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## **THE CIVIL RESOLUTION TRIBUNAL ACT: A NEW FORUM FOR B.C. DISPUTE RESOLUTION**

**Richards Buell Sutton's Insurance Law Newsletter**

### **INTRODUCTION**

Insurers doing business in British Columbia need to be aware of a new forum for resolution of certain civil disputes. The *Civil Resolution Tribunal Act* (the "Act") has received Royal Assent from the legislature and is expected to commence operations in late 2013 or early 2014.

The impetus for the Act is three-fold: (1) to divert cases from the back-logged docket of the Provincial Small Claims Court; (2) to provide an inexpensive and efficient means to resolve disputes that do not warrant the full machinery of a court process; and (3) to diminish adversarial dispute resolution processes in the context of close civil relationships such as strata and family law.

The tribunal's role is to encourage the voluntary resolution of disputes by agreement and decide those disputes that cannot be resolved. The role will be implemented as much as possible by the use of electronic communication in a "virtual" setting in which the participants communicate with each other, a "case worker" and/or the tribunal primarily over the internet.

### **HIGHLIGHTS OF THE ACT**

Some highlights of the procedure under the Act are as follows:

- The process is voluntary, in the sense that if a person or company against whom a claim is made does not consent to resolution under the Act, the tribunal may not proceed. Note, however that mandatory participation is contemplated in certain circumstances.
- The general rule is that parties will represent themselves. For corporations and other legal entities, representation may be by director, officer, partner, or other individuals permitted by the tribunal. For the insurance industry, we anticipate that the tribunal will accept representation by insurance adjusters and examiners.
- The tribunal "may" allow representation by counsel, in particular for children and incapable persons, and otherwise where the interests of justice favour representation. The wording of the Act also suggests that representation by counsel will be better received where both



parties have lawyers. Of course, legal advice outside of the formal process is not precluded, and would be encouraged on any claim raising substantive legal issues.

- The proceeding has two distinct phases; the case management phase and the tribunal hearing phase.
- At the case management phase, a case manager is assigned to assist with communication and resolution. The case manager can bring people together in person, or rely on telephone and internet communication. In addition, with the consent of the parties, the case manager may provide “neutral” evaluations, and make recommendations to the tribunal as to appropriate resolution.
- At the tribunal resolution phase, the process may unfold without the parties being physically present with each other or the tribunal.
- The tribunal is given a broad “fact finding” power, including the power to ask questions and inform itself “in any other way it considers appropriate”. The tribunal need not follow the rules of evidence.
- The tribunal may use “electronic communication” for all or part of the proceeding. “Electronic communication” is defined in the *Act*, and generally contemplates the use of computer programs and communication via the internet.
- The *Act* does not set out a right of appeal. It does, however, specifically provide for a right of judicial review, which for “small claims” tribunal decisions must be commenced within 60 days, and for strata-related decisions within 90 days (or later, if permitted by the Supreme Court in certain circumstances).

## **JURISDICTION**

With some exceptions all civil property, debt and damages disputes that formerly would have run through Small Claims Court may find their forum before the new tribunal. The monetary jurisdiction of the *Act* is to be prescribed by regulation however that jurisdiction is not expected to exceed \$25,000.

The tribunal’s jurisdiction respecting strata disputes is somewhat more complex. Disputes involving a wide ambit of topics including the following are expressly allowed: interpretation and application of the *Strata Property Act*, strata by-laws and regulations; common assets and property; use and enjoyment; money owing (whether a fine, penalty or other); and “threatened action” by or against a strata council, corporation or owner/tenant.

There are a number of exceptions to the tribunal’s jurisdiction over strata disputes but in general, these involve statutory procedures such as winding up a strata corporation, lien removal, forced sales, and claims



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involving strata development. Insurers should note that orders respecting re-building of damaged property under section 160 of the *Strata Property Act* also fall outside the tribunal's jurisdiction.

#### **PRACTICAL CONSIDERATIONS FOR INSURERS**

The *Act* creates an entirely new and potentially prevalent mechanism for dispute resolution within British Columbia. While the majority of the *Act* addresses various procedural and jurisdictional matters; Part 2 of the Schedule provides for specific application to Small Claims and Strata Property Matters. Property and liability insurers should expect insureds including strata corporations and strata owners to avail themselves of the *Act* and thereafter seek coverage under their policies for the settlement or tribunal final decision that occurs therefrom.

Underwriters should consider policy endorsements in British Columbia that deal with notice of proceedings, participation in such proceedings and coverage for settlements or final decisions under the *Act*. Claims administrators should consider educating staff on *Act* procedures and jurisdiction in order to properly handle claims against insureds and advancing subrogated claims under the *Act*. These considerations should happen as soon as practicable so that insurers are well positioned to deal with claims on their "occurrence" based policies when the tribunal becomes operational.

