

Summary

The Civil Resolution Tribunal

A first exploration

The Civil Resolution Tribunal (CRT) is a governmental dispute resolution body for citizens and legal entities in British Columbia, a province of Canada. It replaces the procedure at court for litigants in cases with small claims up to € 3.400, condominium disputes, motor vehicle injury cases, and societies and cooperative association cases. Rules for litigation changed accordingly. For instance, the procedure is conducted fully online when possible, representation is allowed only by exception, and mediation must be attempted before a decision can be rendered. The tribunal includes a digital portal providing persons seeking justice with problem diagnosis, information and self-help tools.

The idea behind the tribunal is that it will simplify access to professional dispute resolution. In addition, disputes could be resolved faster, at lower costs, and in a more informal and flexible manner by means of reaching an agreement between parties where possible and providing a tribunal decision if necessary. Whether the system can be beneficial in the Dutch context is, however, not immediately clear. The current research aims to provide insight into the origin of the tribunal and to explore the advantages and disadvantages of implementing a similar facility in The Netherlands.

Central to this research are the following research questions.

- 1 What is the origin story of the CRT-system?
- 2 What are the characteristics of the CRT-system?
- 3 What advantages and disadvantages of (elements of) the CRT-system are discussed in legal sciences literature between 2012 and mid 2020?
- 4 How does the CRT-system relates to the Dutch context?

Methods

The research was conducted using a desk study, secondary data analysis and two interviews. Key sources for the desk study included parliamentary documents on the laws concerning the tribunal, the CRT act itself, the rules implemented by the tribunal valid between May 1st 2020 and May 1st 2021, and the annual reports of the CRT and the judiciary in British Columbia and The Netherlands. Additional information in particular regarding advantages and disadvantages was collected through a quick scan of the literature in the legal sciences. Furthermore, a secondary data analysis was carried out on databases provided by the CRT detailing the number, type and outcome of cases, and several reference books such as the civil- and administrative law database ('Rechtspleging Civiel en Bestuur') from the Research and Documentation Centre of the Dutch ministry of Justice and Security. Additionally, the chair of the CRT and an expert on Online Dispute Resolution in The Netherlands were interviewed to complemented our results where necessary and to gain more insight into the bottlenecks that are to be expected upon implementation of a similar system in The Netherlands.

Findings

Origin of the Civil Resolution Tribunal

The origin of the Civil Resolution Tribunal can be understood against the background of broad reforms in the judicial system, private initiatives in the field of online dispute resolution, and limited access to justice for people with condominium disputes. The reforms included the idea of developing legal services with a greater focus on people's needs compared to the traditional procedure at court. The CRT was mentioned as an example in the reform plans. The enormous amounts of cases resolved online by eBay and Paypal, combined with the high customer satisfaction of two non-profit organizations using ODR, inspired several policy makers to establish an online tribunal within the public justice system. Condominium owner associations advocated improving access to justice for condominium disputes that previously fell within the jurisdiction of the Supreme Court.

In 2012, the outline of the CRT was laid down in law (the CRT-Act). Development and establishment was estimated at about eighteen months. This proved to be too optimistic, as it took the CRT about four years to open its virtual doors in July 2016. The first cases included condominium disputes. In 2017 the CRT's jurisdiction extended to include small claims (up to € 3.400) and in 2019 also motor vehicle injury cases and disputes regarding societies and cooperative association. In 2019, 18 case managers and 12 arbitrators were working for the CRT.

Characteristics of the Civil Resolution Tribunal

The procedure of the CRT is designed to take place on the tribunal's website. The website's portal, the so-called Solution Explorer, provides information, forms and referrals tailored to the dispute at hand. It helps to increase claimants' knowledge about the legal issue and to address it on their own. After the portal, claimants can continue on the website and start a procedure. A Dispute Notice will be created and sent. When the defendant fails to reply in time, the claimant can request for a default decision. Otherwise, the procedure continues with the opportunity for parties to resolve the dispute through negotiation themselves. In the meantime, a case-manager will be appointed to assist the parties in finding a solution through mediation. When the parties did not reach an agreement in the negotiation or the mediation stage, the parties can continue on the website and ask the casemanager to proceed to the decision stage. In this final stage, an arbitrator of the tribunal will evaluate the case and render a decision. When enforcement of the decision is needed, the decision can be filed at provincial or supreme court. A formal agreement reached in the mediation stage can also be filed in court, but only if after the decision is cleared with and converted into a CRT-order by an arbitrator.

