

Windsor Yearbook of Access to Justice Recueil annuel de Windsor d'accès à la justice



Civil Revolution: User Experiences with British Columbia's Online Court

Katie Sykes, Rebecca Dickson, Sarah Ewart, Candice Foulkes et Marina Landry

Volume 37, numéro 1, 2020

URI : <https://id.erudit.org/iderudit/1088085ar>
DOI : <https://doi.org/10.22329/wyaj.v37i1.7192>

[Aller au sommaire du numéro](#)

Éditeur(s)

Faculty of Law, University of Windsor

ISSN

2561-5017 (numérique)

[Découvrir la revue](#)

Citer cet article

Sykes, K., Dickson, R., Ewart, S., Foulkes, C. & Landry, M. (2020). Civil Revolution: User Experiences with British Columbia's Online Court. *Windsor Yearbook of Access to Justice / Recueil annuel de Windsor d'accès à la justice*, 37(1), 161–188. <https://doi.org/10.22329/wyaj.v37i1.7192>

Résumé de l'article

Le nouveau Civil Resolution Tribunal [CRT] de la Colombie-Britannique est un système de règlement des différends principalement en ligne qui a retenu l'attention sur la scène internationale en raison de son approche novatrice. Cependant, jusqu'à présent, peu de recherches indépendantes ont été effectuées sur l'efficacité du CRT et des initiatives de règlement des différends en ligne similaires comme moyens de fournir l'accès à la justice. Dans le cadre d'une étude qualitative et exploratoire, nous avons interrogé 49 Britanno-Colombiens qui avaient eu recours au CRT au sujet de leur expérience avec le processus. Dans l'ensemble, les résultats donnent à penser que le CRT a amélioré l'accès à la justice, mais les réponses au sondage ont également mis au jour des problèmes et des préoccupations, auxquels nous proposons des solutions possibles.

© Katie Sykes, Rebecca Dickson, Sarah Ewart, Candice Foulkes et Marina Landry, 2022



Ce document est protégé par la loi sur le droit d'auteur. L'utilisation des services d'Érudit (y compris la reproduction) est assujettie à sa politique d'utilisation que vous pouvez consulter en ligne.

<https://apropos.erudit.org/fr/usagers/politique-dutilisation/>

érudit

Cet article est diffusé et préservé par Érudit.

Érudit est un consortium interuniversitaire sans but lucratif composé de l'Université de Montréal, l'Université Laval et l'Université du Québec à Montréal. Il a pour mission la promotion et la valorisation de la recherche.

<https://www.erudit.org/fr/>

Civil Revolution: User Experiences with British Columbia's Online Court¹

Katie Sykes
Rebecca Dickson
Sarah Ewart
Candice Foulkes
Marina Landry*

British Columbia's new Civil Resolution Tribunal [CRT] is a primarily online dispute resolution system that has attracted international attention for its innovative approach. But so far there has been little independent research on the effectiveness of the CRT and similar online dispute resolution initiatives in providing access to justice. In a qualitative and exploratory study, we surveyed 49 British Columbians who had used the CRT about their experience with the process. Overall, the results suggest that the CRT has improved access to justice, but the survey answers also identified problems and concerns, for which we suggest potential solutions.

Le nouveau Civil Resolution Tribunal [CRT] de la Colombie-Britannique est un système de règlement des différends principalement en ligne qui a retenu l'attention sur la scène internationale en raison de son approche novatrice. Cependant, jusqu'à présent, peu de recherches indépendantes ont été effectuées sur l'efficacité du CRT et des initiatives de règlement des différends en ligne similaires comme moyens de fournir l'accès à la justice. Dans le cadre d'une étude qualitative et exploratoire, nous avons interrogé 49 Britannico-Colombiens qui avaient eu recours au CRT au sujet de leur expérience avec le processus. Dans l'ensemble, les résultats donnent à penser que le CRT a amélioré l'accès à la justice, mais les réponses au sondage ont également mis au jour des problèmes et des préoccupations, auxquels nous proposons des solutions possibles.

I. INTRODUCTION

The Civil Resolution Tribunal [CRT] is an online tribunal, part of the public justice system of the Canadian province of British Columbia [BC], that has replaced traditional courts for certain civil disputes. In the summer and fall of 2019, we did empirical research on users' experiences with the CRT. Then, in the spring of 2020, while we were in the process of analyzing and reporting our findings, the world changed almost overnight. When the COVID-19 pandemic hit, BC's physical courtrooms, like courts all around

¹ This research was supported by an Insight Development Grant from the Social Sciences and Humanities Research Council of Canada. We are grateful to the anonymous respondents who took the time to participate in our survey, and to CRT officials and staff members who helped us with many inquiries about how the system works. Professor Noel Semple provided extremely helpful and insightful comments on a draft version of this article.

* Ms. Sykes is an Associate Professor, Ms. Foulkes and Ms. Landry are alumnae, and Ms. Dickson, Ms. Ewart are JD candidates, of the Faculty of Law, Thompson Rivers University in Kamloops, British Columbia.

the world, had to suspend all but the most urgent functions. After that came a period of trying to adapt, by replacing in-person proceedings with alternatives like videoconferencing and telephone hearings, and substituting physical paper for digital alternatives.² We are still in that period now.

The CRT is the only part of BC's justice system that provided seamless continuity of service as the pandemic took hold.³ In this new reality, our research has suddenly taken on new significance. We hope that it will prove informative to policymakers and justice system actors navigating a shift to online dispute resolution.

Even before the COVID-19 pandemic hit, many jurisdictions around the world were considering online dispute resolution [ODR⁴] as a way of addressing the problem of a lack of access to justice for ordinary citizens. Pre-pandemic, a few jurisdictions had already integrated ODR into their civil justice systems, and more were trying out pilot projects or giving serious consideration to this approach.⁵ There is some optimism about the potential for these developments to make justice more accessible and convenient. But there have also been concerns raised about the risk of compromising the quality of justice for the sake of cost savings.⁶

The pandemic forced a sudden and almost universal shift to remote dispute resolution. Although moving to videoconference hearings and other remote modalities was in large part a temporary, emergency response, we might expect that some of the changes might stick, even after the public health crisis has passed. At a minimum, coping with the pandemic has proved that the justice system *can* adapt traditional ways of doing justice and can embrace modern technologies when there is no other option. It seems reasonable to expect that the momentum of the shift to ODR will increase. We need to understand the

² Remote Courts Worldwide, online: *Remote Courts Worldwide* <www.remotecourts.org> (a website hosted by the Society for Computers and Law, that has been tracking transitions to various forms of "remote" justice in jurisdictions around the world).

³ "The cracks are really showing: Coronavirus is exposing the weakness of the court system in Canada" (1 Apr 2020), *CBA National* online: <www.nationalmagazine.ca/en-ca/articles/law/judiciary/2020/the-cracks-are-really-showing> ("because B.C.'s CRT operates online, it hasn't missed a step due to pandemic measures" – while Canada's traditional courts had all "dramatically restricted access and slowed down their work").

⁴ Richard Susskind, *Online Courts and the Future of Justice*, (Oxford: Oxford University Press, 2019) at 61-63. "Online dispute resolution" or "ODR" is sometimes used to describe a form of *private* alternative dispute resolution that uses techniques such as online mediation, negotiation and arbitration, rather than online dispute resolution that is part of the *public* justice system. Susskind uses ODR to refer to this type of private dispute resolution, and "online courts" to refer to public, state-supported dispute resolution processes that take place online. In this article, we use ODR to include public online dispute resolution. The choice of terminology is somewhat personal and arbitrary, but, for us, it seems more accurate to describe the CRT as an example of public ODR than an online court because it is technically not a court but an administrative tribunal.

⁵ See "A Comparative Analysis of Online Dispute Resolution (Cambridge Pro Bono Project, 2019)", online (pdf): *International Legal Aid Group* <www.internationallegalaidgroup.org/images/miscdocs/CPBP_Report_-_FINAL.pdf> (a comparative analysis of ODR platforms in Canada, England and Wales, the US, and Australia). See further discussion in Part 4.

⁶ For example, BuzzFeed News reported in 2019 that the Ministry of Justice in the UK had not reported survey data suggesting that "people had a more positive experience of the justice system if they had physically been in court," as opposed to being heard by phone or online, until it had to do so in response to a freedom of information request. See Emily Dugan, "The Ministry of Justice Has Been Accused of Sitting on Evidence That Undermines Its Drive to Close Courts," *Buzzfeed News* (18 March 2019), online: <<https://www.buzzfeed.com/emilydugan/ministry-justice-data-closing-courts>>.

implications of this change, and especially how it affects the experience of people who use the justice system.

In our research project, our main objective was to develop insight into whether, and how, BC's new public ODR system improves access to justice. It was especially important to us to understand this question from the perspective of people who use the system. A key piece of our empirical research was a survey of members of the public in BC who have used the CRT. The main focus of this article is our findings from that survey.

The survey is a small exploratory and qualitative study, so the findings cannot be generalized to the broader population, but we found some themes that increase our understanding of user experience and suggest avenues for further research. For many survey respondents, the CRT provided an accessible, convenient and proportional means for resolving legal problems, sometimes in situations where they would have had no other realistic option. But participants in the survey also reported aspects of their experience that were less positive. Almost a third of the survey respondents said that they found it difficult and confusing to use the system.⁷ In addition, the survey produced some impassioned criticism of the fairness and expertise of the CRT.⁸

These negative aspects of user experience may indicate hard-to-avoid trade-offs between different dimensions of justice that policymakers will need to evaluate carefully if the move to ODR increases its momentum, as seems probable. For example, it may be that a simpler and more affordable process comes at the cost of certain compromises on process that (at least for some users) may diminish trust in the system's neutrality, fairness, and expertise.

It would be misleading to hold the CRT up against an idealized version of justice that does not match what our real-life justice system is actually like. As we discuss in the article, we have little data on user experiences in the traditional justice system – but, importantly, the survey did allow us to ask about the experiences of people who had used both the traditional system and the CRT. Looking at the whole picture of user experience that emerges from the survey, including that limited comparative data, on balance we think it supports the conclusion that the CRT enhances access to justice. But some users experienced the CRT as providing service below the standard they expect from the public justice system. They expressed frustration at having to use this system instead of traditional courts, and skepticism about the expertise, independence and institutional legitimacy of the CRT.

The article first explains the design and process of the CRT (in part II), and then sets out our understanding of access to justice (part III). Part IV describes the methodology of our study and our survey of CRT users. Part V presents our findings from the survey. In part VI, we offer our conclusions about the CRT's effectiveness as a way of improving access to justice and some ideas for further exploration.

