

OSGOODE INVESTOR PROTECTION CLINIC

NEWSLETTER | Spring 2023

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YORKU

OUR UNIQUE VALUE PROPOSITION

When it comes to service, research and education, our students are the “heavy lifters”

Osgoode’s Investor Protection Clinic continues to lead the way in providing pro bono legal services, research and education to Canadians who believe their investments were mishandled and who cannot afford a lawyer.

This Spring 2023 newsletter is a celebration of those at the heart of our three-pronged mission: our students.

The 13 JD students who make up our caseworker team are some of Osgoode’s best. Described by supervising lawyer Susan Kushneryk (profiled in this issue) as “bright, talented and motivated,” they are the clinic’s heavy lifters, providing legal advice to clients, developing investor education resources and producing the research to help inform public policy.

You can read how our student caseworkers negotiated a settlement in the clinic’s first successful case involving a DIY investor. We share highlights of their recommendations on the future of the IIROC Arbitration Program. And we’re excited to present our newest student-led investor education piece, [“When Should You Complain? A Guide on Limitation Periods.”](#)

All of this work informs and is informed by student-led research. Among many examples, our 2022/23 student caseworkers produced practical research on DIY investing, the IIROC Arbitration Program, investor record-keeping and the [“Know Your Client” rule](#).

The best part is just as this clinic term draws to a close, we welcome another cohort of promising students ready to take their place and ensure the IPC’s future as a thriving hub of service, research and education.

Thank you for making their many successes possible with your support.



Poonam Puri



Brigitte Catellier



Fred Maefs

Poonam Puri

Founding Academic Director

Brigitte Catellier

Associate Director

Fred Maefs

Assistant Director

Excellence in Governance

IPC directors Poonam Puri and Brigitte Catellier have each been recognized for their impact and innovation in Canada’s governance sector. Puri received the Peter Dey Governance Achievement Award and Catellier was named Governance Professional of the Year at the Governance Professionals of Canada’s 2022 awards ceremony in November.

[The Excellence in Governance Awards](#) shine a light on best practices that build and sustain stakeholder value in Canada.

STUDENT CASEWORKERS NEGOTIATE SETTLEMENT IN CLINIC'S FIRST SUCCESSFUL OEO CASE

IPC is sounding the alarm on DIY options trading after client incurs \$28,000 debt

Osgoode's Investor Protection Clinic helped to save a 24-year-old client \$13,000 after he unwittingly purchased options on a do-it-yourself (DIY) trading platform.

The client, a new university graduate, thought he bought \$500 worth of GameStop shares in 2021 through his bank's order execution only (OEO) platform.

"He tried to invest \$500, but, in fact, he used options trading without understanding what that type of trade means," explains Adam Dickinson, the student caseworker on the file. "He was margined to the moon and lost everything without even realizing he was doing it."

OEO platforms generally require investors to have a margin account to trade options. The client's use of options resulted in a \$28,000 debt – a devastating loss to the young investor who was trying to launch a career while also supporting two family members with disabilities.

Few options for recourse for DIY investors

Although DIY investors typically have few options for recourse following a loss, Dickinson and supervising lawyer Liz McLellan, an associate at Crawley MacKewn Brush LLP, recognized that there was something unusual about this case.

"This was a client who literally didn't have access to debt – his credit card limit was just \$5,000 – and they margined his account to nearly six times that," says Dickinson. "His bank should have stopped this. It shouldn't have happened in the first place."

With McLellan guiding the way, Dickinson initiated negotiations with the bank. The two parties ultimately reached a settlement agreement of \$15,000, absolving the client of nearly half the total debt.



Poonam Puri



Adam Dickinson



Liz McLellan

Should OEOs include high-risk products?

The experience has the IPC team sounding the alarm on what they say might well be a gap in the regulatory market.

"Options trading isn't aligned with self-directed investing for novice investors," says Poonam Puri, IPC's founding academic director. "It brings with it unlimited risk and yet it is readily available on DIY platforms that appeal to novice investors acting without training, advice or protection."

The question of whether order execution only platforms should somehow be regulated or include a warning system tied to certain products was discussed at the IPC's investor protection conference last September. At the time, the IPC had yet to close an actionable claim involving a DIY investor.

Now that they have witnessed the potential impact on DIY investors, Puri is rallying her students to explore how the clinic might help expand the conversation.

"We have a role to play in educating investors and leveraging our front-line experiences to help inform public policy," Puri says. "Maybe something good can come of this client's misfortune."

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.

IPC COMMENTS ON THE FUTURE OF IIROC ARBITRATION UNDER CIRO

Recommendations focus on access to justice and fair outcomes

A year after negotiating the Investor Protection Clinic's first Investment Industry Regulatory Organization of Canada (IIROC)-arbitrated financial settlement, the clinic's student caseworkers are offering their recommendations on the future of the program.

Stakeholders were asked to comment on the recommendations of a working group, established in 2020 to review the nearly 30-year-old arbitration program. The review – the first since 2010 – came as IIROC and the Mutual Fund Dealers Association of Canada merged to form what has been named the Canadian Investment Regulatory Organization.

Giving IPC clients a voice

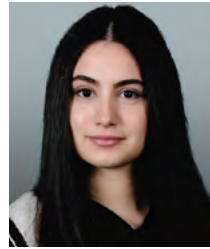
“This was our opportunity to give our clients a voice in the process and urge the new SRO to overhaul the arbitration program and adopt transformational changes,”

says Raha Khatib, a student caseworker who drafted the [IPC submission](#) with fellow Osgoode students Aya Fahmi and Cedric Kim.