Litigation fees depend on the dispute type and the stage in which the case is closed. The fees for filing a claim and counterclaim is € 51 or € 85; responding to a claim is usually free of charge. An additional fee of € 17 will be charged when these forms are sent by regular mail, email or fax (instead of submitting them on the website). Parties who reached an agreement by negotiation receive reimbursement of their application fee. A default order, or a formal document detailing the agreement between parties (consent resolution order), has a fee of € 17. The fee for a non-default decision is € 34 of € 68. Extra requests, such as validated copies or cancellation of a default order, come along with additional fees. To enforce the order, a fee of € 34 of € 74 is charged (CRT- fee and court fee combined). Depending on their income, parties can request a waiver of tribunal fees. The tribunal can order the losing party to pay the winning party's tribunal fees and reasonable dispute-related expenses.

A large majority of the tribunal's cases pertain to small claims up to € 3.400 (85%). Other cases include condominium disputes (14%), motor vehicle injury disputes (<1%) and societies and cooperative association disputes (<1%). In 2019, 18% of all cases were resolved by agreement between parties, with or without a mediator, 20% ended in a tribunal decision and 28% in a default decision. 20% of the cases were withdrawn, 12% were not admissible to the CRT, and 3% of cases were under appeal (and therefore not closed). The average time it took to resolve a dispute in 2020 was 83 days (median is 54 days).

A vast majority of respondents in the participant satisfaction survey is satisfied with the services offered by the CRT. They would recommend using the CRT to others. Additionally, most respondents were happy with the information, comprehensibility and simplicity of the procedure. Moreover, most respondents found the online services easy to use and the CRT staff professional. Finally, a large majority of respondents felt treated fairly throughout the process and found their dispute to be resolved in a timely manner.

Advantages and disadvantages of the CRT system

For people seeking justice who are able to express themselves well in writing, who are digitally proficient, and who have access to the internet, the CRT procedure is more accessible than a court procedure. For this group, the procedure is accessible irrespective of time and location. The increased accessibility is, however, not as obvious for those who are not able to express themselves well in writing, who are not digitally proficient or who have no or limited access to the internet. To accommodate these people seeking justice, the CRT also provides paper forms that can be submitted by regular mail. These forms are, however, hardly ever used. A general service desk for government affairs is available for getting in-person assistance in using the website and filling in forms. It is, however, not clear how often these in-person services are used.

Fees at the CRT are almost equivalent to those of the provincial court in British Columbia. The CRT procedure is, however, more expensive when the fee for filing a CRT-order at court is included. An additional € 34 of € 74 is needed to enforce an CRT-order. According to the CRT, lower costs can, however, be achieved firstly due to by the 'layered' characteristic of the procedure. Each phase is associated with separate fees, and costs can be saved when fewer steps are needed in the procedure. Secondly, according to the CRT, costs are saved because of lower extrajudicial costs (e.g. no representation) and due to the ease of getting a fee waiver (for people with a lower income).

Looking at the time it takes to resolve a dispute, earlier research suggests that the CRT-procedure is faster than a procedure at the provincial court. In 2015 the average time to resolution at the provincial court was three months for a settlement conference and an additional four months for a decision. The average time to resolution for the CRT procedure – including withdrawn and default cases and excluding the use of the Solution Explorer – in small claims cases was 83 days (2,7 months) in 2020.

Compared to a court procedure the CRT procedure is more informal and characterized by more flexibility, allowing for adjustments in the course of the procedure. For instance, terms can be easily adjusted when parties need more time. These type of decisions can be made by the CRT itself and is not based on formal written criteria. Although this is beneficial in the context of reaching a timely decision, it may also come along with arbitrariness in the course of procedures.

The online procedure changes interpersonal dynamics between parties during the dispute resolution process. The written procedure limits non-verbal cues and can hinder the expression of emotions. Additionally, it can be harder for the mediator to

control the process. Online negotiations, however, are also known for certain benefits. For instance, parties do not have to wait when the mediator discusses the case with the opposing party. Besides, written procedures provide the possibility to review a response and revise it where necessary before submitting it.

One of the ideas underlying the implementation of the CRT was that it could relieve the workload of the judiciary. In our explorative study, we, however, did not find empirical data that could support this idea. Most notably, information on court's caseload in the small claims segment up to € 3.400 euro was not obtained in our desk-research. When relieving the judiciary of their caseload is one of the objectives behind possible implementation of the CRT in the Netherlands, it is important to get a better understanding of what causes the high workload in the first place.

Comparison with the Netherlands

The Rent Tribunal (Huurcommissie)

In our desk study we found one decision rendering body in the Netherlands showing many similarities with the CRT in terms of ODR implementation: the Rent Tribunal. Similar to the CRT, the Rent Tribunal is a formal part of the judicial system and a government-implemented alternative to a court procedure. In contrast to the CRT, that has jurisdiction over certain cases in the private housing sector, the Rent Tribunal primarily hears cases originating from the social housing sector (non-liberalized rent).

The digital elements of the procedure at the Rent Tribunal are as follows. Using their website, claimants can file and withdraw their case, pay fees, upload required documents and select their preference about how the procedure should move forward. Hearings can be held by video connection and the final decision can be sent through email. Decisions by the Rent Tribunal are published on the website, similar to the practice at the CRT.