⁷ See discussion in Section V.8.

⁸ The details, specific criticisms that reflect this general theme, and the numbers of respondents who expressed them, are discussed in Section V.9.

II. THE CRT

The CRT was established by the *Civil Resolution Tribunal Act* [*CRT Act*],⁹ which first came into force in 2012 and has been amended several times since then. The CRT started handling its first cases in 2016. At that time, its jurisdiction was limited to certain strata (condominium) disputes. In 2017, the CRT took jurisdiction over small claims disputes up to a value of CAD \$5,000.¹⁰ In 2019, the CRT assumed jurisdiction over motor vehicle injury disputes up to CAD \$50,000¹¹ and disputes involving societies and cooperative associations.¹² The BC government plans to bring in further reforms in 2021,¹³ after which, most motor vehicle injury matters will be decided by the CRT.

A. Public-Centred Design

The CRT is different from traditional courts in many ways that go further than just being provided on an online platform. It reflects an effort to design part of the justice system to be essentially about providing a service. Officials involved with the CRT have described it as based on a “user-centric approach which puts the public first” and “a systemic orientation toward the people who need justice services, rather than those who provide them”.¹⁴

B. Early and Collaborative Resolution

The CRT is mandated by statute to provide accessible, informal and flexible dispute resolution, encourage the resolution of disputes by agreement, and deal with disputes in a manner that recognizes ongoing relationships between the parties.¹⁵ It is what Susskind calls an “extended court,” providing wider service than just dispute resolution.¹⁶ It includes built-in self-help tools designed to solve problems before

⁹ *Civil Resolution Tribunal Act*, SBC 2012, c 25 [*CRT Act*].

¹⁰ *Small Claims Act*, RSBC 1996, c 430, s 21(2) (current limit in BC is \$50,000); BC Reg 232/2018, s 3 (under the current regulation, the CRT has jurisdiction over claims \$5,000 and under).

¹¹ On March 2, 2021, just before this article went to press, the British Columbia Supreme Court released its judgment in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCSC 348 [*Trial Lawyers*], ruling that the certain aspects of the CRT’s jurisdiction over motor vehicle accident disputes are unconstitutional. The provisions of the *CRT Act* giving the CRT jurisdiction to determine liability and damages in motor vehicle disputes up to the \$50,000 limit, and to determine whether an injury in a motor vehicle accident is a “minor injury” for which nonpecuniary damages are capped at \$5,500, were held to be unconstitutional as a violation of s. 96 of the *Constitution Act, 1867*, because (as the court found) they encroach on the judicial functions of the superior courts; s. 16.1 of the *Act*, requiring courts to stay or dismiss matters in the CRT’s jurisdiction, were also held not to apply to these matters. Although the decision can be seen as part of a larger struggle over the legitimacy of the CRT’s place in British Columbia’s justice system, it has no effect on strata and small claims matters, the types of dispute that all the people who took part in our survey were involved in.

¹² *CRT Act*, *supra* note 9, ss 124-131 (societies and cooperative associations) and 133 (motor vehicle accidents).

¹³ Bill 11 - 2020, *Attorney General Statutes (Vehicle Insurance) Amendment Act*, 5th Sess, 41st Parl, 2020, (first reading 4 March 2020).

¹⁴ Shannon Salter & Darin Thompson, “Public-Centred Civil Justice Redesign: a case study of the British Columbia Civil Resolution Tribunal” (2016-2017) 3 McGill LJ 113 at 123.

¹⁵ *CRT Act*, *supra* note 9, ss 2(2)-(3).

¹⁶ Susskind, *supra* note 4 at 111-119.

they become disputes, and to limit the scope of disputes.¹⁷ Adjudication is available as a backstop if it is needed after more collaborative and informal steps do not solve the problem.

C. Rules

Although it is common to describe the CRT as an online court (and we also adopt that usage), strictly speaking it is not a court but an administrative tribunal. An administrative tribunal is a decision-making body charged with exercising powers delegated by statute,¹⁸ which may also be (like a court) an adjudicative body “settling disputes and determining the rights of parties”.¹⁹ Although the CRT is part of the public justice system, it is not part of the court system, and it derives its powers from statute rather than the inherent jurisdiction of courts.²⁰

The *CRT Act* grants the tribunal authority to make its own rules of practice and procedure,²¹ and it has a statutory mandate to provide flexible and informal dispute resolution. Its rules are relatively simple compared to court rules of civil procedure and evidence. There have already been several iterations of the CRT's rules in the short time since it began. The most recent version came into effect on May 1, 2020.²² The CRT has adopted a practice of releasing a table of changes explaining the rationale for changes to the rules simultaneously with each rule update.²³

¹⁷ *Ibid.*

¹⁸ See generally David Philip Jones & Anne S de Villars, *Principles of Administrative Law* (Toronto: Thompson Reuters, 2014).

¹⁹ *Canadian Pacific Ltd v Matsqui Indian Band*, 1995 1 SCR 3 at para 80; Ann Chapin, “Travelling in Constitutional Circles: The Paradox of Tribunal Independence” (2016) 36 NJCL 73 at 77-78 (in Canadian law there is relatively little doctrine concerned with the definition and powers of tribunals as distinct from other types of administrators, because modern administrative law jurisprudence “put[s] all administrative decision-makers in one category, whether they take the form of multimember panels with adversarial procedures or ministers of the Crown determining cases on the basis of written applications” at 77-78).

²⁰ Susskind, *supra* note 4 at 168; *Ocean Port Hotel Ltd. v British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 2 SCR 781 (the Supreme Court of Canada has described administrative tribunals as “fundamental[ly] distinct” from superior and provincial courts in that they are created by the government “for the purpose of implementing government policy” at paras 23-24).

²¹ *CRT Act*, *supra* note 9, s 62.

²² *Civil Resolution Tribunal*, “Rules” (effective 1 May 2020), online (pdf): <www.civilresolutionbc.ca/wp-content/uploads/2020/04/CRT-Rules-in-force-May-1-2020.pdf> [CRT “Rules”].

²³ “Rules - Table of Changes July 13, 2016 – March 31, 2019”, *Civil Resolution Tribunal* online (pdf): <www.civilresolutionbc.ca/wp-content/uploads/2019/04/Table-of-Changes-July-13-2016-March-31-2019.pdf>; “Rules - Table of Changes April 1, 2019 – present”, *Civil Resolution Tribunal* online (pdf): <www.civilresolutionbc.ca/wp-content/uploads/2020/04/CRT-Rules-Table-of-Changes-current-to-May-1-2020.pdf> (the rationales explained in these tables are not binding on the tribunal but are meant to provide transparency to the public about amendments to the rules).

D. Stages in the CRT Process²⁴

The first step in using the CRT to resolve a legal problem is the Solution Explorer, an online expert system²⁵ that anyone can use anonymously and free of charge to get legal information, resources, and tools such as template letters and checklists. The Solution Explorer asks the user a series of questions about their legal problem and guides them to content tailored to their responses.²⁶ Everyone who wants to apply for dispute resolution with the CRT must go through the Solution Explorer first. After using the Solution Explorer – and if the problem is still not resolved – the user can then start the process of dispute resolution by applying and paying a fee, which can be done online by credit card.

At this point, the process has become a tribunal proceeding, which the *CRT Act* divides into two phases: the “case management phase” and the “tribunal hearing phase.”²⁷ Case management consists of successive stages: negotiation, facilitated settlement, and then the preparation of a tribunal decision plan for the tribunal hearing phase.²⁸ A case manager is assigned to support the parties through this phase.²⁹

At the negotiation stage, the parties communicate with each other about their positions without active assistance from CRT staff. If the parties agree on a resolution at this stage, they have the option to get their agreement formalized as a binding Consent Resolution Order.³⁰ If all aspects of the dispute are resolved by agreement, the applicant’s fee is refunded.³¹

If the parties move on to facilitated settlement, the case manager takes an active role. The parties set out their versions of the case and exchange settlement offers. If the parties still do not resolve the dispute, it moves on to the tribunal hearing phase. Adjudication is typically mainly based on written submissions exchanged asynchronously on the CRT’s online platform.³² Telephone, video-conference and (rarely) in-person hearings are also options.³³ Adjudication provides a final resolution in the form of a binding decision from a tribunal member and an enforceable tribunal order.³⁴ Tribunal members are appointed by Order in Council based on recommendation by the CRT Chair.³⁵ They are required to perform their duties “faithfully, honestly and impartially.”³⁶ They have law degrees, expertise in one or more areas of CRT

²⁴ See Lauryn Kerr, “Public Online Dispute Resolution in Practice: A Case Study of the British Columbia Civil Resolution Tribunal” (2019) *Law Society of Ontario Special Lectures 2019: Innovation, Technology and the Practice of Law* (Law Society of Ontario, 2019) at 9-19 (a detailed narrative of the whole process based on a hypothetical representative dispute). See also Shannon Salter, “Online Dispute Resolution and Justice System Integration: British Columbia’s Civil Resolution Tribunal” (2017) 34 *Windsor YB Access Just* 112 at 120-121.

²⁵ Salter & Thompson, *supra* note 13 (an expert system is “a technology-based platform that imitates or emulates the feedback, guidance, or reasoning of a human expert” at 129). See also Darin Thompson, “Creating New Pathways to Justice Using Simple Artificial Intelligence and Online Dispute Resolution” (2015) 1:2 *Intl J Online Dispute Resolution* 4.

²⁶ Kerr, *supra* note 24 at 5.

²⁷ *CRT Act*, *supra* note 9, s 17.

²⁸ CRT, “Rules”, *supra* note 22, Rule 5.1(1).

²⁹ *Ibid*, Rule 5.1(2).

³⁰ *Ibid*, Rule 5.2.

³¹ Kerr, *supra* note 24 at 7.

³² Salter & Thompson, *supra* note 14 at 134.

³³ *Ibid*.

³⁴ *Ibid* at 133-134.

³⁵ Kerr, *supra* note 24 at 8.

