



INVESTOR PROTECTION CLINIC and LIVING LAB

2018 ANNUAL REPORT

FAIR

Canadian Foundation for
Advancement of Investor Rights

 **The Law
Foundation
of Ontario**
Advancing access to justice

OSGOODE
OSGOODE HALL LAW SCHOOL

YORK 
UNIVERSITÉ
UNIVERSITY

SECTION 1. ABOUT US

OUR VISION AND MISSION

The Investor Protection Clinic, the first clinic of its kind in Canada, provides free legal advice to people who believe their investments were mishandled and who cannot afford a lawyer. The student-run clinic was founded in partnership with The Canadian Foundation for Advancement of Investor Rights (FAIR Canada), an organization that aims to enhance the rights of Canadian shareholders and individual investors.

The Clinic received its initial funding from the Law Foundation of Ontario, and more recently received a Cy-prés award of \$80,000 from a court-approved settlement in relation to a securities class action. The Clinic also receives in-kind support from Osgoode Hall Law School, FAIR Canada, and our pro-bono partner law firms. The Clinic is grateful to these organizations for their support.

The Clinic has two primary purposes:

LEGAL ADVICE AND OUTREACH

Provide legal advice to people who believe they have suffered an investment loss because of someone else's wrongdoing.
Develop investor education initiatives and educational resources.

RESEARCH

Act as a "Living Lab" to collect research data in an anonymized way to inform public policy debates.

OUR PEOPLE

Clinic Operations:

The Clinic is staffed by Academic Director Professor Poonam Puri of Osgoode Hall Law School and an Administrative Coordinator. The Academic Director oversees all activities on a day-to-day basis including file management and student supervision.

Student Caseworkers:

In 2017-2018, the Clinic was staffed by 12 student caseworkers. The students were paired with supervising lawyers from the Clinic's pro-bono partner law firms and assigned client files. Students conducted initial intake interviews then, together with the supervising lawyers, assessed if the Clinic could assist applicants, and, where possible, drafted the necessary documents to pursue clients' complaints or claims.

Pro-Bono Partner Law Firms:

The Clinic partnered with a number of leading business law firms including:

- Bennett Jones LLP
- Crawley MacKewn Brush LLP
- Groia & Company
- Harold Geller
- Koskie Minsky LLP
- Siskinds LLP

Referrals:

The Clinic received referrals from industry stakeholders such as the Ontario Securities Commission (OSC), the Investment Industry Regulatory Organization of Canada (IIROC), the Ombudsman for Banking Services and Investments (OBSI), and the Mutual Fund Dealers Association (MFDA), and from our pro-bono partner law firms.

SECTION 2. ACTIVITIES AND ACCOMPLISHMENTS

OUR WORK



In the first year of the Clinic's operation, we conducted 40 intake interviews with prospective clients.

Main Investment Complaints Received:

- Suitability of investments
- Inadequate disclosure about products or fees
- Instructions not followed by financial services representatives
- Misrepresentations by financial services representatives
- Delays in buying or selling securities or transferring funds
- Fraud

Main Factors Considered in Selecting Files:

- Merits of an applicant's complaint
- Whether a complaint fell within the scope of the Clinic's mandate
- Income and personal assets of an applicant
- Expiry of the limitation period
- Consideration of jurisdictional issues
- Learning opportunity for the student caseworkers
- Clinic capacity

Main File Work Included:

- Preparing demand letters to investment firms
- Submitting several complaints to OBSI
- Pursuing civil claims with one statement of claim filed, and two being prepared as of April 30, 2018
- Assisting with settlements
- Determining the standard of care required for recommending an investment
- Educating clients as to how various complaints processes work





SOME CLINIC FILES:

FRAUD

1. Mr. A

Mr. A is a client in his late 30s who invested close to \$60,000 in an organization run by a respected leader in his cultural community. The investment was mischaracterized as low risk with high returns, and Mr. A made his investment based on his trust in the cultural leader, among other factors. Weeks after the investment was made, the cultural leader stopped communicating with Mr. A, and the organization's website disappeared. Upon being contacted by Mr. A, the cultural leader claimed that the organization was having financial difficulties and refused to return the client's money. After reviewing Mr. A's file, the Clinic took on his case, helping Mr. A launch a civil action by preparing and filing a statement of claim on his behalf.

2. Ms. B

Ms. B is a client in her early 60s with a limited understanding of investments. In 2011, Ms. B purchased a large number of shares of Company Z from an individual who was not licensed to sell securities in Ontario. The unregistered individual misrepresented himself as President of Company Z. He convinced Ms. B to invest over \$60,000 in Company Z's shares. Ms. B did not receive share certificates and could not recover her initial investment. After several unsuccessful attempts to follow up with the unregistered individual and various other representatives of Company Z, she complained to the OSC. The Clinic is currently advising Ms. B on her legal options and ways to recover the funds she invested, including a possible civil action.

