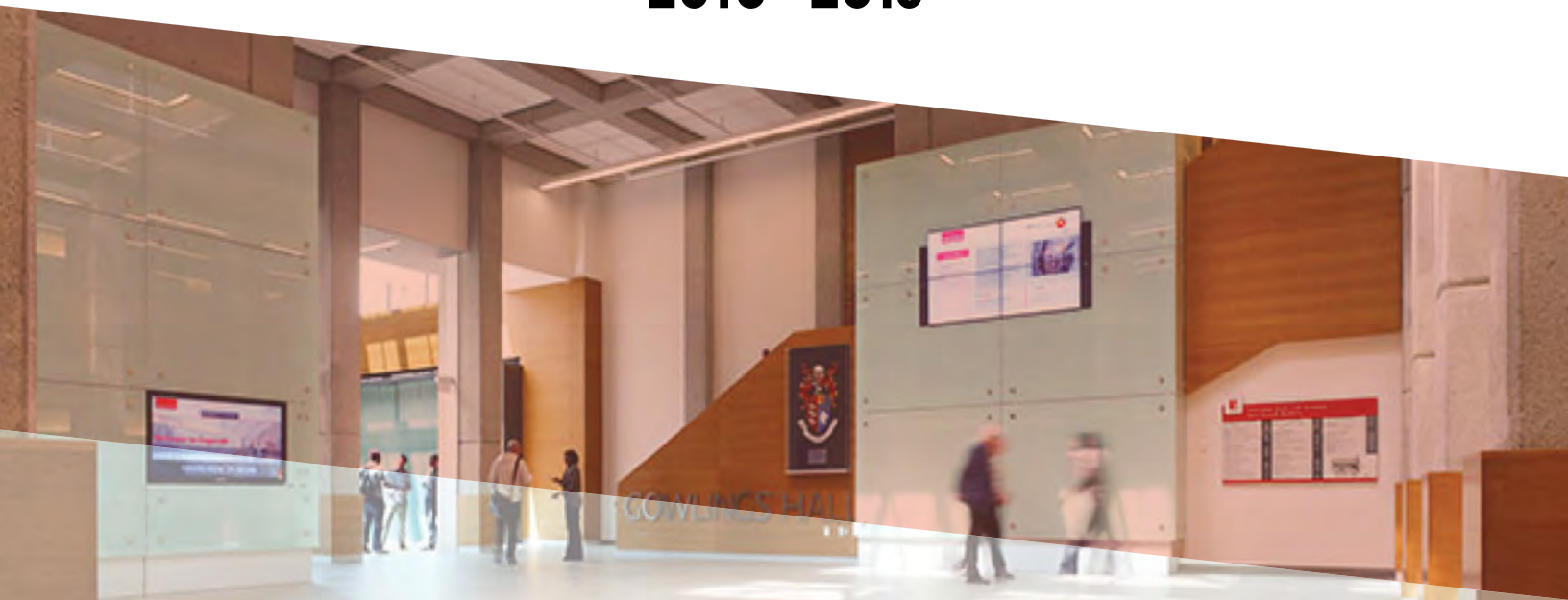


ANNUAL REPORT

2018–2019



**WINKLER
INSTITUTE**
FOR DISPUTE
RESOLUTION

OSGOODE
OSGOODE HALL LAW SCHOOL

YORK
UNIVERSITÉ
UNIVERSITY 

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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.

Based at Osgoode Hall Law School, the Winkler Institute for Dispute Resolution is a vibrant centre for research on innovation in dispute resolution, access to justice and the future of the legal profession. Our projects range from exploring to the potential for human-centred design and legal technology to transform justice services, to innovation in ADR and dispute prevention, to new ways of thinking about the profession, legal education and empowerment. Additionally, we are closely tied in both mission and operation with the Osgoode Mediation Intensive Program and Clinic and its Small Claims Court Mediation Program. Since opening its doors in 2014, the Winkler Institute has become a leading voice in Canadian justice innovation and reform.

Visit us at: www.winklerinstitute.ca



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A WORD FROM THE ACADEMIC DIRECTOR

We have had a very busy year at the Winkler Institute. Whether it was our series of **roundtables on dispute resolution in community organizations**, our **6th annual Conference on Mediation** or our centrepiece celebration of the **10th anniversary of our institutional partner the Osgoode Mediation Clinic**, we at the Institute were firing on all cylinders.

This report aims to share with you, our supporters, advisors and colleagues, the wide-ranging work we have been doing and the diverse set of projects we have embarked on. We hope that it will give you 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 progressing and growing in a way that brings us much joy, and we are glad to have your continued support throughout it all. We always like to hear from you! Please do not hesitate to reach out to us at WinklerInstitute@osgoode.yorku.ca should you wish to ask questions, to talk further, or to collaborate more.



