

BRIEFING NOTE

With the anticipated expansion of the Civil Resolution Tribunal (“CRT”) this year to small claim disputes, it is important for our insurer clients to be ready and able to respond to claims commenced in this alternative forum. The following sets out a brief overview of the CRT and how it may impact our clients, and claims brought against them, going forward.

A Brief Overview: Civil Resolution Tribunal

The Civil Resolution Tribunal (“CRT”) is the first online tribunal for resolving strata and small claims disputes. It was created in response to the overload in the judicial court system and the need for better access to justice. It provides an innovative and simpler way to resolve legal disputes in a timely and cost effective manner that is accessible 24 hours a day 7 days a week from by anyone and from anywhere that has an internet connection.

The Civil Resolution Tribunal Act (“CRTA”) establishes the CRT and sets out its jurisdiction to resolve strata property and small claims disputes. It was first enacted in 2015, and underwent significant amendments in July 2016 after much feedback and consultations. On July 13, 2016, the CRT began accepting strata property disputes for resolution and recently in November 2016, the rules and procedures of the CRT were promulgated to help the parties navigate their way through the CRT. On June 1, 2017, the CRT will begin accepting small claims disputes for resolution, which will coincide with the increase in the Provincial Court jurisdiction limits to \$35,000.

Since its introduction, over 200 parties have submitted online applications for strata dispute resolution with the CRT¹ and there has been three reported decision from the CRT. This, however, does not reflect the number of people that have utilized the free online resources offered by the CRT and the number of matters that may have been resolved prior to the tribunal hearing stage.

How does the CRT impact our clients?

It is important for clients to be familiar with the CRT as it is a further venue for parties to commence or defend a proceeding for damages. An order obtained from the CRT is the same force and effect as a court order and thus is similarly enforceable.

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¹ Shannon Salter, Chair of the CRT “The Civil Resolution Tribunal’s Next Steps”, BarTalk, February 2017 issue at p. 19

The CRT was originally intended to be mandatory for all claims falling within its jurisdiction; however, since its enactment (and amendments thereto), the mandatory requirement to commence a claim in the CRT was eliminated; in other words, a party still has the option of proceeding through the court system. However, once a claim has been commenced, a respondent must file a response to avoid facing a default order.

Currently, the jurisdiction of the CRT is restricted to strata property disputes; however, the small claims jurisdiction (including contracts, debts, personal injury, personal property and consumer claims) will be brought into force by June 1, 2017. Specifically, effective **June 1, 2017**, all small claims under \$5,000 **must** be filed in the CRT. Coinciding with this date, the Provincial Court jurisdiction will be increasing to \$35,000. This is described in the press release as “*the first phase of implementing the CRT’s small claims jurisdiction...*”² In other words, the rollout to accept small claims disputes will be done in several phases, likely with increasing jurisdiction amounts at each stage. There are no details yet (for example how this will affect ongoing cases where the amount sought in the Notice of Claim exceeds \$25,000). We will provide an update once more information becomes known.

If the Provincial Court jurisdiction increases to \$50,000, we anticipate that the CRT limits will also increase over time to match; or alternatively, the CRT may be used to divert and resolve small claims that are worth less than \$25,000 and small claims over \$25,000 will be dealt with at the Provincial Court level.

The CRT is currently in preparation for accepting small claims disputes. In doing so, it is in the process of hiring additional facilitators and resolution support clerks, creating free online legal resources for people with small claims disputes and developing/testing its online platform for small claims, Solution Explorer. It is also anticipated that new rules will be added to deal with small claims disputes.

The CRT Process: How does it work?

The CRT process is quite innovative and forward thinking in that entire process can be conducted almost fully online, at anytime, from anywhere, that has an internet connection. There may be exceptions where the CRT requires an in-person hearing; however, those are anticipated to be very rare. The majority of the CRT process is facilitated through email, telephone conferences, or video conference calls.

Once a claim has been accepted by the CRT, the claimant has **90 days** from date of issue to serve it on the respondents. Once served, a respondent has **14 days** to file and serve Dispute Response Form (and an Additional Claim Form to add other parties, if necessary)³ or risk a default order being sought against them.⁴

² <https://news.gov.bc.ca/releases/2017JAG0007-000693>

³ Rule 73, 74

⁴ Rule 80

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Once a claim has been commenced, the parties proceed through two phases: the facilitation phase and the tribunal hearing phase.⁵ During the facilitation phase, a facilitator is assigned to assist the parties with timelines, processes, communication, document production etc. They essentially work as a case manager on the file to move the file forward to either resolution or a hearing. Of interest is that a facilitator can also provide non-binding neutral evaluations on a dispute as well as views on how a tribunal may resolve it if it were to proceed to the tribunal stage.⁶

Currently, over half of the filed disputes are in the facilitation (mediation) phase and several parties have reached agreements with the help of a facilitator.⁷

If the parties are unable to resolve their dispute, the matter proceeds to the tribunal hearing phase and a Tribunal Decision Plan is prepared that sets out the issues, the evidence to be called, submissions, agreed statement of facts, deadlines for completion and exchange of information etc.⁸

Representation in the CRT

While the purpose of the CRT is to facilitate better access to justice to individuals that cannot afford legal representation, the rules specifically allow for representation, and in fact, provide a greater scope as to who can represent a party. If a party wishes to be represented by another person in the proceedings, they must file a Representative Request Form (“RRF”) with the CRT. The representative can be a lawyer, but that is not necessary. The purpose of the CRT is meant to be flexible so the representative can be a spouse, friend, claims handler, paralegal, articulated student etc.⁹

In this way, a claims adjuster for insured claims can maintain control over a claim and represent the insured in the CRT directly (with or without the assistance of a lawyer). This is particularly convenient for parties located outside of British Columbia since the online platform is not limited to normal business hours but can be logged in 24 hours a day, 7 days a week.

The Advantages of Proceeding through the CRT

The use of the CRT platform is meant to be flexible, economical, and informal with assistance by facilitators at each step of the way – something which is absent in the Small Claims court process.

Utilizing this alternative venue instead of proceeding through the formal court process has many advantages; most notably the fact that claims can be dealt with at any time, anywhere, and can be handled directly in house by the insurer on insured claims. This can result in significant cost savings on legal fees for small claim disputes.

⁵ Section 17 CRTA

⁶ Rules 82, 90 -95

⁷ Shannon Salter, *supra*

⁸ Rules 103, 104

⁹ Rule 40, 43

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In balance to the informality and flexibility the CRT provides, it is of interest to note that the CRT is not bound by the rules of evidence. In other words, the CRT can receive and accept any evidence, even if it would not be admissible in a court, so long as it deems it necessary, relevant and appropriate. When dealing with lay litigants, however, this has potential to create a document heavy file where the respondent may need to sift through multitudes of legally irrelevant documents; however, the use of the facilitator may minimize such issues.

Even where a claim is handled directly by a claims handler, there is still an opportunity for a lawyer to assist the claims adjuster, if needed, on discrete issues, without actually filing a RRF. For examples, lawyers can still be used to assist with legal analysis, the merits of the claim and settlement negotiations. An advantage to using a “helper” is that a party does not need to obtain approval from the CRT to use a helper nor does the party need to advise the CRT they have one.

Overall, given the greater flexibility and informality in the CRT process and the additional (free) legal assistance from assigned facilitators to help direct the parties towards resolution, we anticipate seeing an increase of claims initiated by lay litigants for small claim disputes - particularly as the monetary value of claims accepted by the CRT increases. Correspondingly, this also provides clients with more opportunity to minimize legal costs, handle claims directly, and seek legal advice on more discrete issues or on a limited retainer.



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