Zooming in on the procedures at both organizations, both the Rent Tribunal and the CRT follow a layered approach. First, both platforms provide information before a claim can be filed. At the CRT, however, this stage is more focused on promoting self-help with the claimant. Both platforms differ in their approach towards filing a claim. At the website of the Rent Tribunal's, potential claimants need to navigate to the forms and select the appropriate one themselves in order to file a claim. The CRT uses a diagnostic tool to direct potential claimants towards information and forms that are relevant for resolving the dispute themselves and finally towards the form for filing a claim. Application is always followed by negotiation at the CRT, whereas this is not the standard procedure at the Rent Tribunal. Prior to mediation by a third party, the CRT first provides parties with the possibility to negotiate an agreement amongst themselves. When mediation is not successful, a neutral third party can take a decision on the case. In both organizations the person taking the decision cannot be the same person that was involved in the mediation. The CRT decision (and in specific cases the negotiated agreement) can be filed in court to enable enforcement. A decision by the Rent Tribunal is binding in most cases. In the eight weeks directly after the decision, however, either party has the opportunity to request the court to hear the case. When one of the parties does not comply with the order, and the eight weeks period for appeal have been passed, a new case can be filed at court for breach of contract.

Information websites

Compared to information websites from the Dutch Government regarding resolving legal issues, such as *rechtwijzer* ('signpost to justice'), the CRT is characterized by a more integrated approach and greater simplicity. Most relevant options for address-

ing (predetermined kinds of) legal issues can be found at one location. Moreover, applicants can initiate and go through a legal procedure at the same webpage (in which information collected in the previous stages is used). Claimants only have to answer few and easy questions to find appropriate information, tools or referrals. Although this is sometimes also true for the Dutch websites, claimants are often referred to other websites or presented with information that is irrelevant to their case. The design of the CRT is such that visitors are almost automatically led to information relevant in their case. The simplicity of the website seems to be the result of the citizen-focused approach in developing the tribunal, as well as the rationale behind the platform that when it is accessible for minorities, it will be accessible for everyone.

The Dutch kantonrechter (sub-district court)

Filing a case at the CRT is almost always cheaper than a starting a procedure at the Dutch kantonrechter. This is definitely the case for legal persons seeking justice. The fee for people with a low or no income is also higher: in the Netherlands they will be charged € 184 (court and serving fee combined) compared to a full waiver that is available at the CRT. Another difference pertains to the layering of the CRT procedure and associated fees. Instead of a fixed fee for the whole procedure, parties at the CRT pay for each additional step that is needed to resolve the case. For instance, a case that is solved in the negotiation or mediation phase is cheaper than a case that requires a tribunal decision. In both systems the unsuccessful party can be ordered to pay (extra)judicial costs of the successful party.

Compared to the kantonrechter, the time needed for getting a decision at the CRT is approximately four weeks shorter in both default and adversarial procedures. At the CRT, however, the dispute can also be resolved at earlier stages most notably in the mediation stage. This mediation stage takes seven weeks on average. How this compares to the time needed when mediation is advised by the kantonrechter is unknown due to a lack of data.

The legal safeguards pertaining the CRT-procedure are less pronounced than the ones concerning the kantonrechter. At the CRT there are fewer possibilities to express one's standpoints in the case's initial documentation (the claims and defenses). It should, however, be noted that each party can give their point of view whenever they wish to do in the negotiation and mediation phases doing so. At the kantonrechter, an oral hearing is a right whereas this is an exception in the CRT procedure. The same holds for being represented. Both institutions are required to motivate their decisions. The elements that should be included in this motivation are determined by law for the kantonrechter. This is not the case for decisions rendered by the CRT. Although both organizations have implemented safeguards on impartiality and independence, these safeguards are stronger for the kantonrechter than for the CRT. This is also the case regarding expertise: both organizations have safeguards regarding the expertise, but at the CRT these safeguards are less strict or leave more room for interpretation.

Bottlenecks

This current research also aimed to identify bottlenecks that can be expected when a system similar to the CRT would be implemented in The Netherlands. The best way to summarize these bottlenecks is to outline the dilemmas they involve. The first dilemma revolves around a mandatory or voluntary route. Implementing the CRT as a voluntary route seems hardly viable, but there are several concerns against a mandatory route. These concerns relate to the financial stakes that lawyers and bailiffs have in the current legal system. The second dilemma pertains to the question about which legal stakeholders should be involved in the development

of the system. Excluding certain stakeholders will likely result in resistance regarding the development of such a system, whereas inclusion probably comes along with the cost of a less citizen-focused approach. The citizen-focused approach is also central in the third dilemma: can such a system count on the support from professionals and citizens if it is placed outside of the judiciary? These dilemmas are complex. The interview with the CTR's chair suggested that the delay in the implementation of the CRT in British Columbia was most likely related to the dilemmas pointed out above.