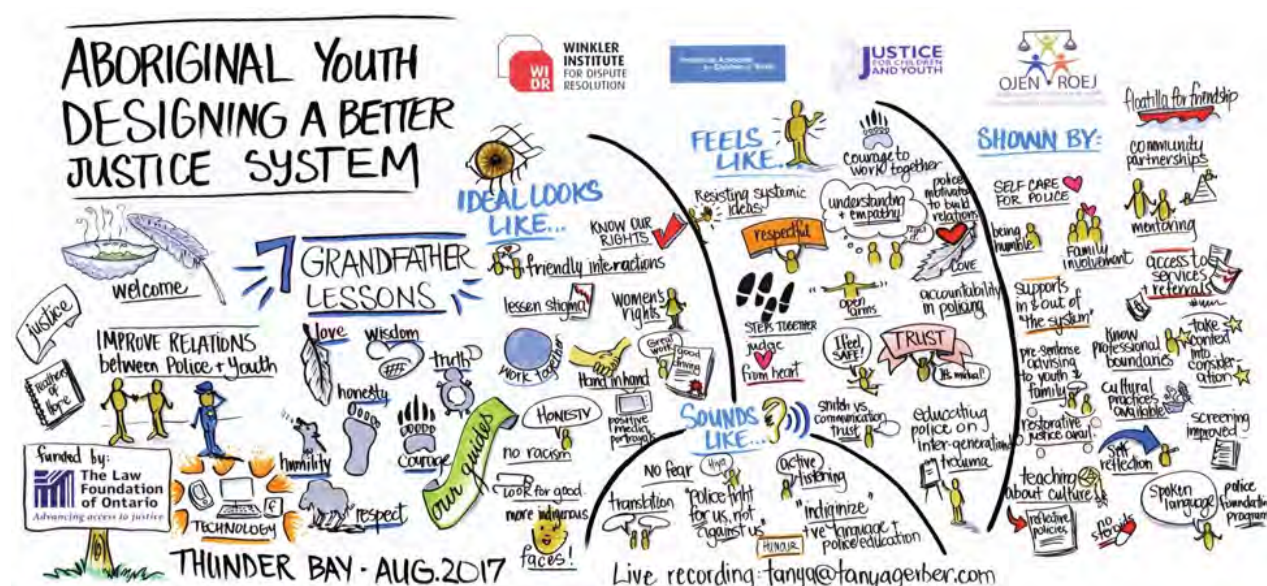
Sincerely,

A handwritten signature in black ink that reads "Martha".

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

Indigenous Youth: Designing a Better Justice System Phase Two

Last year, we reported on phase one of the *Indigenous Youth: Designing a Better Justice System* project. The purpose of the project is to support Indigenous youth in creating technological solutions that would improve the relationship between youth and police, with the ultimate goal of improving the justice system to be more responsive to Indigenous experiences.

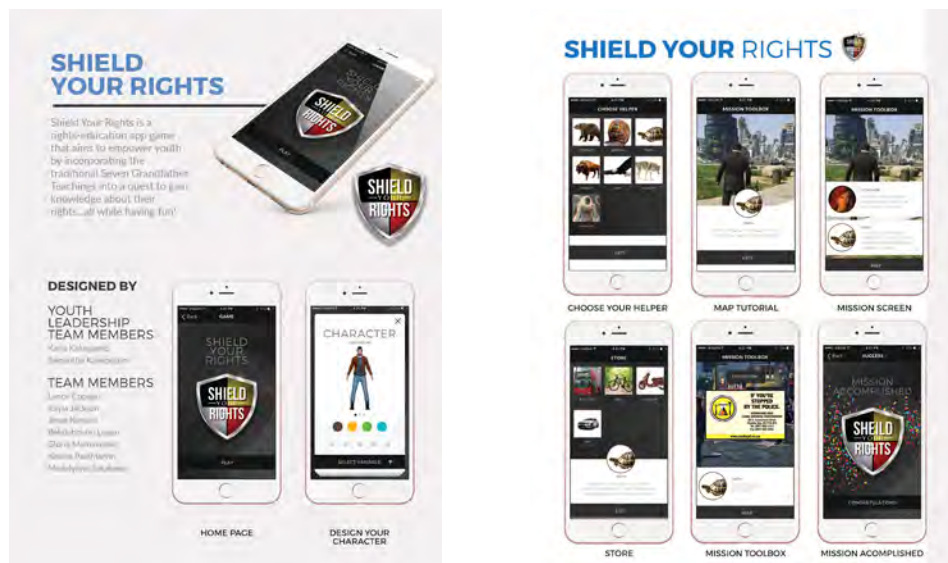


Phase one began in August 2017. The Winkler Institute conducted a 3-day workshop in Thunder Bay that brought together 30 Indigenous youth who worked collaboratively to brainstorm and design technology prototypes that could be used to improve interactions and the relationship between police and Indigenous communities. From their efforts, three innovative prototype solutions developed during the workshop—one website and two mobile-based applications.

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. In April 2018, phase one culminated with the Youth Leadership Team presenting on Indigenous justice issues and their prototypes to students, professors, and community leaders and members at the University of Toronto's Centre for Criminology and Socio-legal Studies.

Phase two of the project, again generously funded by the Law Foundation of Ontario, aims to support the development of one of the three prototype solutions developed during the original 2017 workshop.

Of the three prototypes, the educational app game “**Shield Your Rights**” entered this next phase of development in the spring of 2019. The game aims to empower youth by incorporating the traditional Seven Grandfather Teachings in a quest to teach users about youth legal rights.



Along with the new grant from the Law Foundation of Ontario, the Winkler Institute is continuing to co-direct this project along with program partners Justice for Children and Youth (JFCY) and the Ontario Justice Education Network (OJEN).

During phase two, a newly formed Youth Leadership Team, comprised of Indigenous youth from throughout the province, are working alongside subject-matter experts and staff from the Winkler Institute, OJEN and JFCY to further develop, refine, and concept-test Shield Your Rights. They’ve already met twice, along with our planning team, in Toronto, in May and July 2019 and will continue working throughout the fall and winter. The phase will result in presentation and design documents that will be used to solicit funding to build and, ultimately, release the game.



Winkler Institute @winklerinst • Feb 14

We are grateful for the enthusiastic response from Indigenous youth to join the Youth Leadership Team for the second phase of our [@LawFoundationOn](#)-funded project. The sheer number of applicants is incredibly heartening.



