



ANNUAL REPORT

2017
-
2018



**WINKLER
INSTITUTE**
FOR DISPUTE
RESOLUTION



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"We need to see the justice system through the prism of those who have the greatest stake in its success: the Public."

-The Hon. Warren K. Winkler, Former Chief Justice of Ontario and recipient of the Order of Canada.

The Winkler Institute for Dispute Resolution is devoted to justice innovation and excellence in teaching, research, and reform-based practical application. Named in honour of retired Ontario Chief Justice Warren K. Winkler, the Winkler Institute is one of Canada's first justice innovation hubs with a mandate to develop and implement fresh, creative ideas and action-oriented pilot projects that improve access to justice by "putting the public first." Our work is guided by a desire to push research and implementation boundaries in the service of exploring and improving all forms of dispute resolution – from formal court and tribunal processes to non-traditional and alternative real and online practices and possibilities.

Visit us at: www.winklerinstitute.ca



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A WORD FROM THE ACADEMIC DIRECTOR



Since opening our doors four years ago, the Winkler Institute has developed into a vibrant centre for research on innovation in dispute resolution, access to justice and the future of the legal profession. This report aims to share with you, our supporters and fellow community members, the wide-ranging work we have been doing and the diverse set of projects we have embarked on. These projects include a **summit on legal innovation and education**; a **design-thinking workshop** in Thunder Bay, led by a group of **Indigenous youth**; and our 5th annual **conference on mediation**, among others.

We hope that, through this report, you will get a sense of how we are bringing our vision and mandate, rooted in innovation, collaboration and accessible justice, to fruition.

As always, we wish to thank our academic, institutional, and professional partners for making this all possible. The Institute is on an exciting journey, and we are glad to have your continued support. We always like to hear from you! Please e-mail us at WinklerInstitute@osgoode.yorku.ca to get in touch.



Sincerely,

A handwritten signature in black ink, which appears to read 'Martha'.

Martha E. Simmons, PhD
Academic Director, Winkler Institute for Dispute Resolution



Winkler Institute
@winklerinst

"We have to broaden idea of 'success' and what a successful career path looks like," says [@GinaAlexandris](#) of the [@RULPP](#).

11:48 AM - 8 Mar 2018

Legal Innovation and Education Workshop

The legal world is changing. Technology is augmenting – and often disrupting – the way in which legal services are being delivered. The pressure to provide “better, faster, and cheaper” legal services in a time of fiscal austerity is mounting, both in private firms and in the public administration of justice. At the same time, it has been widely recognized in Canada – as well as many other jurisdictions – that we are dealing with an access to justice crisis. Getting legal help is expensive; lawyer fees amount to hundreds of dollars an hour; and, if one does end up in court, even a short proceeding can cost thousands of dollars. As a result, self-represented litigants are now the norm rather than the exception, and clients are demanding new and alternative ways to access and use legal services at a wider range of price points.

To address the changing expectations of justice users, and to make the justice system more accessible, innovation in how we deliver legal services is a must. However, to truly reimagine the justice system for the 21st century, innovation must take place within the legal profession generally, but also in legal education more specifically.

Over the past three years, the Winkler Institute for Dispute Resolution has worked in collaboration with Osgoode’s Experiential Education Office to develop a Justice Innovation and Access to Justice Program (A2J Program) that explores these questions.

The A2J Program, which consists of three innovative courses: **Designing the Future of Justice: Introduction to Legal Design, Access to Justice and Innovation**, and **Legal Information Technology**, offers JD Candidates an opportunity to learn the theory and tools that are needed to promote

innovation in the legal field, apply these tools hypothetically in case studies and simulations, build partnerships with community organizations and apply theory to real world access to justice issues.

The Legal Innovation and Education Workshop, which took place in March 2018, was the capstone event of this project, and we were excited to gather leaders in the field in Toronto to talk about and collect some best practices on how we might innovate in legal education to best train future lawyers and further develop the A2J Program.