³⁶ *CRT Act*, *supra* note 9, s 83.

jurisdiction, and experience as legal advocates or decision-makers.³⁷ All CRT decisions are published on the CRT website,³⁸ and on CanLII.³⁹

E. Representation

By default, parties in CRT proceedings other than motor vehicle accident claims are required to represent themselves.⁴⁰ This does not prevent people who use the CRT from obtaining any other form of assistance from lawyers or other helpers, such as explaining case law and the process, organizing evidence, and drafting written submissions.⁴¹ The policy choice not to permit representation in most non-motor vehicle cases was done with “the intention of evening the playing field for participants,”⁴² and was based on input from the BC public.⁴³

III. ACCESS TO JUSTICE

Access to justice is difficult to define, in part because it is a complex and multifaceted concept. A theme in modern thinking about “access to the system” is that it is a more expansive idea than just access to the courts.⁴⁴ It means access to solutions to the legal problems people experience. Trevor Farrow and Lesley Jacobs use the term “meaningful access to justice,” referring to “people’s ability to access a diverse range of information, institutions, and organizations – not just formal institutions such as the courts – in order to understand, prevent, meet and resolve their legal challenges and legal problems.”⁴⁵ Justice Annemarie Bonkalo’s 2016 report on family legal services adopted Alf Malmo’s succinct definition of

³⁷ Kerr, *supra* note 24 at 8. See also Salter & Thompson, *supra* note 14 at 134. See biographies of the full-time tribunal members at <<https://civilresolutionbc.ca/about-the-crt/the-crt-team/>>.

³⁸ “Decisions” (last accessed 21 July 2020), online: *Civil Resolution Tribunal* <decisions.civilresolutionbc.ca/crt/en/nav.do>.

³⁹ “Civil Resolution Tribunal of British Columbia – British Columbia” (last accessed 21 July 2020), online: *CanLII* <www.canlii.org/en/bc/bccrt/>.

⁴⁰ *CRT Act*, *supra* note 9, s 20.

⁴¹ See CRT, “Rules”, *supra* note 22, Rule 1.14(1) (“A party may use a helper to assist them in the tribunal process, but a helper may not communicate on behalf of the party or enter into binding agreements on the party’s behalf”). See also *The Owners, Strata Plan NW 2575 v Booth*, 2020 BCCA 153 at paras 23-24 [*Booth*] (insinuating, perplexingly, that in pointing out a party can use a lawyer for advice and assistance with documents, evidence and submissions the tribunal was suggesting “circumvention” of its own decision that did not grant an applicant permission to have, in the Court’s words, “acknowledged representation”).

⁴² Salter, *supra* note 24 at 125.

⁴³ NRG Research Group, “Civil Resolution Tribunal Survey Report” (16 May, 2014), on file with authors.

⁴⁴ Ab Currie emphasized in a groundbreaking report in 2009 that “a wider perspective than one that begins with the courts is required to understand the full breadth of civil justice system problems.” Ab Currie, “The Legal Problems of Everyday Life - The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians” (2009) at 1, online (pdf): *Ottawa: Department of Justice Canada* <www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/index.html>.

⁴⁵ Trevor CW Farrow & Lesley A Jacobs, “Introduction” in Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (UBC Press, 2020) 3 at 7.

access to justice: “the ability of a citizen to bring about a solution to his or her legal problems that is (a) financially affordable; (b) timely; (c) easy to understand; and (d) easy to manoeuvre through.”⁴⁶

We found Richard Susskind’s taxonomy of the principles of “justice according to the law” instructive, because it was developed with the advent of online courts in mind.⁴⁷ Susskind’s list is:

- substantive justice, meaning fair decisions and outcomes;
- procedural justice, meaning a process that is unbiased and respects principles of natural justice;
- open justice, meaning that courts are transparent and accountable, not secretive (for Susskind, this includes making data about the courts’ work, such as case volumes and times to resolution, publicly available);
- distributive justice, meaning that “court service is accessible and intelligible to all” and affordable to everyone regardless of their means;
- proportionate justice, meaning that “the cost of handling individual cases ... makes sense by reference to the nature and value of each dispute”;
- enforceable justice, meaning that decisions are final, binding, and backed by the power of the state – they cannot be disregarded with impunity; and
- sustainable justice, meaning that courts are “stable, secure, adequately funded, and aligned technologically with the societies that they serve.”⁴⁸

As Susskind observes, the principles “overlap and interact in complex and subtle ways,” the furtherance of one may sometimes be at the expense of another, and the appropriate balance between them has no *a priori* right solution but is a matter of trade-offs and value judgments.⁴⁹

A. Improved Access to Justice – Compared to What?

Asking whether the CRT improves access to justice implies a basis of comparison. The baseline should be whatever people would have turned to for resolution of their legal problems if the CRT did not exist, or before it existed. The traditional public justice system is the most important point of comparison.

One of the challenges of our research project is that there is a lack of information to base such a comparison on. As Dame Hazel Genn observed in 2017, in general there is a “data vacuum relating ... proceedings in [traditional] civil courts and tribunals” compared to the detailed data that online courts can

⁴⁶ Justice Annemarie E Bonkalo, “Family Legal Services Review” (Toronto: Government of Ontario, Ministry of the Attorney General, 31 December 2016), online: <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/#_ftnref3>, citing Alf Mamo, “Random Thoughts on Family Law Process Reform,” in Barbara Landau et al, “Home Court Advantage: Creating a Family Law Process that Works (Final Report and Recommendations from the Home Court Advantage Summit, co-hosted by the Ontario Bar Association, the ADR Institute of Ontario and the Ontario Association for Family Mediation” (22-23 November 2009) at 61, online: *ADR Institute of Ontario, Inc.* <http://www.adrontario.ca/media/Family%20Law%20Process%20Reform%20Report_final_web.pdf>.

⁴⁷ Susskind, *supra* note 4 at 71-91.

⁴⁸ *Ibid.*

⁴⁹ *Ibid* at 86.

gather about “the dynamics of disputes, processing, outcomes, dispositions and trends over time.”⁵⁰ Moreover, courts “seldom ask people who appear before them whether they are satisfied with the way the court handled their case.”⁵¹

We know that being involved in a legal dispute is an inherently unpleasant experience that most people would prefer to avoid, and that in an adversarial system at least one of the parties is likely to be unhappy with the outcome.⁵² But there are many other aspects of the court experience that we do not know much about. For example, parties to litigation in the courts could be asked if they understood what happened and felt that they were treated with respect and given a chance to be heard.⁵³ We have insight into these questions with respect to the CRT, both from our survey and the CRT's own data, but there is almost no evidence on experiences in the traditional courts to compare it to.

In 2015, the Canadian Forum on Civil Justice published a report summarizing research on attrition of non-family civil cases filed in the Supreme Court of British Columbia.⁵⁴ The aim of the project was to find out what happened to cases that were filed but had not gone through to trial, and to assess the satisfaction of the claimants with the process. But the researchers encountered such significant gaps in the records and information available about the cases and the claimants that it was hard to get to robust conclusions.⁵⁵

Research conducted by the National Self-Represented Litigants Project (NSRLP) on the experiences of self-represented litigants in court indicates that their experiences are generally very unsatisfactory, and even traumatic.⁵⁶ But the NSRLP research is not optimal as a basis for comparison to the CRT. Most of the participants in the study were involved in family court processes,⁵⁷ and the CRT does not have jurisdiction over family law matters. Also, the NSRLP study is national, and the CRT has jurisdiction only in British Columbia.

Because we had such limited information to form a basis for comparison, in our study we looked to take advantage of the fact that a kind of natural experiment was created by having both the CRT and the traditional courts in the same legal system. At least some British Columbians have experience both with going to court and with using the CRT. In the survey, we asked people who had had both experiences what they thought about how the two compared. This provided some of the most informative data from

⁵⁰ Hazel Genn, “Birkenhead Lecture 2017: Online Courts and the Future of Justice” (16 October 2017), online (pdf): *University College London* <www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf>.

⁵¹ Salter & Thompson, *supra* note 16 at 122.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Focus Consultants for the Canadian Forum on Civil Justice, “Civil Non-Family Cases Filed in the Supreme Court of BC: Research Results and Lessons Learned” (September 2015), online (pdf): *Canadian Forum on Civil Justice* <www.cfcj-fejc.org/sites/default/files/Attrition%20Study%20Final%20Report.pdf> [Attrition Study].

⁵⁵ *Ibid.*; see also Tim Roberts & Associates Consulting for the UVIC Access to Justice Centre for Excellence, “A Supreme Lack of Information: Why we know nothing about the outcomes of the majority of civil cases initiated in B.C.’s Supreme Court, and what can be done about it” (March 2019), online (pdf): <ajrndotco.files.wordpress.com/2019/03/48fa3-attributionfollow-upreport-feb2019.pdf>.

⁵⁶ Julie Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report* (National Self-Represented Litigants Project, 2013), online (pdf): <<https://representingyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf>> at 108.

⁵⁷ 60% of the self-represented litigants in the study were family litigants. *Ibid.* at 8.

our survey. We had a rare opportunity to get some information through direct comparisons between two very different models of public justice services, as they were experienced by some justice system users. There are also British Columbians who have experienced a legal problem in the past and used some other way (other than going to court) to try to resolve it, such as asking friends, looking for information online, or discussing it with the party on the other side of the dispute. We asked survey respondents whether they were in this group and, if so, how the experiences compared.

These questions allowed us to develop some insight into whether and how the CRT improved access to justice in comparison to a baseline of survey respondents' experiences with court and with other legal problems. The survey answers are not equivalent to results from a true experiment with randomized assignment of participants to experimental and control groups, because it is not possible to run exactly the same problem through two situations, with the CRT and without the CRT.⁵⁸ But they do allow us to find out what users think about the comparison between their own experiences in the different systems. This is an exploratory study, and some of the questions it suggests could be the basis for developing more quantitative, controlled research studies in the future.

People's individual experiences with the justice system vary significantly. Aggregate data about the system provides the best information about how well it serves the public generally. At the same time, the picture is incomplete without information about individual experiences of justice and injustice. It is built into our conception of justice that a failure to provide justice in even one individual case can amount to a failure or weakness of the whole system. Conversely, if a system increases access even for one person who otherwise would have been shut out, that is a success that may be profoundly important to the person affected – something that deserves to be given weight in the evaluation of the system.⁵⁹

Overall, what we have tried to draw out of the survey results is an overall indication of whether it improves access to justice on balance, taking into account that some trade-offs may be involved – and paying due attention to the experiences of users who responded to the survey even if they appear to represent a minority view, because justice means justice for everyone. We have also looked for ideas about how any problems users perceive could be ameliorated, and how strengths could be further built on.

IV. METHODOLOGY

Our survey is part of a mixed method case study that also looks at other sources of information. One of those sources is the CRT's own data about numbers of users and types of disputes, and the results of its anonymized participant surveys.⁶⁰ Another source is a series of interviews that we conducted with stakeholders and observers, which will be analyzed in a future article.