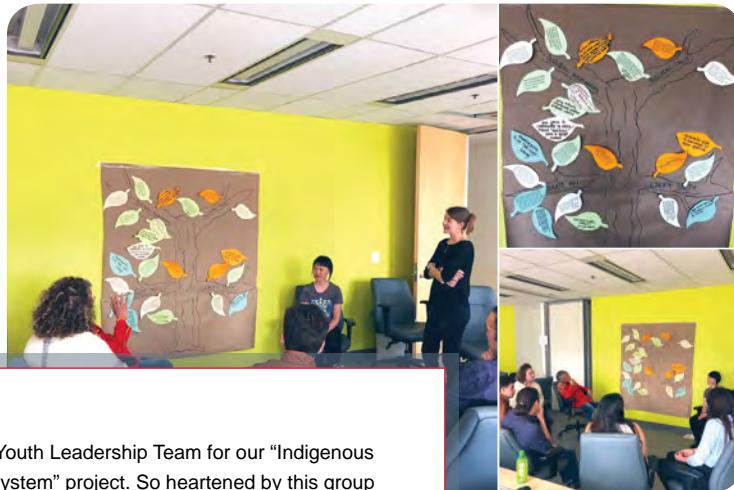
OJEN / ROEJ @OJEN_ROEJ • Feb 13

We're excited to invite Indigenous youth in Ontario to work on "Shield Your Rights"! As a learning tool, the game aims to introduce young Indigenous people to their legal rights. Do you have skills in technology & app development? Apply by February 19th: <http://bit.ly/2N72nPX>



Winkler Institute @winklerinst • May 23

Just a snapshot of our fun day of meetings with our Youth Leadership Team for the second phase of the @LawFoundationOn-funded "Indigenous Youth: Designing a Better Justice System" project. Much more to come over the next year, so watch this space!



Jean-Paul Bevilacqua @jpbevi • Aug 2

Another fantastic meeting with the Youth Leadership Team for our "Indigenous Youth: Designing a Better Justice System" project. So heartened by this group and by the work being done, and looking forward to continuing it!



Partnership with Cyberjustice Lab: Autonomy through Cyberjustice Technologies (ACT Project)

This year, we continued a similarly collaborative partnership with the Cyberjustice Laboratory, a unique centre for reflection and creativity whose goal is to take advantage of technological advances in order to facilitate 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.

The Winkler Institute is an Academic Partner on the ACT Project, which 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).

In collaboration with Cyberjustice Lab, on March 28, 2019, the Winkler Institute participated in a panel titled "An Open Discussion on Online Dispute Resolution (ODR) as a Public Service." Hosted at the MaRS Discovery District and presenting to a full house of attendees, topics included: "Why Consider ODR?," "Best Practices in the Field of ODR," and the "Future of ODR." The primary theme underpinning the conference was how to best increase the use and advancement of ODR from an access to justice perspective. Our Institute's own Nicole Aylwin and Jean-Paul Bevilacqua hosted and moderated the event.

We are happy with the progress made this year and are looking forward to further contributing to the dialogue in this innovative and important field.



Small Claims Court Mediation Program



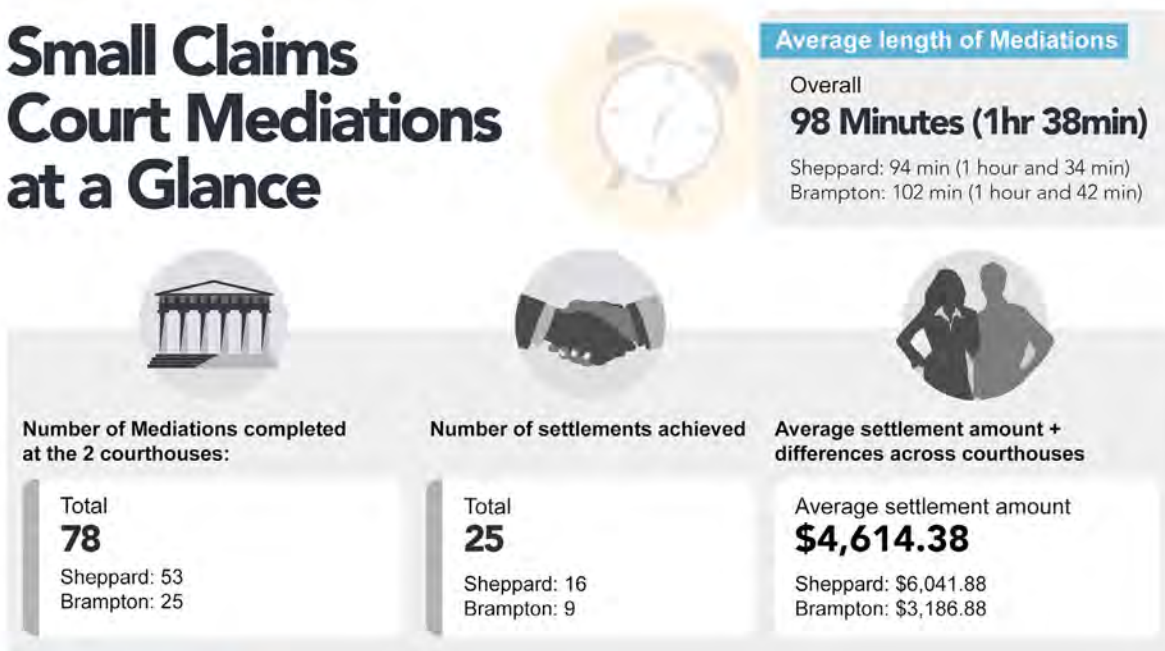
Part of what makes the work of the Winkler Institute special is the contribution and dedication of our affiliated students. Our close relationship with the [Osgoode Mediation Intensive Program](#) and the [Osgoode Mediation Clinic](#) allows us to provide students opportunities to engage with the innovative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

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 (under the guidance of our wonderful coaches) 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.

