

Osgoode Mediation Program: Small Claims Court Data 2019-2020 Academic Year



Overview of Small Claims Court Mediation Program

As a part of their experiential learning components, Juris Doctor 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 courthouses in Brampton and on Sheppard Avenue in Toronto. After receiving their training at the beginning of the school year, students conduct mediations on weekday mornings at these courthouses. Mediation services are planned for each weekday at the Sheppard courthouse from October to March. Mediation are offered in Brampton on on Thursdays and Fridays weekly, from October to March.

Mediation opportunities were also expanded to Master of Laws Program in Dispute Resolution. The Osgoode Mediation Program also engaged a couple of community volunteers with mediation training to participate in Small Claims Court mediation. Learning was enhanced for Juris Doctor students through co-mediation experiences with the community volunteers and Master of Laws students.

This is the kind of hands-on learning that Osgoode delivers at its best, 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. Cases are diverted to mediation at the courthouses due to their deemed suitability for the process. 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 2019-2020 academic year. With this illustration, the contribution of

Osgoode's students and the Mediation Program as a whole should be evident. We are grateful for the partnership of the Sheppard and Brampton courts, as well as for our professional mediation coaches, in this continuing and ever-growing endeavour.

Mediations by the Numbers

Total Mediation Attendances: 80

- 59 at Sheppard Small Claims Court
- 21 at Brampton Small Claims Court

Total Mediations Conducted at Both Courts: 40

- Data specifically unclear between courts here to protect student anonymity

Time Spent in Mediation at Both Courts:

- 0-30 minutes (8%)
- 30+ minutes (56%)

Monetary Stakes in Mediation at Both Courts:

- The average amount of the plaintiff's claim was \$13,553.13
- The amount of money at stake ranged from \$1,281.99 to \$26,000.00.

Number of Settlements Achieved: 17

Settlement Amounts:

- The average settlement amount between the two courthouses was \$6,332.93

Settlement Amounts Compared to Claim Amounts at Both Courts:

- 4 of the 17 settlements (36% of the settlements) were greater than 50% of the plaintiff's claim, ranging from 65% to 84%, 69%, and 82% of the value of the plaintiff's claim
- 1 case settled for the full value of the plaintiff's claim without costs as originally requested
- Variations in settlements ranged from a low of 12% of the plaintiff's claim to a high of 84% of the plaintiff's claim.

Representation of Parties at Both Courts:

- 38% of mediations had only one party represented by counsel or a paralegal, and 53% had both parties represented.
- 10% of mediations had self-represented litigants

Caucusing:

- Caucusing, once again proved to be popular amongst student mediators, being utilized 80% of the time.

Areas of Law:

- There was quite a variation in the types of issues students mediated, ranging from home renovation/construction matters, employment matters, contractual disputes, property damages, and repayment of loans/mortgages. This year, new areas of law emerged like an insurance matter and a real estate transaction.

Language Barriers at Both Courts:

- Conducting the mediation in English was only identified as a barrier to parties fully engaging in the mediation in 18% of mediations
- Some litigants were able to engage in mediation only with the assistance of translation provided by friends, family, or professional translators
- Students expressed concern that litigants who struggled with English and did not have access to translation into their native language did not always fully comprehend the discussion and could not always convey their perspective effectively to the mediators or other parties
- Some disputants refused to speak when matters escalated because they did not fully comprehend the process

Fairness of Process:

- 85% of survey respondents indicated that they felt the mediation process was fair.
- However 5% of survey respondents indicated that the mediation process was somewhat fair, which another 5% reported that it was not fair
- Students identified several factors that impacted fairness in mediation:
 - appropriate time to conduct mediations;
 - the role of legal representatives;
 - language barriers;
 - maintaining impartiality;
 - treating the parties equally, such as providing equal time for parties to share their perspectives;
 - taking the time to provide a thorough explanation of the mediation process and to answer clarifying questions about the process;
 - emphasizing the voluntary nature of the mediation process; and,
 - adapting the mediation process to address power imbalances, such as more readily using caucusing.
- As seen in previous years, students who raised concerns about unfairness in the mediation process identified power imbalances as a primary source of unfairness. Students noted that parties with experience negotiating, or those who were lawyer represented had an unfair advantage to their opposing parties in the mediation process.

Conclusion

We wish to thank the students from this past year for their willingness to attend court, in addition to their collection and reporting of their individual mediations' data. A high level of

sophistication is demonstrated in the surveys, which is a reflection of the care, diligence and respect that the students approach these mediations with. Although this year's reporting time was cut short due to COVID-19, students offered a great deal of data to work with. It has been a pleasure working with everyone.