

i Opinions expressed in this report are those of the author and should not be taken to be those of The Legal Education Foundation.



Lawyers in British Columbia

How do lawyers feel about British Columbia's Civil Resolution Tribunal? Has it taken the bread out of their mouths?

Lawyers are certainly not encouraged by the CRT: the legislation that set it up creates a general rule¹ that the parties are to represent themselves in tribunal proceedings. There are exceptions for children and others with impaired capacity (though not for companies, who are expected to be represented by their directors). Legal representation may be permitted in the interests of justice and fairness. The CRT's rules² make it clear that it may give permission for a party to be represented by a practising lawyer (or someone supervised by a lawyer); by a relative or friend; or by another person with the tribunal's permission.

Shannon Salter accepted that lawyers were apprehensive when the tribunal first announced. Since then, the CRT has been trying to persuade the legal profession that it aims to increase access to justice rather than undermine the rule of law. "I think that, as public support has mounted, so too has support among lawyers. And I feel confident in saying that the vast majority of lawyers are supportive of the CRT."

As she pointed out, small claims and low-value strata disputes are not the sort of work for which it would be worth hiring a lawyer. "But the CRT does represent an opportunity for lawyers to provide unbundled legal services to their clients."

An unbundled legal service is one that has been separated from services that were traditionally supplied as part of a package deal. Take the example I discussed earlier of a seller trying to recover money owed by a purchaser. Under a classic debt-recovery model, the seller would have passed all the details to a lawyer with instructions to do what was necessary. That lawyer – or, in reality, a computer program operated by a paralegal – would have written a letter to the debtor and prepared the court application. The lawyer might have done no more than check whether the case had been brought within the relevant time limits and advise whether the likely benefits of suing the purchaser would outweigh the costs.

If that's all you need a lawyer for, why not let your lawyer unbundle the legal advice and charge you for that service alone – leaving you to complete the court forms online? In a claim worth £5,000, Shannon Salter explained, it's probably not worth paying a lawyer £2,000 to assist you. "But you might spend £500 to get a little bit of legal advice and some coaching in terms of preparing your evidence and submissions. And enough of that repeat business is potentially profitable to the lawyer."

Richard Fyfe QC, deputy attorney general of British Columbia, agreed.³ Lawyers' initial resistance to the tribunal had gone away, he said. And he confirmed that a little legal advice at the right time was worth a great deal.

"If you can solve disputes while they're small – and avoid the escalation that comes with festering disputes – then from society's perspective you're much better off."

It was not easy to find lawyers in Vancouver or Victoria who wanted to talk about the CRT, still less anyone who had used it. But one lawyer I spoke to was happy to endorse what I had been told by Shannon Salter and Richard Fyfe.

Oscar Miklos, from Haddock & Co, acts for strata corporations and individuals who own strata lots. He also runs a well-regarded housing advice website.⁴ When we met in suburban Vancouver,⁵ he told me that not many clients were willing to spend the \$10,000⁶ it might cost to resolve a strata dispute. "But with the CRT, we now have a very cost-effective mechanism whereby we can resolve these disputes for a fraction of the price it was before. And, all of a sudden, you have a lot more people who are taking us up on the offer to have legal assistance through this process."

But surely the tribunal was designed for people to use without lawyers?

"It's not that they need lawyers," Oscar Miklos told me. But the underlying legislation – the Strata Property Act – is still very complex. Even if the procedures are a lot more user-friendly, I think that in order to understand the legal issues most people would benefit from some sort of guidance by a lawyer."

Those without lawyers could certainly benefit from the targeted legal information provided by the CRT's solution explorer, he accepted. But what people really wanted to know was whether it was worth putting time and money into fighting a claim.

"I offer clients what's called a strategy session," Oscar Miklos told me. "Clients will contact me for that initial assessment of their case. Oftentimes they'll finish the strategy session and they'll do the case themselves. Maybe only a limited intervention by a lawyer is necessary and that sets them on the right path."

But all he would be paid for was the initial strategy session. Surely he was losing money?

Before the CRT came along, he explained, many clients would not even have got that far. And although the tribunal generally operated without legal representatives, it did permit "helpers", who could be lawyers.

"So that's where we have targeted our legal services. We say: we can put your case together; we can be in the background. If you have any questions, we can always be there."

His clients pay less than they used to but there are more of them, Oscar Miklos told me.

"I understand the CRT can be a very scary proposition for people who've been practising law for very many years and who are used to doing things in a certain way. It does require lawyers to rethink how they practise law and how they offer their legal services. But maybe because I'm from a newer generation of lawyers" – he is 31 – "I think that if you are creative and innovative in the way you deliver your legal services you can broaden your practice."

The CRT, he said, had revolutionised the way that people like him practised law.

References

1. Civil Resolution Tribunal Act 2012, section 20

http://www.bclaws.ca/civix/document/id/complete/statreg/12025_01#section20

2. <https://civilresolutionbc.ca/wp-content/uploads/2017/07/CRT-rules-effective-July-12-2017.pdf> rule 32.

3. Interview with the author, Victoria BC, 6 December 2017.

4. <https://housingguide.ca>

5. 7 December 2017.

6. Canadian dollars

© 2018 The Legal Education Foundation

© Joshua Rozenberg

Opinions expressed in this report are those of the author and should not be taken to be those of The Legal Education Foundation.