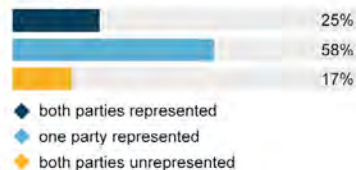
Below you will find a summary of the key findings of the data that was collected throughout the program's 2018-2019 academic year.

Small Claims Court Mediations at a Glance

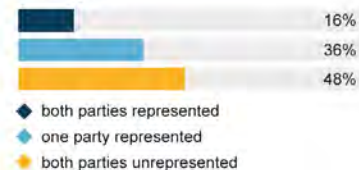


Representation

Sheppard



Brampton



Parties' and students' perceived fairness of the mediation process

Students deemed
65 of 70 mediations
(83%) as fair to all participants



Sheppard: 83%
Brampton: 84%



Students identified several factors crucial to ensuring fairness in mediation:



Caucusing

Caucusing was an overwhelmingly popular tool for our student mediators, being employed 83% of the time

Areas of Law

Contracts, debt-collection, landlord-tenant, property damage, employment/wrongful dismissal



"Participating in the Small Claims Court program has been one of the highlights of my legal education. Having the opportunity to engage with real litigants and diverse legal issues was incredibly rewarding. Parties were happy with the level of control they had in mediation. Helping parties reach an agreement that provided them with finality without having to go through a trial was the best feeling, and the litigants were thankful for the service we provided. Even in the cases where a partial agreement or no agreement was reached, the parties benefited from the process. In one case that I mediated where no agreement was reached, both parties expressed that they learned new case-relevant information from the other party as a result of the mediation process. It was clear to me that the parties had minimally communicated with one another about the case and had not negotiated with one another prior to that day. As I left small claims court that day, I overheard the parties negotiating in the hallway. I doubt that the parties would have even spoken to each other, let alone negotiate, if they had not gone through mediation."

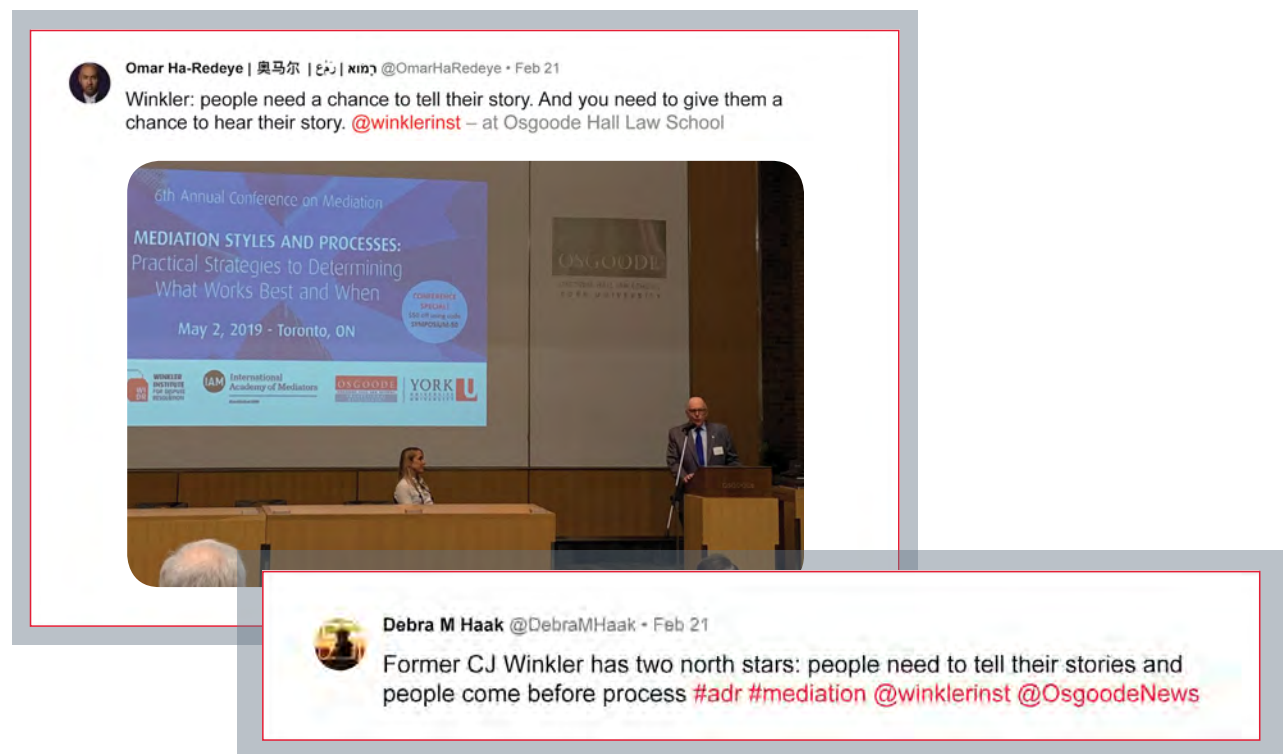
- OMC Student

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 Osgoode Mediation Clinic's 10th Anniversary Symposium

In celebration of the 10th anniversary of Osgoode's Mediation Clinic, the Winkler Institute and Osgoode's Mediation Clinic hosted a symposium at Osgoode Hall Law School on February 21st, 2019. The symposium title was "Where Do We Go From Here? A Celebration, Discussion and Exploration of the Future of Dispute Resolution." The symposium, which drew over 100 attendees, featured several academics, lawyers, judges, and mediators whose presentations showcased the diversity of dispute resolution approaches in Canada. Presentation topics included dispute resolution across cultures, innovations in dispute resolution, improving education of dispute resolution in law schools, and leveraging technology to help effectively resolve disputes.