⁵⁸ See Lee Epstein & Andrew D Martin, *An Introduction to Empirical Legal Research* (Oxford: Oxford University Press, 2014) at 4-7 (describing the lack of an option to create a true experiment with random assignment of control conditions in most empirical legal research).

⁵⁹ In thinking about the evaluation of the CRT in this way, we are also mindful of the argument of Chief Justice James Allsop of the Federal Court of Australia that in assessing the use of technology in the justice system, bearing in mind its character as a public and "human" institution, it is indispensable to keep in mind the humanity of the individual, and success or failure from this perspective is not entirely quantifiable in terms of metrics or statistics. Chief Justice James Allsop AO, "Technology and the Future of the Courts" (2019) 38:1 U Qld LJ 1 at 1-3, 8.

⁶⁰ These are reported monthly on the CRT web site and on an aggregated basis in the CRT's annual reports. See Section V.I.

The case study is a form of research that examines “a contemporary phenomenon in its real-life context.”⁶¹ Case studies often employ an “umbrella strategy” that uses different types of data and research methods.⁶² The use of multiple data sources, known as “triangulation,” can reduce the risk of “misleading findings based on an incomplete picture” and contribute to “well rounded conclusions.”⁶³ Laura Beth Nielsen describes the benefits of multi-method research by analogy to the traditional Indian parable of blind men feeling and describing different parts of an elephant, arguing that multiple methods can help us to “study the whole elephant.”⁶⁴ The User Experience Survey allowed us to triangulate detailed information about the experiences of a relatively small sample of survey respondents with evidence from the other sources about how the CRT operates and how it is perceived. The different sources of information complement one another: for example, the CRT’s internal participant survey has a much larger number of respondents than our survey, but our survey is independent of the CRT and asks more detailed questions.

We asked CRT users about their experiences using a SurveyMonkey survey with a mix of closed-option and open-ended questions. The survey was accessed mainly online. There was an option to contact us and answer the questions by phone, which one respondent did. We ran the survey from July 10 through October 31, 2019. We got 49 responses (our original target was 50). All of our responses were from people who said that they had used the CRT for their own legal problem.⁶⁵

To recruit people to take our survey, we publicized the study and asked for volunteers. This means that our survey respondents were *not* randomly chosen from the BC population. They are self-selected people who, we can infer, were motivated to complete the survey because they wanted to share their opinions about the CRT.

The survey is primarily exploratory and qualitative. Qualitative research “does not depend on statistical quantification, but attempts to capture and categorize social phenomena and their meanings.”⁶⁶ There are quantitative aspects to our study that are useful in providing context and perspective to the qualitative stories of user experience that the survey responses tell. The most detailed and nuanced information from the survey is in the respondents’ written responses to open-ended questions; the quantitative data helped us to interpret that information. For example, some written answers were critical of various aspects of the CRT as a justice institution, as we discuss in Section V.9. These criticisms are important, but it is also important in interpreting them to understand that they are often minority views among our survey respondents – as the closed-end responses tell us. We were also able to enhance our understanding of written responses with information from the survey about other aspects of the respondents’ experiences, like the type of dispute and whether they had experience with the traditional courts.

⁶¹ Robert K Yin, “The Case Study Crisis: Some Answers” (1981) 26:1 *Administrative Science Q* 58 at 59.

⁶² Lisa Webley, “Qualitative Approaches to Empirical Legal Research” in Peter Cane & Herbert M Kritzer, eds, *The Oxford Handbook on Empirical Legal Research* (Oxford: Oxford University Press, 2012) 926 at 939-940. The parable is also a useful reminder of the need for humility about our capacity to understand a phenomenon when we can only get limited information about it.

⁶³ *Ibid* at 940.

⁶⁴ Laura Beth Nielsen, “The Need for Multi-Method Approaches in Empirical Legal Research” in Cane & Kritzer, *supra* note 62 at 952.

⁶⁵ We filtered out people who had used the CRT to assist someone else with an initial screening question.

⁶⁶ Webley, *supra* note 62 at 928.

Because of the small sample size, the composition of the respondent group (self-selected rather than selected at random), and the nature of the investigation (designed to explore a multifaceted question, rather than structured to test a clearly defined hypothesis), the study is not – and was not intended to be – statistically probative. It provides evidence about individual people’s subjective perceptions of their own experiences with using the CRT. If we think it matters to evaluate access to justice from the point of view of “regular people on the street” who actually use the justice system,⁶⁷ these experiences are important to know about.

Our data has important limitations that should be kept in mind when looking at the results. To gather data from a reasonably large number of users quickly and at low cost, we administered the survey on an anonymous, voluntary basis primarily online. Voluntary surveys suffer from self-selection bias. People are much more likely to participate in a voluntary survey if it is asking about a topic that they feel strongly about (whether those feelings are positive or negative).⁶⁸

We made the choice not to ask people for personal information or permission to follow up with them, for speed and simplicity – but the cost of that choice was another limitation on the completeness of the data, because we were unable to ask follow-up or clarification questions. Participants were also unable to ask us questions for clarification. During our analysis, we noticed some anomalies or unlikely patterns in people’s responses that we could have asked about and perhaps resolved if the survey was delivered in person or over the phone. For example, an equal number of survey respondents said that they resolved their dispute at the negotiation and facilitation stages. This may be accurate, but very few CRT disputes are resolved at the pure party-to-party negotiation stage (that is, without active case management). It seems likely that some survey respondents did not make a distinction between the two stages based on the CRT’s terminology, but may have thought of what they did as “negotiation” even if they went to what the CRT calls the facilitation stage, which is a form of facilitated negotiation. But we cannot be sure about this without being able to check with the respondents.

Also, although our survey was available in an offline format, it was much easier and more immediately accessible for people with internet. The data we collected does not capture the full spectrum of individual experiences, and is probably missing information from people who might have found the online nature of the CRT especially challenging.

V. RESULTS

A. How We Analyzed the Data

We used a combination of qualitative and quantitative data analysis methods to interpret the 49 survey responses. SurveyMonkey’s “analyze results” function produced summaries of the responses to the closed-option questions in our survey. For the open-ended responses, we used NVivo⁶⁹ and performed a grounded theory analysis to find and label themes that emerged from the text. Grounded theory is an

⁶⁷ See Trevor CW Farrow, “What is Access to Justice” (2014) 51:3 Osgoode Hall LJ 957.

⁶⁸ Sonya K. Sterba & E. Michael Foster, “Self-Selected Sample” in Paul Lavarkas, ed, *Encyclopedia of Survey Research Methods*, vol 1 (Thousand Oaks, California: SAGE Publications Inc, 2008) 806 at 807-808.

⁶⁹ NVivo is a qualitative data analysis software. More information can be found here: NVivo, “Qualitative Data Analysis Software,” online: <<https://www.qsrinternational.com/nvivo-qualitative-data-analysis-software/about/nvivo>>.

inductive method of data analysis which involves “wide data collection [...] and then gradual development of codes, categories, relationships and themes in [the] data.”⁷⁰ Coding the open-ended answers allowed us to organize the responses into categories exhibiting similar themes and concerns.

Although our results are not an accurate reflection of what is true for CRT users or the BC population in general, they give us information about the subjective experiences of specific users – and comparisons between different groups of users.

B. Profile of Survey Respondents

In general, the 49 survey respondents skewed slightly older and more educated than the BC population, and were more likely to be born in Canada.⁷¹ Only three respondents (6%) said that they spoke a language other than English as a first language. None identified as Indigenous or as speaking an Indigenous language as their first language. 49% lived in the Vancouver and coastal region of BC. 86% said that they lived in a city. Only 16% of respondents lived more than 100 miles from the nearest courthouse. Only two respondents reported being very uncomfortable using the internet.

Nearly all the survey respondents (94%) used the CRT in the period from when it started operating in July 2016 up to April 1, 2019 – not surprisingly, since the survey opened in July 2019. This was the period when the CRT had jurisdiction only over strata and small claims disputes. We had no responses from people who had used the system for motor vehicle disputes.

96% of the people who took our survey went on to the dispute resolution,⁷² either as an applicant or as a respondent to an application filed against them. Only two respondents said that they used the Solution Explorer and did not go on to dispute resolution.

A majority of the respondents used the CRT for a strata matter.⁷³ One of the ways we recruited participants was by publicizing the survey in a Facebook advocacy group for strata owners. Some respondents learned of the survey through an advocacy group of strata owners organizing to support one another in conflicts with their strata councils.

C. The Solution Explorer

Three quarters (37) of the respondents said that the Solution Explorer was at least a little bit effective, providing some (16), most (12), or all (9) of the help that they needed. Twelve said it was not helpful at all.

⁷⁰ Margaret Hagan, “Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System” (2020) 36:3 Design Issues 3 at 9. See also: Webley, supra note 62 at 941.

⁷¹ Statistics Canada, *British Columbia [Province] and Canada [Country]* (table), *Census Profile*, 2016, Catalogue no 98-316-X2016001, (Ottawa: Statistics Canada, 29 Nov 2017), online: <www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E>. The average age of people who completed our survey was 48, while the 2016 census reported that the average BC resident was 42.3. 65.3% of our survey participants have completed a post-secondary degree, while only 55.0% of the BC population has.

⁷² See discussion of the stages of the process in Section II.D.

⁷³ 55.1% of people who answered our survey used the Solution Explorer for a strata property/condominium issue. 46.2% of people who applied said they applied for dispute resolution with the CRT did so for a strata property/condominium issue. 57.1% of people who took our survey and said that someone else filed a claim against them indicated that the claim was a strata property/condominium claim.

Survey respondents said that what was helpful about the Solution Explorer was being able to use the system at times that worked for them (43%),⁷⁴ being able to access the system from anywhere without having to travel (39%), and ease of use (35%). The most common difficulties people experienced were that the information they got did not help with their problem (43%), and having a problem that was not covered by the Solution Explorer (27%).

A relatively low number of respondents indicated that they had problems because of using an internet-based platform. About 20% said they felt anxious putting information about their legal problem into an online system, and only about 6% said they had trouble using the system because of a lack of good internet access.

Some of the written responses described how information and tools from the Solution Explorer had helped them deal with legal problems at an early stage and saved them money in lawyers' fees. A respondent who was a strata council member said:

For almost every topic I have looked up, I have found helpful reading materials that direct me to the correct parts of the Strata Property Act. Then I can show the other council members the act and we can talk about the issue knowing that we have found the right section of the legislation. The letter templates are so helpful. I have saved several of them to help us write letters properly when there are bylaw complaints and if there are fines levied.

