

OSGOODE INVESTOR PROTECTION CLINIC

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A FITTING CELEBRATION OF OUR FIRST FIVE YEARS

IPC's anniversary conference moved the needle on issues of importance to retail investors



Poonam Puri

Since its founding five years ago, Osgoode's Investor Protection Clinic (IPC) has carved a unique niche: We're a source of legal advice and outreach to people who believe they have suffered an investment loss because of someone else's wrongdoing. We develop investor education resources and we act as a "living research lab," providing important data and evidence of trends to help inform public policy debates.

On September 8, we took our mission to new heights. We convened our first conference and, in so doing, firmly established Osgoode's IPC as a national thought leader, committed to working with sector stakeholders to advance access to justice and fair outcomes for retail investors across Canada.



Brigitte Catellier

The full-day event at the Osgoode Professional Development Centre in Toronto drew together nearly 100 lawyers, investment advisers, investor advocates, regulators, academics, and IPC students and alumni. Together, we took stock of the retail investment landscape, exploring what has changed and the priorities we share moving forward.

In this special edition of Osgoode's IPC newsletter, we continue the conversation through our clinic lens, offering fresh perspectives on the issues of **OBSI binding authority**, **DIY investing and the rise of a pan-Canadian network of investor protection clinics**. If you missed our conference and want to catch up, you can follow this [link](#) to a free recording of the day's events.



Fred Maefs

Thank you to our esteemed presenters and panelists and to the many engaged participants whose questions helped to fuel a lively discussion. By all accounts, this was an extraordinary opportunity to amplify our diverse voices and perspectives and move the needle on key issues, all while celebrating IPC's five-year anniversary.

As a public service provider, educator, researcher and thought leader, Osgoode's Investor Protection Clinic is proud to be at the forefront of the national conversation on retail investor protection.

We are equally proud and honoured to have you along for the ride.

Poonam Puri
Founding Academic Director

Brigitte Catellier
Associate Director

Fred Maefs
Assistant Director

MORE FAIR OUTCOMES FOR RETAIL INVESTORS

Osgoode's IPC will have an important role to play if OBSI is granted binding authority

Osgoode's IPC is anticipating a shift in the nature of the support they provide to retail investors following a recent announcement from the Canadian Securities Administrators (CSA) to introduce binding authority at the Ombudsman for Banking Services and Investments (OBSI).



Brigitte Catellier

“Firms and their representatives will want to settle cases before going to OBSI because that will be their only opportunity to negotiate,” predicts **Brigitte Catellier, IPC's associate director**. “I expect the IPC will be involved in more negotiated settlements and fewer OBSI cases.”

But the clinic also sees an opportunity to educate harmed investors on the pros and cons of filing a complaint with OBSI when investment firms are bound to act on its compensation recommendations.

“We'll want to educate them that they shouldn't accept a lower settlement through the complaint process and, instead, consider going through OBSI for a binding decision,” Catellier adds.

The issue of OBSI binding authority was top of mind at Osgoode IPC's investor protection conference last month.

“I can't say that we have an efficient complaint process for the retail investor, but we want to get there. We're motivated,” **CSA Chair Stan Magidson** told the audience, noting that the association's business plan calls for binding authority as do multiple independent assessments of the OBSI, including a 2022 review led by Poonam Puri, IPC's founding academic director, that found, in the last five years, investors settled for \$3 million less than recommended by OBSI.



Stan Magidson



Sarah Bradley

The OBSI handled more than 1,000 complaints last year resulting in \$260,000 in consumer compensation. Roughly a third of investment cases and a quarter of banking cases ended in a recommendation, says **Sarah Bradley, OBSI's ombudsman and CEO** and a featured panelist at the IPC conference.

The dollar values are relatively modest, though—a median recommendation of \$2,500 over the last five-and-a-half years.

“Smaller value recommendations are typically paid,” she says. “Where we see a challenge is when making more significant recommendations of \$50,000 or even \$100,000 and up.”

While outright refusals are rare, some firms will make an offer, leaving the consumer with the choice to accept it or risk getting nothing.

That's where Osgoode's IPC can help. Since 2017, the clinic has guided 11 retail investor clients through the OBSI complaint process, including one client who received a \$250,000 recommendation and payout on a nearly \$350,000 loss.

Both Catellier and Bradley look forward to seeing more fair outcomes as a result of binding authority.

“We should be able to assure investors, firms and regulators that a fair outcome will be achieved,” says Bradley. “Consumers should know that they can trust the investment industry. That means if things go wrong and it's not the investor's fault, that there's an ombudsman with binding authority to deliver the redress they deserve.”

The CSA's proposal is expected to be published for public comment in the coming year



To learn more about the role and impact of Osgoode's Investor Protection Clinic, read our [2022 Annual Report](#) or visit our [website](#). To join our team as a supervising lawyer or donor, contact the clinic at ipc@osgoode.yorku.ca or 416-736-5538.

OBSI Ombudsman and CEO Sarah Bradley (middle) discusses whether access to justice for harmed retail investors has improved over the last five years. Joining her (L to R) are Jean-Paul Bureaud, Diana Iannetta, Jeff Kehoe, Joel Rochon, Todd Saltzman and Charles Toth.

DIY INVESTOR COMPLAINTS ARE ON THE RISE, BUT WHAT'S THE RECOURSE?

IPC conference panelists explore potential solutions



Blair Wiley (left) says order execution only platforms aren't inciting risky investment behaviours. Tyler Fleming of the Ontario Securities Commission and UBC's Christie Ford look on.

The dramatic rise in do-it-yourself investing coupled with increased market volatility have led to a flurry of calls to Osgoode's Investor Protection Clinic from Canadians seeking legal recourse for their losses.