The day began with a welcome from the Winkler Institute's Academic Director, Martha Simmons, followed by an insightful opening address from former Chief Justice of Ontario and founder of the Winkler Institute, Warren Winkler. Prior to the first group of presentations, we were grateful to hear

from our keynote speaker Bob Bordone, professor and founder of the Harvard Law School Negotiation & Mediation Clinical Program. The topic of his presentation, the future of dispute resolution, underscored the main theme of the day.

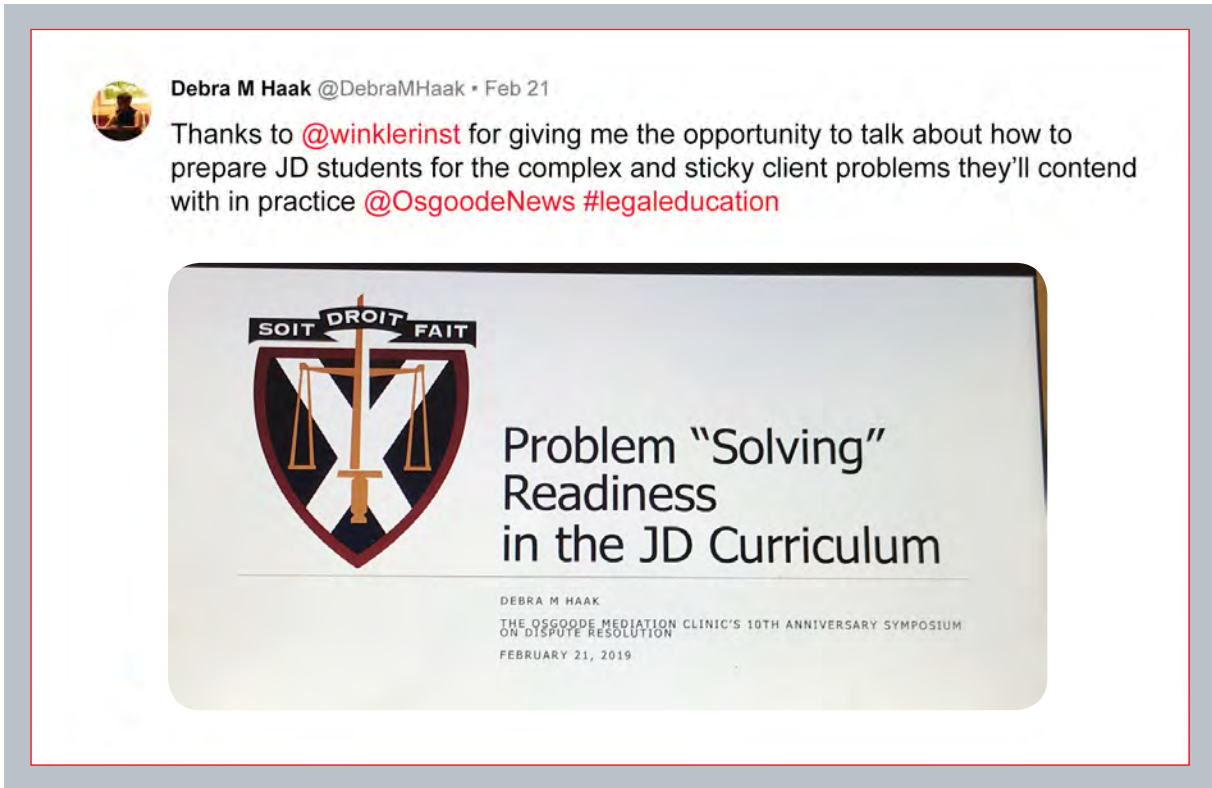


A number of panelists presented on the diversity of mediation approaches. Pamela Large Moran and Lori St. Onge spoke about the importance of integrating Indigenous dispute-resolution perspectives based on collaboration and relationship mending in order to make the process responsive to the needs of Indigenous peoples. Applying Indigenous dispute-resolution approaches, representatives from Peacebuilders International Canada presented about their use of restorative justice circles with youth which focus on repairing youths' personal well-being and relationships rather than punishment for crimes committed.

Other presenters spoke about the unique mediation services being employed in the areas of community conflict, sexual assault, and family law and domestic violence.

In line with the symposium's title of the "Future of Dispute Resolution" were the sessions on online dispute resolution (ODR) and artificial intelligence. Speakers described the utility of ODR mechanisms such as video conferencing, audio conferencing, and virtual rooms to resolve disputes. One highlight of the discussion was the success of the Ontario Condominium Authority Tribunal's use of a mandatory ODR process. Another was Omar Ha-Redeye's presentation about Queen's University's development of an online small claims tribunal that uses artificial intelligence to help self-represented litigants. Disputants answer questions and the program generates a prediction of the likely outcome of the case, which may inform the disputant's position in negotiation or mediation.

As the Osgoode Mediation Clinic provides experiential education opportunities for law students, the symposium appropriately featured multiple sessions on the topic of dispute-resolution education. The speakers discussed the importance of alternative-dispute-resolution education given the low percentage of cases that are resolved through litigation, and highlighted simple but effective strategies for implementing dispute-resolution exercises within law schools which foster better problem-solving skills, even in black-letter-law courses.