Additional Materials:

Best Practices

[Justice Innovation & Access to Justice Program Report \(2016\)](#)

[Conference Background Materials](#)

[Justice Innovation & Access to Justice Program Report \(2016\)](#)

[Blog by Nicole Aylwin & Kim Bonnar, "Justice Innovation & Access to Justice: Training Tomorrow's Lawyers"](#)

[Y-File Article, "Law courses look toward future of the profession"](#)

Indigenous Youth: Designing a Better Justice System

As a part of our mandate of examining how technology and innovation can work to provide justice that is fairer and more accessible, we embarked on a journey to explore how engaging “user experience” and design thinking could contribute to accomplishing this goal.



In August 2017, over 25 Indigenous youth gathered for a 2.5-day design-thinking workshop. The aim of the workshop was to create ideas for technology solutions to build a justice system reflective of Indigenous experiences and responsive to Indigenous traditions.

This youth-driven and youth-centred workshop helped accelerate the implementation of the recommendations found in the [Justice & Juries – A First Nations Youth Action Plan for Justice report](#) by gathering young people in one place to focus their creative energy on developing ideas to address the needs identified in the report. A Youth Leadership Team comprised of Indigenous youth from Ontario planned, facilitated and directed the workshop.

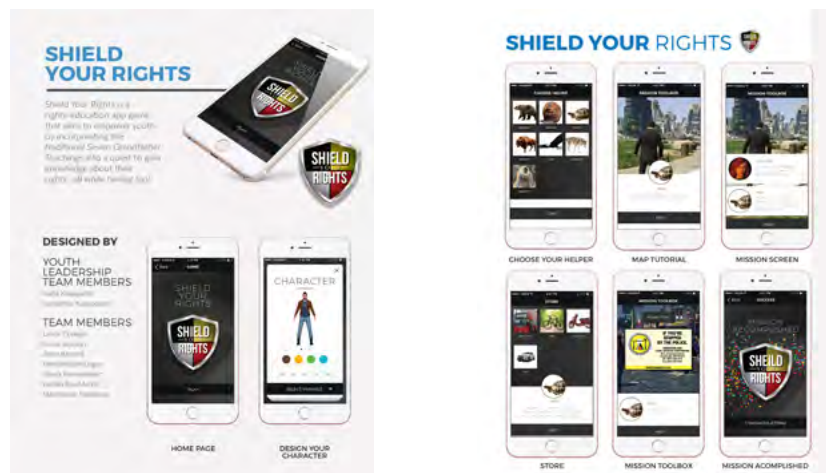


Thanks to our fellow organizers, staff and, most of all, the youth, who were at the heart and centre of this workshop...and true leaders.

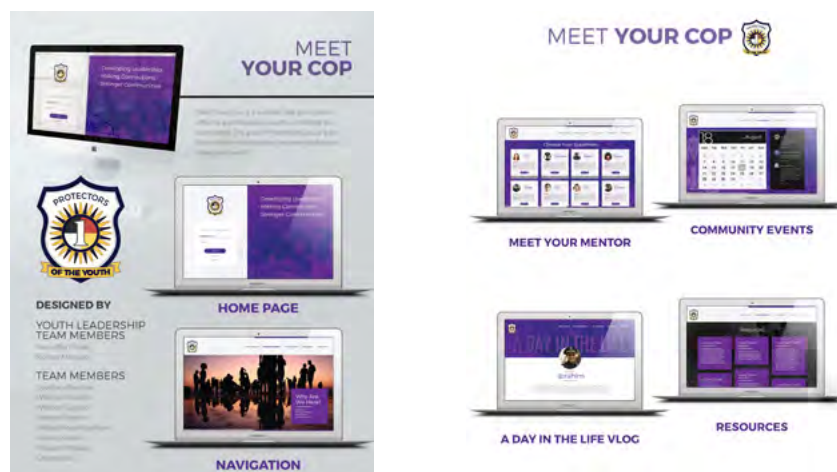
Organized and supported by our Institute, in close collaboration with the Ontario Justice Education Network (OJEN), Justice for Children and Youth, and the Feathers of Hope initiative (supported by the Ontario Child Advocate), this workshop aimed to create a safe and supportive space for Indigenous youth participants to take ownership over the exploration of technology as a means to address issues related to the justice system.