OBSI COMPLAINTS

1. Mr. C

Mr. C is a client in his early 60s who held a trading account with an investment firm. He believed that unauthorized sales were made on his behalf after discovering that his account had \$50,000 more in cash than what he expected. After several attempts to contact the investment firm, he came to the Clinic seeking advice. The Clinic assisted with Mr. C's formal complaint to OBSI and drafted a complaint letter to launch the investigation. As of April 30, 2018, the Clinic was awaiting the results of the OBSI investigation.

2. Mr. D and Mrs. E

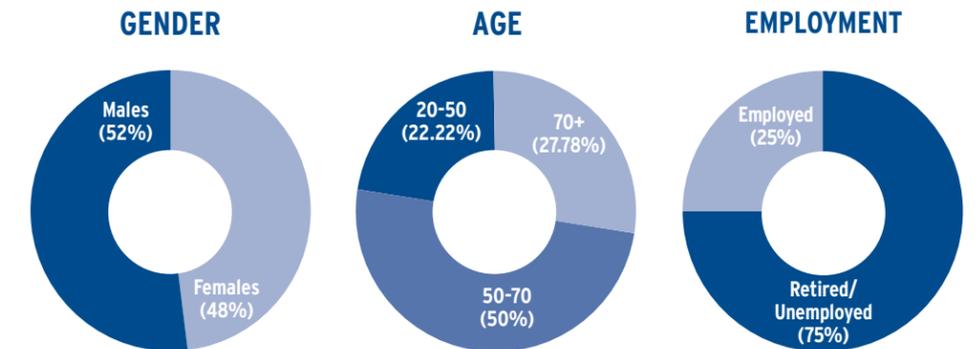
Mr. D and Ms. E are both clients in their early 60s who invested with a registered advisor and instructed them to keep their portfolio risk low. However, midway through the relationship, the advisor put them in investments reflecting 80% high risk and 20% growth. The advisor did not explain the risk associated with these investments, which were unsuitable for Mr. D and Ms. E. The clients lost over \$100,000. After leaving the advisor, the clients discovered that the advisor had been under investigation by IIROC during part of the time they were investing with him. The Clinic is currently assisting them with their complaint to OBSI.

CLIENT DATA & DEMOGRAPHICS

The Clinic also serves as a research lab that collects data in an anonymized way in order to inform public policy debates in future years. As the only legal clinic of its kind in the country, the Clinic is in the unique position to develop a much-needed body of data that is unavailable in the Canadian capital markets today.

DEMOGRAPHICS

The Clinic's clients in 2017-2018 were diverse in gender, age, cultural background and occupation.



GEOGRAPHIC AREA

Close to 90% of this year's clients were based in Ontario including the Greater Toronto Area, Hamilton, Simcoe County, and Ottawa.

INVESTMENT KNOWLEDGE AGE

Almost all the clients were ordinary Ontarians with low to medium financial literacy and little to no background in investing and capital markets.

Over two-thirds of the Clinic's files involved individuals over the age of 50 who were retired or unemployed.

OTHER CHARACTERISTICS

LANGUAGE	English was a second language for several of our clients. The Clinic used student volunteer translators to assist with intake and on-going communications.
DIMINISHED MENTAL CAPACITY	Two of our clients were particularly vulnerable to investment fraud due to diminished mental capacity.
CULTURAL & COMMUNITY TIES	In several cases, clients alleged that they were defrauded by a trusted member of their ethnic or cultural community.

CLIENT FEEDBACK

"The Investor Protection Clinic was absolutely the best starting point for me."

"The students were asking me questions that made me backtrack and think hard about the chronology of events. They seemed to really know what they were after."

I am a retiree on limited income and I never wanted to go to a lawyer who would cost a lot of money. I practically ran to the Clinic as soon as IIROC told me that this was a possibility."

"I feel like I am in very good hands with the IPC and the reality is that this would have already cost me thousands of dollars. Without this Clinic, I wouldn't have fought even though I believe justice needs to be done."

SECTION 3. LESSONS & RECOMMENDATIONS

KEY LESSONS WE HAVE LEARNED

LACK OF KNOWLEDGE

Most of our clients had low to medium knowledge about the capital markets and placed their trust in financial advisors to handle their investments wisely. In most cases, this trust was based on referrals and investors did not perform any further diligence, such as checking to see that the advisor was registered with a regulatory body, checking the advisor's disciplinary history, and seeking a second opinion. Clients did not always fully understand the information on the documents provided to them.