Continuing the theme of legal education, the symposium capped off with a roundtable on pedagogical approaches in experiential and clinical legal education. The roundtable was led by three professors each from different law schools, including our very own Professor Martha Simmons, who spoke about the experience at each of their respective institutions. A testament to the symposium's success, participants remained engaged and asked many questions and shared their reflections on the presentations during the roundtable.

We are immensely proud of the response to the symposium and the success of Osgoode's Mediation Clinic. We are excited for what the future of dispute resolution holds and the Mediation Clinic's role in that future.

ADR Competitions and the Osgoode Advocacy Society

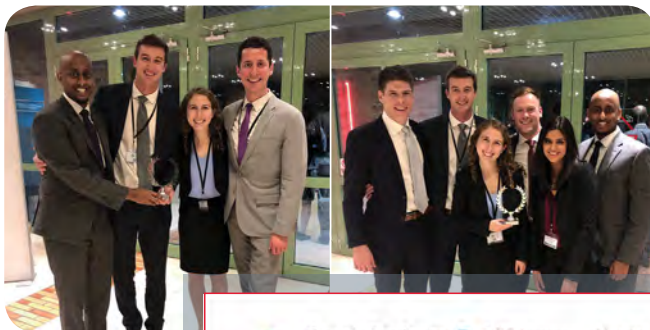
The day after the Mediation Clinic's 10th anniversary symposium, Osgoode hosted the 2019 Canadian National Negotiation Competition (CNNC) which took place on February 22nd and 23rd. Founded in 2017, the CNNC aims to promote alternative dispute resolution, build networks across law schools, and also serves as the qualifier for the annual International Negotiation Competition. Having won first place in the 2018 CNNC, this year Osgoode's team finished right on the heels of their predecessors by finishing second place. Next year's competition will be hosted at the University of New Brunswick.

Continuing on that success, Osgoode sent two teams of three students to the International Academy of Dispute Resolution's International Law School Mediation Tournament, which took place in Athens on March 14–17. The tournament promotes mediation as an effective dispute-resolution method and provides law students with a valuable opportunity to develop their advocacy skills. Coached by the Winkler Institute's Jean-Paul Bevilacqua, one of Osgoode's teams took first place at the competition which consisted of a total of 53 teams. Every member of the second Osgoode team received individual awards, meaning that every member of Osgoode's two teams returned to Canada with awards recognizing the strength of their advocacy skills. A successful trip and tournament, indeed!



Jean-Paul Bevilacqua @jpbevi • Mar 17

And, just like that, @OsgoodeNews is bringing home the gold from Athens. Immensely proud of this hard-working, talented and, most importantly, kind group of individuals who supported and lifted up each other during it all. It was an honour to be their coach.



Ontario Bar Assoc. @OBALawyers • Mar 20

Congratulations, everyone!, osgoode.yorku.ca/news/osgoode-w...
@OsgoodeNews

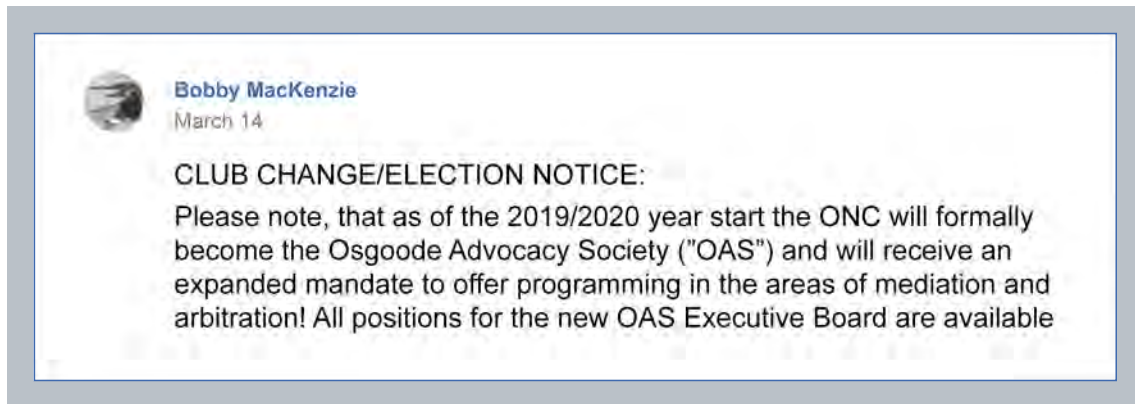


Osgoode wins INADR's International Law School M...

Pictured, from left, Stephen Littleford, Adam Voorberg, Lindsay Stitt, Aaron Pearce, Robel Sahu, Karen Mann and coach Jean-Paul Bevilacqua Osgoode's team retur...

osgoode.yorku.ca

We are also delighted to share another development at Osgoode in the area of alternative-dispute-resolution experiential education. As of the 2019/2020 academic year, the Osgoode Negotiation Club (ONC) will become the Osgoode Advocacy Society (OAS).



The ONC focused on teaching law students about the dynamics of negotiation and effective negotiation advocacy. The annual capstone event of the ONC was hosting the preliminary rounds of the Canadian National Negotiation Competition, sponsored by Dentons LLP. The OAS will continue to promote these negotiation-focused initiatives but will also expand the old ONC's mandate to provide programming and events in the areas of mediation and arbitration.