This project was made possible by generous funding from the Law Foundation of Ontario. From this workshop, three prototypes emerged:

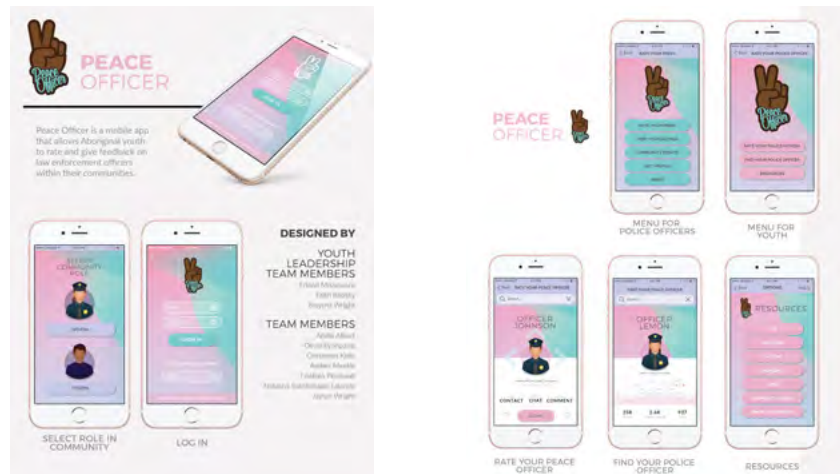
1. **Shield Your Rights** is a rights-education app game that aims to empower youth by incorporating the traditional Seven Grandfather Teachings into a quest to gain knowledge about their rights... all while having fun!



2. **Meet Your Cop** is a website that pairs police officers and Indigenous youth as mentors to each other. The goal of MeetYourCop.ca is to foster better relationships between police and Indigenous youth.



3. **Peace Officer** is a mobile app that allows Indigenous youth to rate and give feedback on law enforcement officers within their communities.



In April, the Youth Leadership Team, along with the project partners, was asked to present to a working group on Indigenous justice issues run out of the Centre for Criminology and Sociolegal Studies at the University of Toronto. The presentation took place at the downtown U of T campus on April 20, 2018. We were fortunate enough to welcome some of the youth leaders to present with the project partner representatives. They shared their experiences and took the audience of undergraduate and graduate students, professors and other academics, and community leaders through the design-thinking process and the prototypes.



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@winklerinst

Jackie Lavallee closing us out in a beautiful and meaningful way with a traditional water ceremony. Thanks again to her and everyone at @UofT for inviting us and making today possible.

12:19 PM - 20 Apr 2018

We and our partners are so proud of that work the youth have done up until this point and look forward to continuing it. For more about the project and experience, please read our just-released full [report](#).

Professionalism and Ethics in Family Law



We were pleased to share the report by Research Fellow Deanne Sowter entitled “**Professionalism and Ethics in Family Law: The Other 90%**” in the summer of 2017. Like our other projects, Ms. Sowter’s report directly engages the Winkler Institute’s mandate and vision, this time, though, through the lens of family law.

This report summarizes the findings of a research project that was undertaken with the support of the OBA Foundation Chief Justice of Ontario Fellowship in Legal Ethics and Professionalism Studies, and a Research Fellowship with The Winkler Institute for Dispute Resolution. The project looked at ethics and professionalism in family law alternative dispute resolution (“ADR”), specifically collaborative law, negotiation, and mediation.

As innovation in the provision of legal services continues to develop, it requires consideration of what constitutes ethical professional behaviour within those service models. What is meant by the term “ethical” in family law ADR? How will new professionals know what norms to apply? And how will the public know how to measure a professional’s behaviour? While this project asked some of these questions, it also sought to begin a broader conversation that is still ongoing about understanding legal ethics in an innovative ADR process. The goal of the project was to look at all three components that serve as guidance for family law lawyers when dealing with ethical challenges in family law ADR:

codes of conduct and professional standards, academic research, and ethics in practice. The project included empirical research involving ground table discussions with three groups of professionals (lawyer-mediators, settlement-focused negotiators, and collaborative lawyers), with a view to determining what is considered to be unethical behaviour in family law ADR.