Recommendation #1:

Increase public awareness of performing due diligence prior to investing. It is important to find out as much information as possible about the relevant advisor, investment firm, and investment itself. Moreover, the processes for conducting due diligence should be easy to understand and accessible.



RISK OF FRAUD

Many of the complaints we received involved unregistered fraudsters who convinced clients to invest a large proportion of their savings, and then absconded with the money. Many used family and community connections to gain trust. Typically, clients did not take steps to ensure that these individuals were registered with a regulatory body.

Recommendation #2:

Currently, there are several different databases that must be referenced to determine whether an individual is a registered financial advisor and whether they have been subject to any disciplinary proceedings. Regulators need to provide a single, centralized resource for checking an advisor's registration status, proficiency and disciplinary records. This would help make it easier for ordinary Canadians to conduct adequate research before investing their money.



RELIANCE ON THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

At least three of our current active files have resulted in a complaint to OBSI, with suitability of investments being a top issue. However, while the OBSI complaint process is free and accessible for most clients, its decisions do not have binding authority.

Recommendation #3:

OBSI recommendations should be binding. With rising demand for Clinic services and limited free and effective mechanisms for seeking redress and compensation, retail investors need an ombudsman service that can issue binding decisions. This would protect harmed investors in a cost-effective way and hopefully prevent future harm. In addition, OBSI could consider establishing a fraud compensation fund. Another consideration would be for IIROC arbitration to be made free for retail investors below certain financial thresholds.



SECTION 4. LOOKING AHEAD

The Investor Protection Clinic needs to be prepared for even greater demand for assistance. Demand has been steadily increasing.

In Year 2, the Clinic plans to improve and expand its operations by:

- Continuing to build high-quality Clinic processes that reflect best practices
- Providing investor education and resources to better engage with diverse communities, and further increase Clinic visibility
- Continuing to establish new partnerships with regulators, law firms, and community organizations
- Raising awareness and improving access to justice by using results from the Living Lab to inform public policy debates

FREE LEGAL ADVICE
FOR PEOPLE WHO BELIEVE
THEIR INVESTMENTS
WERE MISHANDLED.

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The Law Foundation of Ontario | Advancing access to justice
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“There is a huge demand for legal resources on the plaintiff side. The IPC is a really good thing because you need to start somewhere. Learning this perspective is incredibly important to students.”

Lawyer from a pro-bono partner law firm

STUDENT CASEWORKERS

Year 1 (2017-2018):



Johann Annisette



Jory Binder



Alex Despotovic



Nenad Dumanovic



Bitia Ghiasi



Ankita Gupta



Rishi Nageshar



Natasha Novac



Ekin Ober



Aarushi Puri



Alex Tashos



Gabrielle Wright

STUDENT CASEWORKERS

Year 2 (2018-2019):



Laura Abate



Ayah Al-Sharari



Eric Cheng



Awale Deria



Emraan Dharsi



Trevor Fairlie*



Paniz Ghazanfar



Ilona Larionova*



Max Ledger



Susan Mansuri*



Ellery O'Hara



Shruti Ramesh



Vahini Sathiamoorthy*



Adam Voorberg



Jaclyn Wang

* These students were also 2018 summer interns at the Clinic.



Osgoode's Investor Protection Clinic opens the Toronto Stock Exchange on February 7, 2018

COMMUNITY OUTREACH

NOTABLE EVENTS:

- In our first year of operations, the Investor Protection Clinic engaged in several outreach events with our community partners. The Clinic is grateful to Tyler Fleming and Raj Balasubramanian from the Investor Office at the OSC for the opportunity to participate in the “OSC in the Community” events and contribute to the discussion on investor protection.
- On February 13, 2018, a group of students from the Clinic presented at an “OSC in the Community” event for over 100 seniors at the Oshawa & District Shrine Club in Oshawa, Ontario.
 - On March 28, 2018, a separate group of students presented at another “OSC in the Community” event for over 75 participants at the Cambridge Probus Club in Cambridge, Ontario.
 - On February 7, 2018, the Investor Protection Clinic joined Ungad Chadda, SVP & Enterprise Head of Corporate Strategy, Development and External Affairs, TMX Group, to open the Toronto Stock Exchange market.

MEDIA HIGHLIGHTS

In 2017-2018, the Investor Protection Clinic was featured in the media several times, including:

1. Moolala Interview
2. The Lawyer's Daily Article: “First Canadian legal clinic for investors opens at Osgoode Hall”
3. Finance Magnates Article: “Investor Protection Clinic Launched in Canada to Provide Free Legal Advice”
4. Advisor.ca Article: “Pro bono legal clinic backs wronged investors”
5. Finance Feeds Article: “Canada's first investor protection clinic launches”
6. BNN Bloomberg Interview



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