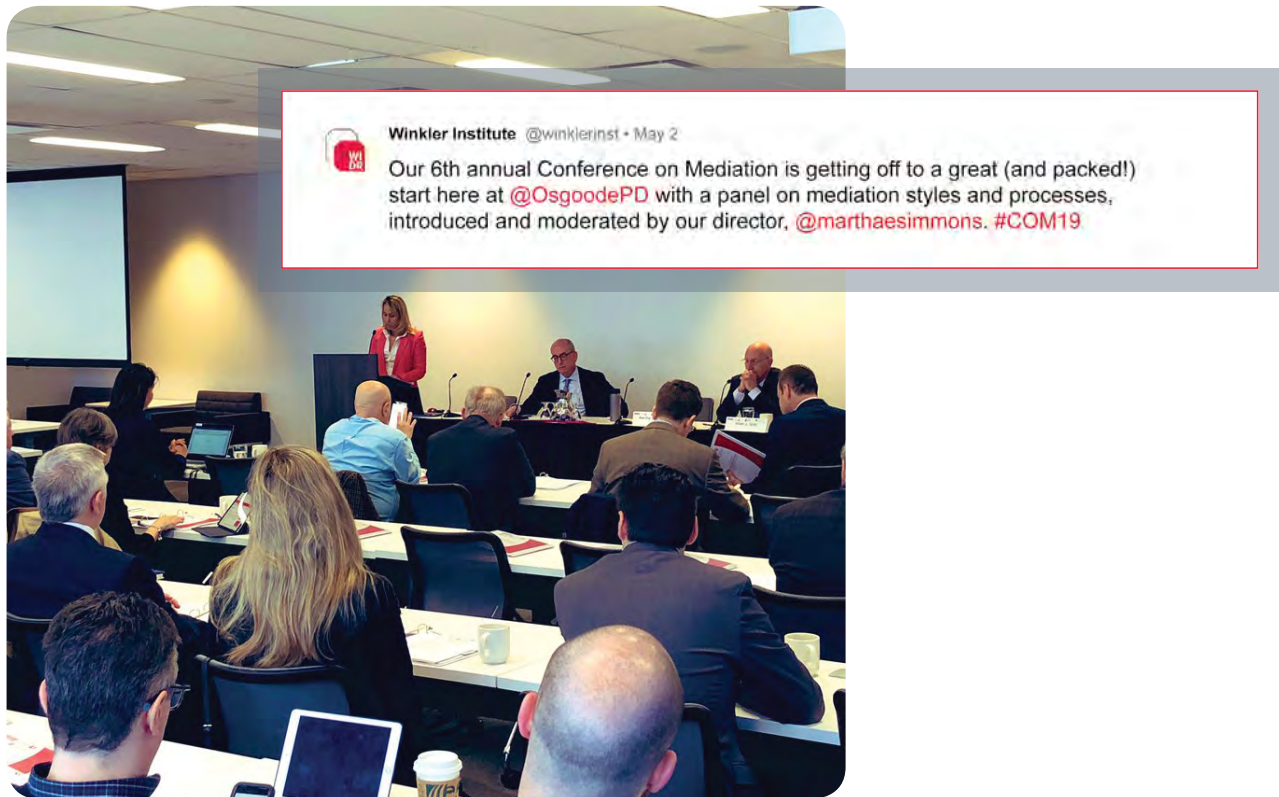


Campus Trainings

For the last few years, students and staff of the Institute, as a part of our partnership with the Osgoode Mediation Clinic, have been providing conflict-resolution and mediation trainings for residence dons and students leaders at both of the York University campuses over the summers. We appreciate the opportunity to continue and build upon these important relationships with student groups and the broader university community and are grateful to contribute to the health and success of student life at York.



The 6th Annual Conference on Mediation: Mediation Styles and Processes – Practical Strategies to Determining What Works Best and When



In partnership with the International Academy of Mediators (IAM) and Osgoode Professional Development, the Winkler Institute held the 6th Annual Conference on Mediation on May 2, 2019. The conference focused on the effectiveness of different mediation styles, whether the type or number of parties involved changes the process, the utility and timing of caucusing, and ethical considerations for mediators. The conference employed both panel-style presentations and small-group interactive exercises and discussions.

With a different focus each year, the goal of the intensive full-day program is to bring together leading legal, mediation, and academic experts to provide a forum for sharing insights and practical tips that will enhance the skills of counsel and mediators and ensure that they are up-to-date on the current law and best practices.

The first session was titled “Mediation Styles and Processes: Choosing the Ones that Work Best for You,” which focused on the effectiveness of different mediation styles in different situations. Topics included whether it is important for mediators to be able to employ different styles and processes, the

differences between style and process, does style or process affect the outcome of mediation, ethical considerations when deciding on which style or process to use, and whether the process and style selected should depend on the subject matter of the mediation, the parties involved, or cultural diversity.

The second featured session was “What Role do the Parties Play in Process Design?” This session focused on important issues such as whether parties choose a mediator based on their style or process, what questions a mediator should ask parties prior to mediation, and whether and when to caucus during mediation.



Our keynote session was titled “Mediation as an Adjunct to Public Policy.” During this session, the Honourable Warren Winkler posed questions to the Honourable Caroline Mulroney, then the Attorney General for Ontario and Minister of Francophone Affairs. The questions focused on the theme of access to justice and the role that mediation can play in achieving this goal. We are grateful that Ms. Mulroney was able to join us, and even more delighted that she shares our vision that mediation is an integral part of Canada’s justice system.



The afternoon kicked off with our Interactive Process Design Challenge. Attendees separated into small groups and were tasked with designing a mediation process to handle different hypothetical complex, multi-party legal disputes. After formulating their approach, each group reported back to the larger group about their process and their reasons for choosing that process. The group debrief helped to improve participants' understanding of different mediation styles and processes, and how to identify which one will be most effective in different situations.