For Deanne's blog posts, please see below:

[Professionalism & Ethics in Family Law: The Other 90%](#)

[Professionalism & Ethics in Family Law: The Other 90%, Part II – What Does it Mean to be Ethical in an Innovative Process?](#)

[Family Law ADR Requires a Higher Ethical Standard](#)

[Family Law ADR Requires a Higher Ethical Standard, Part II](#)

[Collaborative Practice Pro Bono Family Law Pilot Project Launches](#)

Improving Ontario's Family Justice System through Technology



Along the same family law vein, the Winkler Institute collaborated with the Ministry of the Attorney General (MAG) in the summer of 2017 to explore ways that technology can help support families that are involved in the family law system. As an independent university-based research centre, the Winkler Institute took an objective view of the issues faced in the family justice system across Ontario.

To ensure that the needs of families drive the design of online family law services, the Winkler Institute conducted public engagements by speaking with family justice sector participants such as litigants, court staff, legal professionals and judges. The goal was to gather first-hand user experiences to better understand how to help those with family law problems navigate the system.

For the just-released final report, please see [here](#).

The Windsor Yearbook of Access to Justice Special Issue



The early identification of innovation and access to justice as a key gap in the A2J field made it possible for Nicole Aylwin and Martha Simmons to compile and edit what is one of the first peer-reviewed special editions of a Canadian law journal to focus exclusively on Innovation and Access to Justice.

Published by the Windsor Yearbook of Access to Justice in December 2017, this special edition, entitled “Innovation & Access to Justice: Addressing the Challenge of a Diverse Justice Ecosystem,” highlights the work of authors who are leading thinkers and practitioners in the field of A2J. It covers topics such as online dispute resolution, social innovation in law, the human centered design of legal services, and innovations in legal education, including the use of Indigenous pedagogy in the law school classroom.

The complete contents of the Special Edition can be accessed [here](#).

Small Claims Court Mediation Program

Part of what makes the work of the Winkler Institute special is the contribution and dedication of our affiliated students. Our close relationship with the Osgoode Mediation Intensive Program and the Osgoode Mediation Clinic allows us to provide students opportunities to engage with the innovative projects that the Institute takes on.

As a part of their experiential learning components, students in the Osgoode Mediation Intensive Program and in the fall course “Theory and Practice of Mediation” participate in the Small Claims Court mediation partnership with the Sheppard and Brampton courthouses. After receiving their training at the beginning of the school year, students conduct mediations on weekday mornings at these courthouses. The cases they receive are diverted to mediation due to their deemed suitability for the process.

This is the kind of hands-on learning at its best that Osgoode delivers, providing an invaluable opportunity for students to put theory into practice in a real-world setting, while effectively assisting the country and province’s mandate of access to justice for its inhabitants. By providing mediation for parties currently in the justice system, students are, in their own small but significant way, alleviating some of the strain felt by both the courts as well as the litigants themselves.

“I was so happy when I managed to get the two parties to some sort of agreement. There were a number of emotional issues that popped up which complicated matters. When the mediation started out, both parties were either rude to each other, crying or throwing insults. By the end of the mediation, they gave each other a hug. I was so proud of myself that I had the biggest grin as I walked out of small claims courts.”

- OMC Student

Below you will find a summary of the key findings of the data that was collected throughout the program’s 2017-2018 academic year.

MEDIATIONS BY THE NUMBERS

For the 2017-2018 Academic Year



AVERAGE LENGTH OF MEDIATIONS

Sheppard: 112.9 minutes (1 hr, 52 min)

Brampton: 86 minutes (1 hr, 26 min)

Overall: 99.5 minutes (1 hr, 39.5 min)



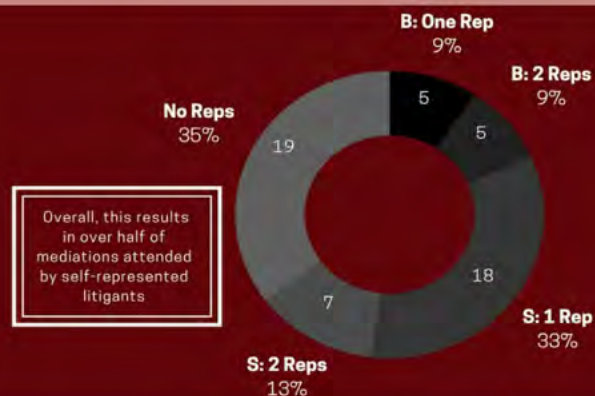
Global Average Settlement Amount:
\$6,505.36

But note...