“A new, enhanced arbitration program would in essence represent a unique avenue for a greater number of retail investors who seek adjudication of their claim,” adds Brigitte Catellier, the IPC's associate director. “We believe that that key enhancements to the existing arbitration program, along with a tiered form of arbitration, will provide a valuable and cost-effective channel of dispute resolution for retail investors.”

Among their recommendations, the IPC caseworkers suggested that the new SRO streamline the resolution process, which now averages 16 to 18 months, through strategies that include allowing parties to forego preliminary hearings and undertake simplified procedures for claims of less than \$50,000.

While supporting the working group's recommendations for a tiered approach to claims based on the amount in dispute, they also proposed that the costs of arbitration be proportional to the size of the claim and take into account the client's financial capacity and loss.



Raha Khatib



Aya Fahmi



Cedric Kim

“IIROC arbitration usually involves an individual and a big bank or financial institution with lots of resources. Dividing the costs doesn't necessarily equal a fair outcome. Our clients are unable to afford a lawyer; paying the costs of arbitration might well be an insurmountable financial burden,” explains Khatib.

Partnership potential

The team further recommended that the new SRO consider mitigating the power imbalance through a partnership with law school legal clinics, including the IPC. In addition to representing retail investors who can't afford a lawyer, the IPC could aid in the development of written guidelines to help self-represented claimants navigate the arbitration process.

The opportunity to comment on the working group's recommendations closed in early March. The Canadian Investment Regulatory Organization is expected to release its final recommendations later this year.

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TWO SIDES OF THE SAME COIN

IPC supervising lawyer Susan Kushneryk is working to ensure the capital markets remain accessible to all

As a partner at boutique Toronto law firm Kushneryk Morgan LLP, Susan Kushneryk spends her days prosecuting securities fraud and counselling businesses in complex, high-value capital markets cases.

As a pro bono supervising lawyer at Osgoode's Investor Protection Clinic, she advises on cases involving retail investors whose losses are often significantly smaller but devastating just the same.

Kushneryk is grateful for both opportunities, saying "it's important that the capital markets function properly for all of us, large investors and small." She leverages her experiences supervising students in the IPC to remind her how retail investors with limited financial knowledge respond to issues around disclosure, for example. Those lessons later help to inform her corporate securities work.



Susan Kushneryk

“When helping corporate clients interact with their investors and make decisions impacting them, it’s helpful to see the situation from both perspectives,” she says.

It’s just one of the benefits that has kept Kushneryk on the IPC’s supervising lawyer roster since 2021. She has helped to lead multiple files in that time, including a recent case in which the principals of the allegedly fraudulent investment company disappeared along with the investor’s money.

“We talk about strategy and what to do next, but the students do the heavy lifting. They’re all very bright, talented and motivated to figure out how things work,” says Kushneryk, whose more than 20 years of practice includes appearances before the Supreme Court of Canada, all levels of court in Ontario, the Ontario Securities Commission, the Investment Industry Regulatory Organization of Canada and the Senate of Canada Standing Committee on Banking, Trade and Commerce.

“I’d be thrilled to have any one of them in my office.”

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CONTINUED STRONG STUDENT INTEREST

IPC attracts a record-setting number of applications from Osgoode students interested in law, capital markets and social justice



Diana Damiani



Mathieu Rozier



Emma Kirwin



Jialin Zheng

From a record-setting 77 applications, Osgoode's Investor Protection Clinic has chosen 13 students to serve as the clinic's caseworkers during the 2023-24 school year. Four of those started in May, ensuring the clinic can continue to meet the urgent need for legal advice over the four-month law school summer break.

"Our students love the intersection between law and the capital markets, but it's also the social justice element," explains Poonam Puri, IPC's founding academic director.

"We're helping people who believe they have been wronged and can't afford a lawyer or navigate the path to justice on their own."

The IPC is one of 17 clinical programs offered by Osgoode, one of Canada's largest and most respected law schools and a centre of influential legal research and thinking. In addition to offering the opportunity to develop fundamental lawyering skills involving real clients, clinical education shines a light on the needs of marginalized individuals and communities relative to broader issues of public policy and legal reform.

This year's summer caseworkers share what inspired them to compete for a place in the program:

"Having witnessed my father fall victim to an online investment fraud and experiencing the subsequent financial loss, I became acutely aware of the importance of fraud prevention. Through my subsequent work as an investment advisor, I gained further insight into the concerns that investors have. These experiences have motivated me to apply to IPC and work toward bringing about positive changes in the current investor protection and education landscape." – Jialin Zheng, JD Candidate 2025

"By working at the Investor Protection Clinic, I am excited to directly impact the lives of investors who have been wronged. With rising interest rates, Canadians are facing increasing financial trouble and rely heavily on their investments for long-term financial security. Few Canadians have the resources to gain legal support if they have been wronged and I want to help them navigate the complex investment landscape." – Diana Damiani, JD Candidate 2025

"The internet has removed traditional barriers to investment, enabling people of all means to access the tools and expertise necessary to secure their financial wellbeing. Conversely, the internet has also facilitated the proliferation of misinformation and fraud that particularly threatens inexperienced and low-income investors. At the IPC I hope to learn more about the risks that investors face and apply my knowledge of internet investor fraud to help those who have been wronged." – Mathieu Rozier, JD Candidate 2025

"I was inspired to apply to the IPC after being exposed to the world of venture capital and finding a passion for investing as the co-founder of a start-up and member of the Osgoode Venture Capital Society. I look forward to thinking of creative ways to solve our clients' challenges and I am eager to learn from the supervising lawyers about how to protect investors, deal with mishandled investments and improve my overall lawyering skills." – Emma Kirwin, JD Candidate 2025

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