Another said:

I think that by using the letter templates and suggested reading, our Strata council has been able to prevent some issues from getting worse. If we hadn't used those letters, I think we might not have worded things correctly. ... And it saved our Strata money as well. At one point we were going to have a lawyer write all of the bylaw infraction letters. Then we found out about the templates in the solution explorer. We have one owner who makes several bylaw complaints every month so if you estimate legal costs of even \$300 per letter, it would have cost us over \$6,000 last year.

Some others (4), however, criticized the Solution Explorer as incomplete, misleading, or hard to understand.⁷⁵

Having help with the process made a significant difference to survey respondents' level of satisfaction with the Solution Explorer. There were 20 people who said that they had help using the Solution Explorer. Of those, 16 (80%) said that the Solution Explorer provided either all or most of the help that they needed. In contrast, of the 29 people who used the Solution Explorer alone, only five (17%) answered in those two categories, and ten (29%) said that the Solution Explorer did not help them at all.

⁷⁴ Percentages are rounded to the nearest whole number.

⁷⁵ See Section V.8 for discussion of the survey responses indicating that the respondent found the CRT hard to use or confusing.

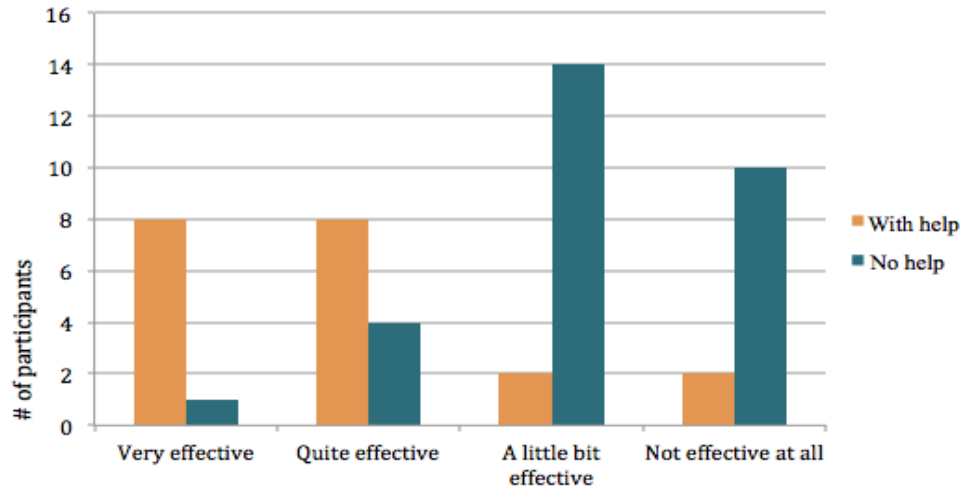


Figure 1: Difference in how helpful survey respondents found the Solution Explorer, divided into respondents who had help using it and respondents who used it alone.

Survey respondents who were assisted by a friend or advisor (14) found the Solution Explorer just as helpful as those who had used a lawyer (4).

These findings are consistent with previous research indicating that having assistance improves people's experience with legal problems. The Canadian Forum on Civil Justice study on everyday legal problems showed that high percentages of those who got help with their legal problems, whether from lawyers, non-legal organizations, or friends or relatives, found it helpful, and 42% of those who had no help said that in retrospect the outcome of their legal problem would have been better if they had had assistance.⁷⁶ In our survey, when asked what could be done to make the Solution Explorer better, 51% of people suggested that it should be easier for people to contact a support worker or advisor in person to help.

Survey respondents who used the Solution Explorer for small claims matters generally reported finding it more helpful than respondents who used it for strata matters, as shown in Figure 2.⁷⁷ The difference may reflect differences between the kinds of information and resources that the Solution Explorer provides in strata and in small claims.⁷⁸ In strata law the "domain" or subject area is relatively narrow and specialized, and the user pathways are relatively precise and detailed, with multiple questions leading the user to relatively specific outcomes. By contrast, small claims is a broad area that covers a wide variety of legal matters, including consumer, property, personal injury and employment claims. Users tend to be given information at a higher level of generality. Another factor that could be driving this difference is the fact that in general the survey respondents who used the CRT for strata matters appear to have been more unhappy with the system.

⁷⁶ Trevor CW Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016) at 10-11.

⁷⁷ The responses are divided into "Strata" and "Other (small claims)," which includes all of the small claims disputes types as well as three respondents who chose "I'm not sure or I don't remember."

⁷⁸ We are grateful to Lauryn Kerr for drawing our attention to this distinction.

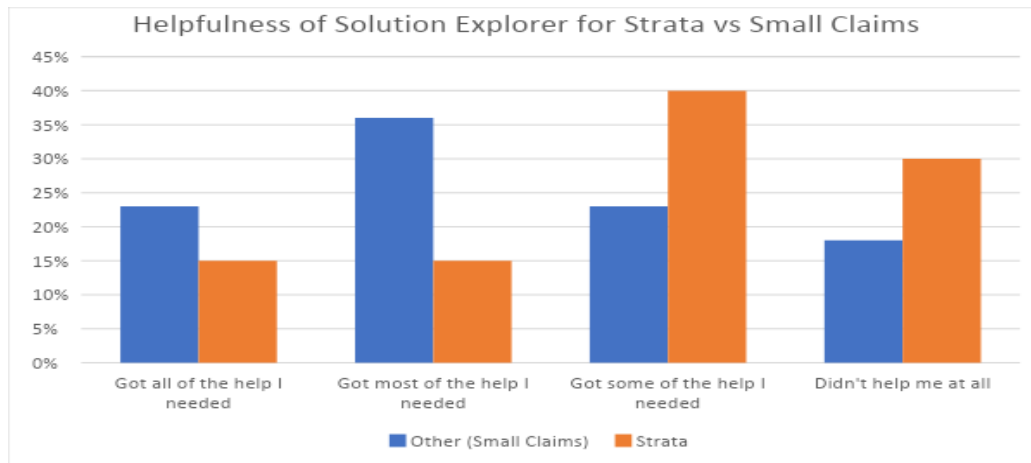


Figure 2: Difference in how helpful survey respondents found the solution explorer, divided into respondents who used it for a strata matter and all other respondents (small claims or unknown).

Because nearly all (45 out of 49, or 92%) of our survey respondents used the CRT for dispute resolution, we have little information about its effectiveness for members of the public who use it just to get information, resources, or help with tackling a legal problem without going on to take additional dispute resolution steps. As of March 31, 2020, there had been a total of 114,017 Solution Explorer explorations, and 16,050 applications for dispute resolution.⁷⁹ It seems likely that there are British Columbians using this service who never apply for dispute resolution – perhaps many more of them than apply for dispute resolution. More research on experiences with the Solution Explorer specifically would be useful in increasing understanding of how this innovative “extended court”⁸⁰ approach is affecting access to justice for the public in BC.

D. The CRT Compared to Previous Legal Problems

Prior research by the Canadian Forum on Civil Justice [CFCJ] indicates that about half of adult Canadians experience a legal problem in a given three-year period,⁸¹ and that they almost always (95%) try to do something about it – but very few (only about 7%) turn to the formal justice system for a solution.⁸² Strategies people used as evidenced by the CFCJ survey were contacting the other party in the dispute (75%), searching online (33%), getting non-legal assistance from an organization like a union or advocacy group (28%), and getting some form of legal advice (19%).⁸³

The experience of our survey respondents was consistent with the findings from the CFJC survey. 43% of our respondents had had a legal problem in the prior three years, and 90% of those (19 of 21) tried to

⁷⁹ Civil Resolution Tribunal, “2019/2020 Annual Report” (July 2020), online (pdf): <civilresolutionbc.ca/wp-content/uploads/2020/07/CRT-Annual-Report-2019-2020.pdf> (latest report) [CRT, “Annual Report”] at 18.

⁸⁰ In Susskind’s terminology – see Susskind, *supra* note 4 and accompanying text.

⁸¹ Farrow et al, *supra* note 76 at 2.

⁸² *Ibid.*

⁸³ *Ibid.*

do something about it. The most common strategies were talking to the party on the other side and talking to a friend or relative (9 each).

One test of whether the CRT is improving access to justice is whether it provides a better solution than would be available if it did not exist. A rough proxy for that is whether it is an improvement on whatever people tried when they had legal problems in the past, before the CRT was an option. Our results provide some, although not overwhelming, evidence that for our survey respondents it is an improvement. 21 people who took our survey had had a legal problem in the past three years. Twelve out of those 21 (57%) said the CRT was better. Of those who had tried to solve the problem by contacting the party on the other side (a common strategy for both our survey respondents and the much larger sample in the CFCJ survey), 66% (6 of 9) said the CRT was better.

E. The CRT Compared to Court

A fairly high number of respondents (43%) said that they had been to court at some time in their lives for a legal proceeding. Asking these respondents about their experiences with both types of process allowed us to obtain what is probably the only direct evidence available at this point of how people's experiences with the CRT compare to their experiences with the traditional justice system.

14 of the 21 (67%) said that the CRT was either much easier or somewhat easier than court. The most common reason for finding the CRT easier was being able to use the system at any time (seven people (33%) chose this answer). Other reasons that survey respondents commonly chose from a list of options were "the rules were easy to understand," "I didn't have to travel to a court building," "I didn't have to interact with the other side in person," and "the system worked around my needs" (four each (19%)).⁸⁴

13 of the 21 survey respondents who had been to court before (62%) said they were either somewhat or much more satisfied with their experience at the CRT. The most common reason that people were more satisfied with the CRT was that they liked the outcome: eight respondents (62% of the people in this category) chose "the final result or outcome was better for me."⁸⁵ Intriguingly, for the eight people who were *less* satisfied with the CRT, the most commonly chosen reason was "I felt less empowered to participate in the process" (six choices, 75% of the people in this category). This is a striking result, given the evidence from the National Self-Represented Litigants Project⁸⁶ suggesting that, at least for self-represented people, the experience of going to court can be profoundly disempowering.

In written, open-ended answers, one survey respondents said "going to court is harder because I would have had to represent myself. The process of going to court is harder to navigate than using the CRT." On the other hand, some survey respondents said that deadlines were not enforced, rules were not applied to the parties equally,⁸⁷ and there were no penalties for frivolous claims or cost rules to incentivize people to settle. The CRT Rules follow the usual rule in court proceedings that costs follow the event; in cases where a tribunal member makes a final decision, the unsuccessful party will usually be required to pay the

⁸⁴ For this question, respondents could pick as many answers as applied.