The conference concluded with our "Bringing it All Together" panel discussion. Moderated by Warren Winkler, this final session highlighted the key takeaways of the day including ethical challenges and solutions and the ins and outs of designing your own mediation style and process. The discussion ended with a Q&A session, and the insightful and numerous questions posed by participants reflected the success of the day.



Bernard Morrow @MorrowMediation • May 2

Hon. Warren K. Winkler: "These cases we're mediating are about people, not process or the law." @OsgoodePD @winklerinstitute #mediation #ADR #Torontolawyers

Community Roundtable Series



In association with the [Conciliation and Arbitration Board for Canada](#), the Winkler Institute conducted three community roundtables on dispute resolution in the fall of 2018: one in Toronto, the other Calgary and the final as a part of the ADR Institute of Canada's National Conference in Montreal. These events provided forums for stakeholders such as faith groups and community organizations to learn about effective dispute resolution and the resources available to them in their community. The purpose of these events was to improve the dispute-resolution capacity of the communities that we serve. As a result of the success of these events and the feedback received from participants, the Winkler Institute continued work on this front during this past summer, developing materials that stemmed from the first roundtables as well as to prepare for future iterations of the sessions across Canada.

The roundtables were guided by the following two questions:

- How do we build vibrant and competent community organizations and strengthen civil society in Canada?
- How do community organizations develop a culture of dispute prevention and resolution, of settlement and agreements, to better focus an organization's mission?

After the "lightning round" which was used to introduce the various participants and organizations, participants separated into small groups. Each group was provided with pre-formulated questions which were intended to prompt participants to relay their experiences and the tools that they use in their work.

The small groups then reassembled into the larger group where one member from each small group shared the highlights of their discussions. It was in this large group that themes, challenges, and ways forward emerged.



A key finding was the high level of success of alternative-dispute-resolution processes offered by participant organizations once parties became aware of them. Given this, a final question was posed to participants: “What do you, as participants and stakeholders at the table, want to get out of this session and going forward?”

First, participants expressed the need for deliverables. This would include items such as instructional documents, resource databases, and catalogues of the work being done by each organization and their dispute-resolution processes to allow for the sharing of best practices. These documents could then be shared across groups and organizations.

Second, there was a strong call to provide credentials to dispute-resolution professionals to give clients a sense of trust in a baseline level of training, experience and aptitude and in order to connect conflicts with the appropriate mediators. Additionally, it was suggested that faith-based mediation groups seek professional accreditation and that collaboration should be encouraged in order to combat any siloing or segregation.

Third, participants expressed a desire to formalize and make consistent the presentation of these roundtables across the country. The participants saw the value of the roundtables and were attuned to the risk of gaining initial momentum and initiative, but having it fizzle out due to inactivity. The potential benefit of this work is too great for us to allow that to happen.

As a result of the success of these events and the enthusiasm and feedback received from participants, this summer, the Winkler Institute created an instructional document that will provide the necessary information for interested groups to enable them to conduct similar sessions in their own community. An ADR Resource Database will also be created containing best practices, tips, and other materials for organizations that will ultimately be posted on the Winkler Institute’s website.

Health and Well-Being of ADR Professionals Workshop

In July 2019, Nicole Aylwin appeared and presented at this sold-out, full-day event at the ADR Institute of Ontario. The workshop explored the health and wellness for those at the heart of the conflict, recognizing that taking care of oneself is a necessity in this line of work.



ADRIO ADR-Ontario.ca @ADROntario • Jul 25

Nicole Aylwin is up next with an interactive mindfulness exercise. "Sit up straight, close your eyes and think about the elephant..."

#WellnessWorkshop @ADRathletics



Mitchell Rose @SettleWithMitch • Jul 25

Nicole Aylwin on Coping with Conflict: Mindfulness as a Critical Skill, at #WellnessWorkshop at @ADROntario.

"Too much time doing, and not enough time being still....We don't need to strive so much." #wellness #mindfulness #yoga #ADR



Staffing Changes at the Institute



After over two years with the Institute, we're excited that Osgoode alum and adjunct professor Jean-Paul Bevilacqua has moved into the role of Assistant Director of the Institute. He will continue the work of leading, directing and managing our various programs and projects in tandem with our Academic Director.

This past summer, we said goodbye to our Advisor of Strategic Research Initiatives and former Assistant Director, Nicole Aylwin, who was with the Institute since its inception five years ago. Nicole played a huge hand in delivering our centre to where it is today, and her skill, expertise and disposition will be missed. Although she is leaving her formal role, we are happy she will be remaining connected to the Institute as a research fellow. We wish her well in her burgeoning and thriving yoga-therapy business.

Students: The Lifeblood of Our Organizations



*Pictured (from L to R): Jean-Paul Bevilacqua, Michael Dunk, Latania Christie, Andy Zhou, Martha Simmons
(Not pictured: Kojo Almasi and Deena Gangbar)*

Thanks to our wonderful Osgoode summer students for keeping the varied work of the Institute and Osgoode Mediation Clinic and Intensive running so smoothly over the summer months. We are lucky to have such dedicated individuals supporting our projects and programs.

You can read about their experiences on our [website](#).

We are grateful to announce and acknowledge a generous donation from Jonathan Foreman and David B. Williams from Harrison Pensa LLP that will ensure that the Winkler Institute is able to continue facilitating our programs and projects, like those detailed in this report, for years to come.

If you would like to support the continuing growth of the Institute and innovation in access to justice, please contact our Assistant Director, Jean-Paul Bevilacqua, at JBevilacqua@osgoode.yorku.ca.

Gifts of any amount are transformative and appreciated.