The clinic's student intake team has assessed 17 DIY investor complaints since 2020, including files involving delayed transactions and trading at margin. A recent inquiry, for example, involved a discount brokerage client who invested \$20,000 and got hit with a margin call of \$150,000.

"He thought he had an order limit in, so the price wouldn't go any lower," explains **Fred Maefs, IPC's assistant director.** "Turns out, he was wrong."

The increase in IPC activity was sparked by the COVID-19 pandemic, which left many Canadians looking for somewhere to redirect their savings. According to Investor Economics, Canadians opened more than 2.3 million new DIY accounts in 2020 and another 3.6 million in 2021—up from 856,000 in 2019.

Both the Ombudsman for Banking Services and Investments (OBSI) and Investment Industry Regulatory Organization of Canada (IIROC) have also seen an uptick in inquiries and complaints.

The trend prompted a robust discussion at IPC's investment protection conference about the financial literacy of young Canadians in particular and whether order execution only platforms are leading retail investors to take on too much risk without the benefit of professional advice.

"The answer is no," **Blair Wiley, the chief legal officer** at Toronto-based online financial provider Wealthsimple Inc. said during a conference panel on the evolving retail

investment landscape. "We're big believers in financial inclusion. A few years ago, an OSC report said 50 per cent of millennials weren't investing at all. If this means more millennials, more Canadians are getting involved in the stock market, that's something to celebrate."

He pointed to "a lot of really good [investor] behaviour," but also admitted there are examples of people who mortgaged their homes to buy a risky crypto asset.

"The regulators can't regulate out risk," said **Stan Magidson, CEO of the Alberta Securities Commission and chair of the Canadian Securities Administrators.** "I'm not suggesting we go there and there are a lot of shades of grey between this but should we suggest a modicum of advice on OEO channels? Are certain products so dangerous that we adopt a warning system like the cigarette industry?"

When a DIY investor does suffer a loss, there are few options for recourse. In fact, none of the DIY investing cases reviewed by the IPC to date have led to actionable claims. "If you're investing on your own, you're largely on your own in terms of the consequences of those decisions," says Maefs.

Instead, the IPC is exploring the role they might play in educating DIY investors about their legal rights and responsibilities.

While securities regulators such as the Ontario Securities Commission (OSC) and IIROC publish resources directed at all types of investors, articles and tools like the OSC's Get Smarter About Money typically focus on the advantages and disadvantages of self-directed investing, common mistakes and how to determine if DIY investing is right for you.

"These are great resources for investors who are thinking about opening a discount brokerage account," says **Brigitte Catellier, IPC's associate director.** She questions whether there might be a way for Osgoode's IPC to bridge the gap by educating investors who are already engaged on an OEO platform.

"We're not talking about legal advice, but legal education," she adds

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OSGOODE'S IPC THE FIRST IN A GROWING CANADIAN NETWORK

A second university investor protection clinic is now open with a third planned for 2023



Osgoode's Investor Protection Clinic is inspiring a pan-Canadian network of pro bono legal clinics for wronged investors.

A plan to turn Osgoode's Investor Protection Clinic into a pan-Canadian network of pro bono legal clinics for wronged investors is gaining momentum with a second university clinic now open and a third set to open its doors in 2023.

"We had this vision that Osgoode would host the model clinic and we would roll it out across the country," says Poonam Puri, an Osgoode Hall Law School professor who founded Osgoode's IPC in 2016 with the Canadian Foundation for Advancement of Investor Rights and now serves as the clinic's academic director.

A first in Canada, Osgoode's IPC has recovered nearly \$700,000 in mismanaged investments, while delivering invaluable hands-on training to 77 Osgoode Hall Law School students. The clinic has also developed investor education resources, including a six-part informational video series and a retail investor's guide to avoiding crypto scams, and reached hundreds of lawyers, investment advisers, investor advocates, regulators and academics through legal education seminars and the "Access to Justice and Fair Outcomes for Harmed Investors" conference this September.

With Osgoode's IPC as the roadmap, the University of Toronto's Faculty of Law launched an Investor Protection Clinic in 2020.

In addition to student education, **"we're very concerned with prevention—how to prevent people from falling victim to scams and frauds," says Ivy Lam, the clinic's inaugural director.** U of T has hosted a series of public education seminars through the Toronto Public Library and the YMCA Newcomer Information Centre and participated in policy projects, including consultations on the state of self-regulatory organizations.

The Faculty of Law at Université Laval in Québec City is also developing a legal clinic based in part on Osgoode's experience. Expected to launch in September 2023,

it will provide legal advice to financial consumers through a partnership with the Autorité des marchés financiers responsible for financial regulation in the province.

Together, the three clinics form the cornerstones of what Puri hopes will be a pan-Canadian network of university clinics dedicated to supporting harmed investors from coast-to-coast. To jumpstart the idea at even more universities, she plans to invite a handful of students from other law schools to join Osgoode's clinic in a virtual capacity beginning as early as next year.



(L to R): Brigitte Catellier, Samuel Tanenbaum, Poonam Puri, Ivy Lam and Cinthia Duclos discuss the role of university-led investor protection clinics.

"We need a network to share ideas and resources and help other law faculties develop their clinics, much like Poonam did for me," agrees Cinthia Duclos, an associate professor of law at Université Laval and the clinic's founding director. When it comes to funding, research and advocacy, she says there is strength in numbers.

"When I speak in Québec about the clinic or investor protection, my ideas stop here. If we want to have a voice everywhere in Canada, we need to work together."

Puri is setting a goal to make that happen. "I want to continue to scale up Osgoode's model. In our second five years, I'd love to see even more clinics across the country, so even more law students are being trained and more Canadian investors have somewhere to turn."

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