⁸⁵ A difference between our survey and the CRT's internal participant surveys that should be borne in mind when interpreting the data is the fact that the CRT invites participants to complete the participant survey before they know the final outcome of adjudicated cases, so the results reflect people's level of satisfaction with the process, rather than the outcome.

⁸⁶ See Macfarlane, *supra* note 56.

⁸⁷ See also Section V.9, which discusses these themes in the written answers overall.

other party's fees and reasonable expenses related to the dispute.⁸⁸ But the tribunal will not order payment by one party of another's costs of representation by a lawyer (except in motor vehicle disputes), or compensation for time spent on the dispute, except in extraordinary circumstances.⁸⁹

F. Collaborative Dispute Resolution

Sixteen survey respondents were involved in a CRT dispute that was resolved in the Case Management Phase at the CRT, either at the negotiation stage or at the facilitation stage. Of these, almost all (14, or 88%) said that they were either very satisfied or somewhat satisfied. Six of these 16 (38%) were also in the group of respondents who had been to court before. *All* of the survey respondents who had prior experience in court and who had resolved their disputes at one of the collaborative stages reported that the CRT was easier than court, and that they were more satisfied with the experience at the CRT than with their court experience. Respondents involved in strata matters were slightly less represented in the group who resolved their disputes at one of the collaborative stages than in the overall group. Out of the 53 disputes⁹⁰ that are reflected in our survey, 49% (26 disputes) were about a strata issue. In comparison, only six of the 16 disputes that reached a collaborative decision (38%) were strata disputes.⁹¹

G. Justice Needs That Otherwise Would Not Have Been Served

Some survey respondents had no other viable option apart from the CRT for seeking justice. Seven of the survey respondents who had filed a claim with the CRT (18%) said that if the CRT had not been available they would have done nothing to pursue the claim. Four of those who responded to a claim filed by someone else (29%) said that if the CRT had not been available and the claim had been filed in court, they would have done nothing and hoped that the claim would go away. One respondent wrote: "This online thing really helped me. I seriously would not have been able to do this in person."

Some of the written answers indicate that the respondents would not have had a viable option without the CRT because they would have had to expend more effort and money than would make sense given the dollar value of the claim (and, sometimes, more than they could bear) – even if the legal claim had a big impact on their lives. Respondents said:

I would not have hired a lawyer as it would be too expensive. The amount of money I wanted was only \$360. [If the CRT did not exist] I think I would have not known where to turn and just give[n] up.

I was really stressed out because my [roommate] wouldn't give me back my damage deposit. I was so broke. Someone told me it would take more than 6 months to use the CRT but it only took about 2. It was a hard time for me but in the end I got my money back.

⁸⁸ CRT, "Rules", *supra* note 22, Rule 9.5.

⁸⁹ *Ibid.*

⁹⁰ The total number of disputes is greater than the total number of survey respondents because we asked people about both applying for dispute resolution and responding to a dispute started by someone else, and some answered about both experiences.

⁹¹ Because our participants are self-selected and our sample size is very small, we cannot conclude that this is a statistically significant result. However, we think that it illustrates an interesting potential trend that could be explored in future research (or tracked by the CRT).

I own a business and am very busy during the day. I don't have time to go to a court house and stand around and deal with people who owe me a few hundred dollars.

I don't know what the council would have done. It doesn't make sense to pay a lawyer and go to court over one or two thousand in Strata fees owed. And yet we really need that money to pay our bills.

H. Users Who Found the System Confusing or Hard to Understand

Most, but not all, CRT users find the system easy to understand. From the CRT's aggregated participant survey results for the last year reported, from April 1 through October 31, 2019, 68% said that the system was easy to understand, and from October 1, 2019 through March 31, 2020, 85% said it was easy or neither easy nor difficult.⁹²

Our survey responses are roughly consistent with those results, but indicate a somewhat higher rate of people finding the process hard to use or confusing. Out of the 45 survey respondents who participated in dispute resolution at the CRT, 13 (or 29%) gave written answers indicating that they were confused about the process or found the rules or materials hard to understand. Themes identified with the grounded coding process included the rules and communications being unclear and the process being difficult to navigate for an ordinary person. One respondent stated "[t]hey're kind of expecting you to be a lawyer for yourself, and you're not a lawyer. How fair is this to Joe Blow, who owns a condo, and Joe Blow has a grade 9 education or even a Bachelor's Degree - it's not going to be enough to get through the system." Another survey respondent said that the Solution Explorer "does not in any way provide 'information about the law' clearly or understandably." Another described going through the process as "being in total darkness, attempting to find / provide clarity, with ambiguous rules and processes that constantly changed."

In addition to survey respondents describing subjective feelings of being confused and lost, we also saw indirect evidence in the written responses that some survey respondents were confused about or misunderstood the process while they were going through it. Several seemed unaware of what the Solution Explorer was or when they were using it. For example, one survey respondent who was an applicant in a dispute stated that they "didn't know about this Solution Explorer until starting this survey" but all applicants must go through the Solution Explorer before they can file a claim at the CRT. Another survey respondent who was unhappy with the CRT decision stated that "there should be a way to appeal a CRT decision." In fact, for small claims decisions (the category of this person's claim), the process for reviewing a CRT decision is much easier than a traditional appeal; someone who disagrees with the tribunal decision can file a Notice of Objection without needing any reason to object, and would be entitled to have the claim litigated *de novo* in the BC Provincial Court.⁹³ One respondent said that there was a default decision against them because notice of the claim was sent to an old e-mail address: "I didn't check my old email and nothing got sent to me by mail to let me know what was going on." But the CRT Rules

⁹² CRT, "Annual Report", *supra* note 79 at 29. The format of the survey was changed in October 2019, and results for the two periods (April 1 through September 30, 2019; and October 1, 2019 through March 31, 2020) are presented separately in the Report.

⁹³ *CRT Act*, *supra* note 9, s 56.1. For a more complete discussion of this process, see Rebecca Dickson, "Does the Notice of Objection Mechanism Available to Civil Resolution Tribunal Small Claims Parties Enhance Access to Justice?" 54:1 UBC L Rev, [forthcoming]. Other CRT decisions are subject to judicial review; see *CRT Act* ss 56.6 and 56.7.

provide (and have since the CRT's inception) that service (now called "Dispute Notice") by e-mail is only effective if and when the respondent acknowledges receipt of the notice.⁹⁴

These survey responses show that the system leaves some users feeling confused and alienated. This was not the case for everyone, however; one respondent said that it was "wonderful" that there are now many published CRT strata decisions "written in fairly easy to understand language."

It is possible that the difficulties experienced by some CRT users are caused at least in part by the complexity of the laws and regulations at issue in the disputes (rather than, or as well as, the CRT process). As one survey respondent noted, in strata matters multiple sources of law and rules can apply and interact, including the *Strata Property Act* and regulations, other property legislation and regulations, strata bylaws and rules, and case law. Simpler processes may ameliorate the difficulty of dealing with multiple, complex sources of law, but perhaps only up to a point.⁹⁵

It is very hard to navigate through a legal process without guidance from someone who has some knowledge of or familiarity with it. The responses to our survey suggest that, even aside from the question of having expert guidance, some users might have found the experience better if they had someone to support them as they went through the process.

I. Criticism of the CRT as a Justice Institution

A significant minority of survey respondents wrote narrative comments that expressed some form of criticism of the CRT as a justice institution, including complaints that they saw it as lacking attributes such as impartiality, legal expertise and independence.

13 survey respondents (about one in four) provided comments showing that they did not perceive the CRT as neutral between the parties to the dispute. These responses overwhelmingly involve assertions that the CRT favoured the strata corporation over the other side in strata disputes. They include comments like "the CRT is skewed so heavily to favour the strata in condo related cases," and "their decisions [...] appear largely to be in favour of the Strata Council members vs the aggrieved victim owner/s."

Three survey respondents provided written answers criticizing the CRT for lacking independence or being indistinguishable from the BC government in a way that made it less legitimate. Some of the comments said that the CRT does "whatever they want" because "they are the government" and they "don't have to follow any standards or precedents," and that the "CRT regularly successfully gets Government to change [its] own law."

Ten survey respondents provided written answers expressing opinions that CRT staff or tribunal members did not know enough about the law or were not experts in the area of law at issue. The following comment is representative of the category: "The complainant should not have to be knowledgeable on the laws that apply, like a lawyer, nor should the respondent. The Tribunal member & the facilitator should know the laws that apply to bring justice & resolution to the issue." Only two of the ten respondents who provided criticisms in this category had prior experience in court (one of them was the respondent quoted above), whereas the critical comments in general are fairly evenly split between respondents who had been to court and respondents who had not. It is possible that some of these criticisms in this category reflect incorrect assumptions about the extent to which judges in traditional courts are specialists in specific areas and engage in proactive investigation, rather than relying on submissions of the parties.

⁹⁴ CRT, "Rules", *supra* note 22, Rule 2.4(1).

⁹⁵ See Colleen F Shanahan & Anna E Carpenter, "Simplified Courts Can't Solve Inequality" (2019) 148:1 *Daedalus* 128.

Another source of frustration for some of the survey participants was having to continue on to another step to enforce an order from the CRT. Of the 39 people who were applicants at the CRT, six (15%) said that they received an order from the CRT and then had to go to start new court proceedings to enforce it.⁹⁶ Survey respondents' open-ended responses indicated considerable frustration about this. In one respondent's view, "[t]he gap in the law between a CRT order and actually ensuring anyone adheres to it effectively enables it to be invalid ... in essence this means that it is futile to have or use a CRT." The same problem exists in the traditional courts. The NSRLP 2013 study found that self-represented litigants "were often appalled to learn that [after a judgment] they now had to take further steps to collect the money themselves" and felt that it was pointless to have obtained the order.⁹⁷

On top of the frustrations that can occur when trying to enforce an order from the CRT, there are additional procedural hurdles that some CRT small claims participants may encounter. Sections 56.1-56.4 of the *CRT Act* provide the option for parties to CRT small claims who are not satisfied with the outcome to file a Notice of Objection, which renders the CRT decision non-binding and unenforceable.⁹⁸ The matter must then be re-litigated through a *de novo* trial at the Provincial Court.⁹⁹ We had one survey respondent indicate that the other party in their dispute had filed an objection to the CRT decision. This respondent said this was why they were less satisfied with their experience at the CRT compared to their prior court experience, stating "had this just gone to Small Claims court in the beginning, it probably would already be finished but here we are over a year later and back at square 1."