The average settlement amount at Sheppard was
\$2,385.71

This is **4.45X** less than the average at Brampton which was
\$10,625



Admittedly more difficult to quantify was the perceived and felt fairness of the mediation process.

From the parties' perspective, the mediation was done in a fair way 85% of the time

85%

From the students' perspective, mediations were done in a fair way 88% of the time

88%

A key caveat: students were quick to point out an important difference between judging the process to be fair and finding the outcome fair and/or desirable.



Caucusing was an overwhelmingly popular tool for our student mediators, being employed 87% of the time.



Areas of Law

- Contracts
- debt collection
- real estate matters
- consumer issues
- landlord-tenant
- solicitor-client matters





"The parties seemed satisfied with the process. Both the plaintiff and the defendant were satisfied that their relationship was not tainted by this suit and that the matter had settled before proceeding to trial. Both sides realized the advantages of party self-determination and having some control of the outcome of the case. They also appreciated that if the terms of the agreement were fulfilled, this matter would be finished and both parties could continue on with their business arrangements. They thanked us for facilitating the process."

- OMC Student

As a closing note, we wish to thank our students from this past year for their diligent collection and reporting of their individual mediations' data, as well as their more anecdotal recollections and reflections on the situations they encountered. Their grappling with the issues and scenarios at hand demonstrate a true care for the process, as well as a respect for the litigants and justice system as whole. We are appreciative of this and them.

The 5th Annual Conference on Mediation: The Evolution of Mediation – Where are We Going?



Bennett G. Picker of Stradley Ronon Stevens & Young LLP delivers his keynotes address entitled, "The Landscape of Mediation – The Past 40 Years."

Our commitment to mediation and alternative dispute resolution took further shape once again this year with our conference on mediation in the spring.

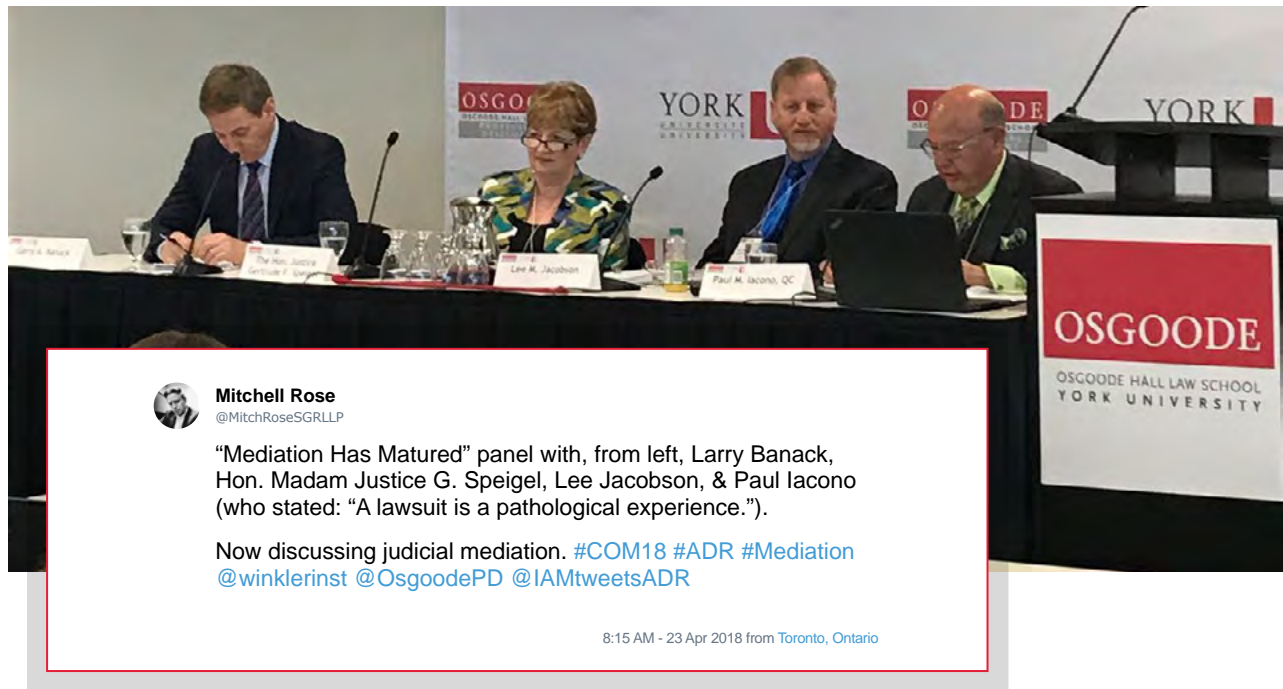
On April 23, 2018, the Winkler Institute, The International Academy of Mediators (IAM) and Osgoode Professional Development presented the 5th Annual Conference on Mediation. The conference was an opportunity to learn how to navigate the complex and nuanced issues arising in today's mediations from an international faculty of mediation experts.

