a court.

### *Restricted Lawyer Involvement*

There is also the concern that a person's legal rights may not be fully represented through this process. The Act restricts the ability of lawyers to represent clients before the tribunal unless they are granted prior permission. Section 20 of the Act allows for a lawyer acting for a child or person with impaired capacity or where the other party has permission to be represented by counsel.<sup>1</sup> The Canadian Bar Association BC Branch ("CBABC") has advocated for the repeal of this section, as it sets restrictions on parties' rights to legal counsel.<sup>2</sup> Simply because a matter is within Small Claims jurisdiction or is strata dispute does not necessarily mean it is not complicated. The initial stages of the dispute resolution process require litigants to read and interpret the legal information that is provided to them, which may create an imbalance amongst parties if legal counsel is not an available resource. Although about 90% of parties in Small Claims are self-represented, there may still be situations where a lawyer's involvement is appropriate and necessary.

While it may be in the public interest to reduce the cost of litigation, including lawyers' fees, this may not necessarily result in a more streamlined and efficient dispute resolution model. Often, the costs of litigation are a deterrent to frivolous claims. A party with a dispute is forced to step back and contemplate whether the cost of bringing a claim outweighs the potential reward. The CRT has the potential of becoming a place to vent dissatisfaction rather than waiting and considering whether to take the matter to a lawyer. In addition, since there are few cost consequences to continuing down

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<sup>1</sup> Sorensen, Jean, "BC lawyers worried about exclusion from new civil resolution tribunal," (September 2, 2013) Canadian Lawyer Magazine, online: <[www.canadianlawyer.com](http://www.canadianlawyer.com)>.

<sup>2</sup> Canadian Bar Association, "Civil Resolution Tribunal and Access to Justice-Concerns Remain," (March 11, 2015) CBABC, online: <[www.cbabc.org](http://www.cbabc.org)>.

the line of CRT processes, parties may have little incentive to settle their dispute at an early stage if they think there is a chance they can achieve a more favorable result through arbitration.

### *Strata Involvement*

The Civil Tribunal Amendment Act makes it mandatory that all strata property disputes be heard through the CRT after one year of its existence. This means that certain members of the strata corporation will have the responsibility of appearing before the tribunal. Strata councils may have to consider whether they designate someone to take on these cases and essentially partake in the practice of strata law.

### *Judicial Independence*

The CBABC is also concerned about the judicial independence that is provided by the CRT. In a recent publication, it stated:

"As the government moves funding and jurisdiction away from justice administered by independent courts, the public is being funneled into a process that relies on appointees of the government who are fulfilling adjudicative roles in deciding general civil claims matters, without actual judicial independence (security of tenure, a higher degree of administrative independence from government, etc.)."<sup>3</sup>

As a result, the CBABC recommended that the government repeal Bill 19 which proposed a complete switch from voluntary to mandatory application of the CRT process in small claims matters, unless an exemption is allowed to permit disputants to access a judicial court.<sup>4</sup>

## **Conclusion**

The development of the CRT will, without question, result in a major change in the handling of small claims and strata property disputes in British Columbia. These changes will be realized within a matter of months, with several trial cases already being run through the program, and a beta version of the Solutions Explorer available for public testing. It is to be expected that the format of the CRT will evolve in the initial years in which it is employed, as it responds to user and professional advisory feedback. The CRT will impact how residents of British Columbia access justice and it will likely set a precedent for similar models in other jurisdictions. As a result, it is important for lawyers and clients alike to understand the advantages and shortcomings of this new dispute resolution model, and how it can best serve their legal needs.

For more information, please visit us at [www.whitelawtwining.com](http://www.whitelawtwining.com) or contact:

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*