Fourteen survey respondents criticized the CRT for being different from the traditional legal system and not in line with what they expected a legal forum to be. Some respondents indicated that they were frustrated because the rules of the CRT were different from court rules – for example, they thought the rule against hearsay should apply, that the CRT should have the power to subpoena documents from parties who are not cooperating, and that untruthful evidence should be under penalty of perjury.¹⁰⁰ Another complaint was that there is no incentive for parties to be truthful (such as a risk of being found guilty of perjury) like there is in the traditional court system.

Some of the written comments convey CRT users' sense that they were deprived of justice or procedural fairness because they had to go to the CRT instead of court. As one survey respondent put it, "I should have had the RIGHT to go to court. Not to do this online." This is a minority view. Only five out of the 39 survey respondents who filed claims with the CRT said that they wanted to court instead of using the CRT. Only two of those five had been to court before.

The default rule under s. 20 of the *CRT Act* that parties are unrepresented does not seem in itself to have been a significant factor behind criticism of the system. Only one of the respondents who had filed a claim with the CRT, and only two of those who had responded to a claim, said that they wanted and were prepared to pay for a lawyer but were not allowed to have one. But, as discussed above, some survey

⁹⁶ See Civil Resolution Tribunal, "After a CRT Decision" online: <://civilresolutionbc.ca/how-the-crt-works/how-the-process-ends/#how-do-i-enforce-my-motor-vehicle-injury-dispute-order> for information about enforcement of tribunal orders.

⁹⁷ Macfarlane, *supra* note 56 at 54.

⁹⁸ *CRT Act*, *supra* note 9, ss 56.1-56.4.

⁹⁹ See Dickson, *supra* note 93.

¹⁰⁰ The tribunal does have the power to make an order against a person to provide evidence or to produce a record or other thing in that person's control. CRT, "Rules", *supra* note 22, Rule 8.2(3).

respondents indicated that they were lost or confused, and probably could have used help. We can speculate that these problems might have been mitigated by having someone to guide those users through the process (although not necessarily a lawyer).

These criticisms are important evidence for evaluating the CRT's effectiveness, from the user's point of view, in providing access to justice. Access to justice means access to a process that the user experiences as fair. It is important to note, however, that we do not have evidence about whether the problems respondents perceived, such as bias and lack of expertise, did occur. The survey only tells us about the perception of users. We do not know what happened that led some users to feel that there was a problem with fairness or expertise. It bears noting that CRT tribunal members are experienced professionals who are required under the *CRT Act* to perform their duties faithfully, honestly and impartially¹⁰¹ and are bound by a Code of Conduct.¹⁰²

Compared to our survey, the CRT's internal participant surveys show stronger positive results on professionalism and fairness. In the last reported year, more than 90% of participants agreed that the CRT staff were professional in each interaction, and 85-86% agreed that they were treated fairly throughout the process.¹⁰³ In one more recent month, the score on fair treatment (based on 50 responses) was 100%.¹⁰⁴ Survey respondents' criticisms of the CRT as a justice institution echo some themes that have featured in arguments raised about the CRT by professionals in the traditional legal community. It has been argued, for example, that the CRT, as an administrative tribunal, is part of the executive branch of government and lacks the independence of a court, and that courts are the best way to provide robust procedural justice.¹⁰⁵

VI. RECOMMENDATIONS

Based on the responses to our survey, we put forward the following proposals for consideration as solutions for some of the problems that respondents to our survey reported.

A. Easier, More Accessible Ways to Get Help with the Process

1. Navigators

Some of the survey responses convey a sense of being lost in a legal system that users found opaque, mystifying, and disempowering. The CRT was built to be navigable by self-represented persons without a legal representative or expert helper. But going through any legal process is burdensome and difficult,

¹⁰¹ *CRT Act*, *supra* note 9, s 83

¹⁰² Civil Resolution Tribunal, "Code of Conduct for CRT Members" online (pdf): <civilresolutionbc.ca/wp-content/uploads/2018/01/Code-of-Conduct-for-CRT-Members-Dec-2017.pdf>.

¹⁰³ CRT, "Annual Report," *supra* note 82 at 29-30. As noted in note 95, the format of the participant survey changed during the year, so there are two sets of results summarized here.

¹⁰⁴ Civil Resolution Tribunal, "Participant Satisfaction Survey – May 2020" online: <civilresolutionbc.ca/participant-satisfaction-survey-may-2020/>.

¹⁰⁵ See Notice of Civil Claim between Trial Lawyers' Assn. of British Columbia and British Columbia (Attorney General), filed in the British Columbia Supreme Court under registry number S-193931 at part 3, para 10. Also see Canadian Bar Association British Columbia, "CBABC Position Paper on the Civil Resolution Tribunal Amendment Act, 2018 (Bill 22)" (8 May 2018), online (pdf): <www.cbabc.org/CMSPages/GetFile.aspx?guid=7780205c-d5e1-4611-97b1-7458b193813e>.

and a simpler process cannot completely mitigate the complexity of the underlying law. The responses to our survey suggest that CRT users might be helped simply by having someone to accompany them or help them navigate through the process.¹⁰⁶ This could be helpful even if the helper was not a legal expert. The survey responses suggest that the effectiveness of the Solution Explorer was much better for people who had someone helping them whether that was a lawyer, or a friend or family member.

2. More telegraphing of information about options for help

The existing options for CRT users to get guidance and help may be underused and not widely understood. The CRT could more clearly telegraph information for users about the options for getting help, including asking a friend or family member to provide support, and/or getting help from a lawyer using the “unbundled” or “limited scope retainer” model, where the lawyer provides partial services with a matter, often for a fixed fee.¹⁰⁷ The *CRT Act* has a default rule that parties are to represent themselves in proceedings (except for motor vehicle accident claims), but this does not prevent CRT users from obtaining any other form of assistance from lawyers or other helpers, explaining case law and the process, organizing evidence, and drafting written submissions.¹⁰⁸

Currently, information about where to get help is provided to users mainly at the point where they move from the Solution Explorer to the dispute resolution phases (at the end-point of Solution Explorer explorations, and in the form that must be completed to apply for dispute resolution). This information could be useful earlier in the process, perhaps right on the landing page that users first see when they start interacting with the CRT,¹⁰⁹ and could be repeated and reinforced at various points along the way.

3. Default Permission for Clinic and Pro Bono Lawyers to Represent Parties in CRT Proceedings

One approach that we think is worth considering would be adopting a rule that free lawyers such as community legal clinic lawyers and volunteer lawyers with Access Pro Bono¹¹⁰ can represent parties in

¹⁰⁶ An interesting example of non-lawyer guides who help people through a legal process is the navigator service provided by Canada's Social Security Tribunal for certain appeals. Navigators are staff who have detailed knowledge of the appeal process and provide one-on-one support, guidance through the process, and help with preparation – but not advocacy, since they are neutral. See Government of Canada, “Social Security Tribunal: Navigator Service” online: <<https://www1.canada.ca/en/sst/innovation/nav.html>>.

¹⁰⁷ See Law Society of British Columbia, “Code of Professional Conduct for British Columbia” r 3.2-1.1, and commentary, online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/> (permits limited scope retainers). See also Canadian Bar Association British Columbia, “Unbundling Legal Services” online: <www.lawsociety.bc.ca/our-initiatives/access-to-justice/unbundling-legal-services/> (recommends limited scope or unbundled services as “especially helpful to self-represented litigants, who often are not self-represented by choice, but are unable to afford to retain legal counsel”).

¹⁰⁸ See CRT, “Rules”, *supra* note 22, Rule 1.14(1) (“A party may use a helper to assist them in the tribunal process, but a helper may not communicate on behalf of the party or enter into binding agreements on the party’s behalf”). But see *Booth*, *supra* note 40 and accompanying text.

¹⁰⁹ The BC Human Rights Tribunal has a prominent “Who Can Help?” button on its landing page that leads to information about service providers organized by geographical area and by specialization. See online: *BC Human Rights Tribunal* <www.bchrt.bc.ca/>.

¹¹⁰ Access Pro Bono facilitates the provision of pro bono legal services in BC for people and non-profit organizations of limited means. See online: *Access Pro bono* <accessprobono.ca/>.

CRT proceedings by presumption.¹¹¹ The *CRT Act* currently provides that representation is allowed in certain circumstances for a party who is a child or a person with impaired capacity – a presumption based on the characteristics of certain types of litigants.¹¹² Presumptive permission for full representation based on the nature of the service provider could broaden access to legal help for disadvantaged people. Clinic or pro bono lawyers and their clients may prefer the familiarity and reassurance of a relationship based on full representation, where the lawyer can take over for the client and go through the process for her.

There is, however, a risk that this approach could undermine the purpose of s. 20 of the *CRT Act*, since if one party is represented by pro bono counsel and the other is not there could still be a power imbalance. The risk might be reduced by specifying that the presumption is rebutted if representation for one side is not in the interests of justice and fairness.

4. Alternative Legal Service Providers

The expense of lawyers' services is a significant obstacle to accessing legal assistance. Under current BC law, there are limited options for more affordable forms of legal assistance, because lawyers have a statutory monopoly on practicing law for remuneration, which extends to giving legal advice and preparing for legal proceedings.¹¹³ Our survey did not ask specifically whether survey respondents would have used lower-cost providers if that was an option, but one of the respondents spontaneously mentioned the barrier that the statutory monopoly creates: "I could have asked VISOA [the Vancouver Island Strata Owners Association] or CHOA [the Condominium Home Owners Association of British Columbia] but I know they can't actually give legal advice." Lower-cost professionals could provide services such as advice, drafting submissions, preparing evidence, and representing people in CRT proceedings. But this is not allowed under BC law as it currently stands.

The debate and literature about changing the rules prohibiting the unauthorized practice of law are extensive, and a full discussion is beyond the scope of this article,¹¹⁴ but we do note the particular relevance of that debate for the CRT, which is designed around the needs of people who are assumed not to be able to pay the full price for a lawyer (or for whom the cost of traditional legal representation is not

¹¹¹ *CRT Act*, *supra* note 9, s 20(2)(b) provides that a party may be represented if the CRT's rules permit it, so the CRT could create this presumptive category under its own rules.

¹¹² *Ibid*, s 20(2)(a); see also CRT, "Rules", *supra* note 22, r 1.13.