Developed as part of a unique partnership of legal, mediation and academic experts, the goal of this full-day joint Winkler/IAM/OsgoodePD annual intensive program, which draws from across North America, was to provide a forum for discussion focusing on broadening the skills of counsel and mediators.

The conference featured sessions such as, “Fitting the Forum to the Fight” which focused on the different requirements of different types of cases. The session highlighted issues like resolving Indigenous disputes might require a different process than traditional mediation and the ethical considerations associated with this area of practice, commercial versus personal disputes, processes and the use of joint sessions when mediating sexual abuse cases, the requirements of changes to process involving political, human rights and/or high-profile cases, ethical concerns in human rights mediations, and the effects of culture on a decision maker.



Also featured was the “Mediation has Matured” session discussing how mediation has changed in recent years. The session focused on key issues such as the utility of joint sessions and mediator’s proposals, the future of mediation, advocacy techniques and strategies, differences between conventional and judicial mediation, differences between Canadian and American mediation processes, and ethical changes.



In the "Ethical Problems and Impasse" session, The Hon. Warren K. Winkler and Karin Hobbs presented a series of ethical questions/dilemmas focused on provoking thought around the likely pitfalls, traps and ethical concerns faced in the mediation process. Topics included dealing with power imbalances, material changes in evidence, questions about the necessity of neutrality in the mediation process and presenting the same assessment in both rooms when in caucus, and allowing confidentiality that sweeps bad conduct under the table.

Following Break-Out sessions addressing the Ethical Problems presented by the Hon. Warren K. Winkler and Karin Hobbs, groups came back together in the afternoon to report on the discussions and strategies that emerged in their groups. This concluding group discussion was intended to reinforce participants' understanding of the issues and provide best practices and tools needed to address these ethical dilemmas in the future.

The day concluded with a Fireside Chat entitled "The Future of ADR". The chat addressed what the future will look like and who represents the next generation of mediators, best practices for future

"Mediation is about two things:
patience and listening."

— Warren Winkler

mediators, geographical differences, the (in)ability of mediation adjust to a changing landscape, things to know about online and cyber security cases, the future of mandatory mediation, and the latest on the regulation of mediators.

Cyberjustice Lab: Autonomy through Cyberjustice Technologies (ACT Project)

Finally, we would like to give you a little preview of an exciting project and collaboration that is on the horizon.

With its main installations at the Université de Montréal, and a satellite courtroom at McGill University, the Cyberjustice Laboratory is a unique center for reflection and creativity where judicial processes are modeled and reimagined to increase access to justice. Specialized in the online settlement of conflicts, and the modernization of the justice system through digitalization, networking and the use of artificial intelligence, the Cyberjustice Laboratory develops platforms, software, and chatbots to improve the everyday life of litigants and legal professionals alike.

The ACT Project is a 6-year SSHRC (Social Sciences and Humanities Research Council of Canada) Partnership Grant that aims to increase access to justice through the use of artificial intelligence (AI). The Winkler Institute is an Academic Partner on this project.

The ACT project seeks to: 1) gain a better understanding of if and how AI can lead to the empowerment of justice stakeholders; and 2) explore if/how AI can be an effective answer to the access to justice crisis.

Other objectives include:

- Assessing the legal effects of introducing algorithmic tools into justice system and dispute prevention.
- Interpreting the consequences of the introduction and penetration of AI technology.
- Developing best practices with partners around use of technology that are in line with the fundamental rights and interest of those subjected to justice system.
- Consolidating emerging research on Cyberjustice and AI in the social sciences.

We are excited to come on board for this huge endeavour and will be keeping you posted along the way.