¹¹³ *Legal Profession Act*, SBC 1998, c 9, s 15. The BC legislature has already enacted amendments to the *Legal Profession Act* that open up the practice of law to one additional category of alternative service providers, licensed paralegals, see Bill 57, *Attorney General Statutes Amendment Act*, 3rd Sess, 41st Parl, British Columbia, 2018 (assented to 27 November 2018), BC 2018 c 49. But these provisions are not currently in force. They are set to come into force upon the adoption of regulations, which at the time of writing have not been adopted. In 2018, the Law Society of British Columbia adopted a resolution asking the government to refrain from adopting regulations bringing the licensed paralegal amendments into force until the Benchers have had time to complete further consultations. See Law Society of British Columbia, "Minutes of Annual General Meeting" (30 October 2018), online (pdf): <www.lawsociety.bc.ca/Website/media/Shared/docs/about/agm-2018-minutes.pdf> at 8. The *CRT Act* already contemplates that a person who is not a lawyer may represent someone in a tribunal proceeding if the rules permit it, or if the tribunal is satisfied that the person is an appropriate person to do so: *CRT Act*, *supra* note 9, s 20(4).

¹¹⁴ See e.g., Deborah L Rhode & Lucy Buford Ricca, "Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement" (2014) 82 *Fordham L Rev* 2587; William D Henderson, "Legal Market Landscape Report Commissioned by the State Bar of California" (July 2018), online (pdf): *Association of Certified E-discovery Specialists* <aceds.org/news/410653/Professor-Bill-Hendersons-CA-Bar-Report-Change-Ethical-Rules.htm>.

worth it given the size and nature of the dispute). This new kind of dispute resolution forum could inspire reimagined ways of providing legal services. For example, there could be a new class of legal professionals trained to help people with this type of process specifically – think CRT Advocates, or Online Tribunal Paralegals.¹¹⁵ Such alternative providers could be even more helpful to CRT users if they had skills and training enabling them to assist particular communities that may experience higher barriers to accessing justice. Expertise in resolving conflicts in a strata setting, proficiency in non-English languages, Indigenous cultural knowledge, or expertise with non-legal aspects of legal problems such as the health and psychological dimensions of motor vehicle accident disputes, could all be powerfully helpful in combination with knowledge of the CRT's process and relevant law.

B. 'Myth-Busting' and Public Education.

The responses to our survey show that some skepticism about the CRT arises from misunderstandings or erroneous information. The CRT could increase and emphasize messaging to counter misperceptions that contribute to some users' doubts about the system. For example, some responses revealed a belief that the CRT and the legislature are not meaningfully distinguishable, so that the CRT has power to choose what types of claims it has jurisdiction over or to determine what is in the *CRT Act*. As the CRT expands its work on motor vehicle cases, there is likely to be further amplification of the view that its independence is compromised because it will have to assess claims determinations by the provincial insurer ICBC (a Crown corporation).¹¹⁶ There is some basis for these perceptions, since CRT adjudicators are not independent of the government to the same degree as judges, but the concerns could potentially be allayed if there were more widespread knowledge of the protections that do exist to protect its independence. For example: the content of the *CRT Act* and the CRT's jurisdiction are determined by elected members of the legislature, not by the CRT; tribunal members are non-political appointees, appointed for a fixed term, not subject to termination based on their decisions, and independent of the government in the same way as members of other administrative tribunals in areas like human rights and employment standards (although they do not have lifetime appointments and the very high degree of independence that judges do); and that organizations such as ICBC have no role at all in the selection, remuneration or oversight of tribunal members.¹¹⁷

¹¹⁵ Susskind envisioned in 2013 that "ODR practitioner" could be a new kind of job for lawyers: "These specialists will advise clients on how best to use ODR facilities and will be experts in resolving disputes conducted in such online environments." Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013) at 115.

¹¹⁶ This impression may be amplified by advocacy communications from constituencies that oppose the pending reforms of motor vehicle insurance law in BC, including the move to no-fault – which is a substantive change distinct from any change in the CRT's jurisdiction, but part of a coordinated approach to reforming the law. An advocacy organization called "No to No Fault" describes the CRT as "a non-arm's length tribunal that is hired and fired by the government." "Your Questions Answered (FAQ)," online: *No to No Fault* <www.notonofault.com/faq/>.

¹¹⁷ See e.g. Commonwealth of Australia, "Key Practices for Industry-based Customer Dispute Resolution" (2015), Benchmark 2 (concerning the independence of decision-makers), online (pdf): <treasury.gov.au/sites/default/files/2019-03/key_pract_ind_cust_dispute_resol.pdf>.

C. Technological Tools

Additional technological tools could also help CRT users. The survey responses suggest that technology is unlikely to be a perfect substitute for human guidance for people who find the process difficult to navigate. But additional technological resources, enhancing the information and tools already available through the CRT, might be helpful. The survey responses identified some tools that CRT users thought would help them. One respondent suggested that it would be helpful to be directed to relevant legislation and case law through hyperlinks in the Solution Explorer.¹¹⁸ Another respondent suggested that information submitted to the system in an application for dispute resolution or a response could be automatically analyzed to “determine whether there is a *prima [facie]* case or defence.” With increasingly sophisticated predictive analytics through machine learning applications, it would seem that this is feasible at least in principle, especially as the data set of CRT decisions continues to expand – although this type of technology is more complex and currently a lot more expensive than the simple logic pathways of the Solution Explorer, so the financial and resource costs of using it might not be justified by the benefits. Chatbots are another technological tool that some public legal information providers are using effectively,¹¹⁹ and they could potentially be used as well to help guide users through the CRT process. Some chatbots use sophisticated artificial intelligence technology, but simpler chatbots can also be built using a similar structure to the Solution Explorer. Adding this type of user interface could potentially present information in a way that some users would experience as more welcoming, friendly and accessible.

If CRT users had access to additional technological tools like this (as well as the existing tools and information provided through the Solution Explorer) *and* human guidance, advice and support, the experience of being “in total darkness” might become lighter. As one comment from Twitter sums it up, “[p]eople-help paired with tech-help sounds like a winning combination.”¹²⁰

VII. CONCLUSIONS: EVALUATING THE CRT’S SUCCESS IN IMPROVING ACCESS TO JUSTICE

Overall, do the results from our survey suggest that the CRT improves access to justice? This is a complex and multifaceted question to which there is no simple or absolute answer. But on balance, our findings from the survey support the conclusion that the CRT has improved access to justice on a number of dimensions. The survey results also identify some areas where, at least for some users, there is a deficit in some aspects of access to justice.

Most of the CRT users who completed our survey were satisfied with the system and found it helpful. Users commented on the help they got from resources like letter templates in the Solution Explorer, which

¹¹⁸ It should be noted, however, that case law and statutes can be very difficult to interpret even for people with legal training, let alone those without, and directing CRT users to primary sources could risk overwhelming people with dense and complicated information.

¹¹⁹ For example, “Beagle,” a simple chatbot provided by the People’s Law School that answers questions through Facebook Messenger. See Heather Douglas, “Can a Chatbot Answer Legal Questions,” *Slaw* (29 April 2020), online: <<http://www.slaw.ca/2020/04/29/can-a-chatbot-answer-legal-questions/>>.

¹²⁰ Legal Issues Centre, “People-help paired with tech-help sounds like a winning combination, according to early findings of research into the effectiveness of Canada’s online Civil Resolution Tribunal” (26 May 2020 at 18:09), online: *Twitter* <www.twitter.com/OtagoLIC/status/1265450125763043329>.

enabled them to solve legal problems and saved them money. Being able to access the CRT remotely and at convenient times meant that survey respondents could deal with disputes while also handling work and other responsibilities that would have made it difficult or impossible for them to go to court. The CRT provided proportional justice where, if it had not existed, some survey respondents would not have had any viable options.

For the majority of survey respondents who could compare the CRT to their other experiences coping with legal problems – including in court – it was an improvement. Two thirds (67%) of those who had been to court said the CRT was easier. A majority (57%) of those who had experienced one or more legal problems in the past three years said that the CRT was somewhat or much better than their experience dealing with the other legal problem. The survey responses also provide evidence that collaborative or consensual resolution does provide a better experience for the CRT users who took our survey.¹²¹

The survey responses, especially the narrative answers, highlight two broad areas where some survey respondents experienced problems with access to justice through the CRT. Some found the process confusing and hard to navigate. Some criticized the CRT as a justice institution. The fact that some users experience these problems is important. The criticisms are relevant to some of the components of access to justice: ease of use, procedural fairness, substantive justice (being confident that the decision was consistent with applicable law), and a system that treats people with dignity and meets their needs. They also have a connection to Susskind's concept of "sustainable justice," because a justice system needs a strong grounding in public trust and perceived legitimacy to have ongoing stability and security.

We do not know whether the CRT is doing worse or better on these points than the traditional justice system. We can speculate that it could be an improvement over the court system, given how complex the traditional system is. Even if some CRT users are confused or frustrated, these problems certainly exist in traditional courts, and they may be worse. Because there is essentially no data to use as a baseline regarding people's subjective experiences with the traditional court system in BC, we cannot draw firm conclusions about this.

The survey responses give us a glimpse into what it is like for users to be part of the early days of a revolution in providing public justice services: a shift from the idea of court as a place to court as a service,¹²² and from a process designed around lawyers and judges to one that tries to build around the needs of users. It would be beneficial to do further research to expand on our knowledge, including longer qualitative interviews with CRT users, more extensive research on use of the Solution Explorer, and research on areas that our survey provided little or no information about, such as the experiences of Indigenous people and members of other marginalized groups.

The picture we get from the survey is messy and complicated. The survey results indicate some areas of concern. At the same time, on balance they suggest that the CRT is effective in providing access to justice for British Columbians. This is especially encouraging considering that the CRT has continued to provide service in the COVID-19 pandemic without any interruption or setbacks. The CRT proves that

¹²¹ See NRG Research Group, *supra* note 43.

¹²² We allude here to Susskind's challenge to ask whether justice is "a service or a place" (Susskind, *supra* note 4 at 93). Notably, Chief Justice Hinkson in *Trial Lawyers*, *supra* note 11 at para 340, rejected the view that justice is a "service," describing it as "anathema to the long standing and widely accepted views of the Supreme Court of Canada" about the Canadian justice system.

the public justice system can be rebuilt to be more accessible, to be resilient and robust even in a crisis that prevents physical access to courts, to provide a high quality of justice, and to serve users well.