



**Winkler Institute
for Dispute Resolution**
ANNUAL REPORT
2020-2021





Based at Osgoode Hall Law School (“Osgoode”) in Toronto, Ontario and named for the former Chief Justice of Ontario Warren Winkler, 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 and justice system. Our projects are wide-ranging but always rooted in this mandate.

Whether it is exploring the potential for human-centered design and legal technology to transform justice services, innovating in dispute resolution and prevention, discovering new ways of thinking about the profession, or legal education and empowerment, we are consistently striving to find out how to do things better and more inclusively.

Additionally, we are closely tied in both mission and operation with the Osgoode Mediation Clinic, supporting the work of its three primary divisions (and their community partners) and facilitating its Small Claims Court Mediation Program. We also support the work of the student-led Osgoode Advocacy Society, aiding in the facilitation of a number of internal and external ADR competitions.

Since opening our doors in 2014, the Winkler Institute has become a leading voice in Canadian justice innovation and reform and a partner on many research projects and initiatives with similarly minded organizations and institutions across the world.

We are always looking for more ways to work on pressing issues and to advance causes within our mandate.

Please do not hesitate to reach out by emailing us at WinklerInstitute@osgoode.yorku.ca

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A Word from the Academic Director



This was a year like no other. To say that it required all hands on deck would be accurate but would fail to capture what we witnessed at the law school and the Winkler Institute during the past 12 months.

Very quickly, all members of our community were forced to adapt and change in ways that many have been pushing for for years. Much has been said about what the pandemic has taught us, the silver linings that it presented, and these are true. By giving us no choice, innovation became not solely a goal but a necessity, and I am happy to say that, in the midst of all the darkness, sadness, loss and grief, we saw examples of resilience and progress all around.

This report aims to capture this journey, along with the various activities, competitions, and workshops that took place throughout the 2020–2021 academic year. A common theme you will see is our students rising to the occasion despite being faced with many hurdles on multiple fronts.

For example, we witnessed a flourishing Advocacy Program thanks to our partnership with the Advocacy Society that resulted in unprecedented wins for our students and for Osgoode at competitions in Canada and abroad—no doubt as a result of the seeds that have been planted throughout the past few years to foster a culture of dispute resolution that is rooted in getting to the core of the conflict in a tactful, efficient and compassionate manner.

No matter the research or initiative, our small but mighty team at the Winkler Institute chose to see this year for what it could be—a chance to continue the work that we have been doing since 2014, while capitalizing on the opportunity that a set of unexpected circumstances threw our way.

I could not be prouder of what has been achieved, and I invite you to look back with us through the pages that follow.

As always, we love to hear from you, so please reach out with comments and ideas at WinklerInstitute@osgoode.yorku.ca. We thank you for your unending support.

Take good care, and we hope to see you in-person in the not-too-distant future

Martha E. Simmons, PhD

Academic Director, Winkler Institute for Dispute Resolution

First Day of Class



The 2020-2021 academic year was a very different one, to say the least. With remote classes and a new virtual learning environment, the students at the Winkler Institute were faced with unique challenges that served as great opportunities for improvement and reflection. Jean-Paul Bevilacqua, assistant director of the Institute and co-director of the Mediation Clinic, welcomes the students to the first day of classes for new and exciting possibilities.

Advocacy Competitions

Dentons Cup

The Osgoode Advocacy Society (OAS), formerly the Osgoode Negotiation Club, is a student-run club that was established in 2016 and aims to advance the negotiation, mediation, and general oral advocacy skills of Osgoode students through training boot camps and advocacy-based competitions.

The Dentons Negotiation Cup is Osgoode's flagship advocacy-based competition designed to provide participants with an opportunity to demonstrate their ability to craft creative approaches to dispute resolution, think on their feet in a constantly evolving fact scenario, and demonstrate their ability to remain calm in a for-stakes negotiation.

Students compete in teams of two, hoping to advance through three rounds of simulated negotiation scenarios. Teams advance based on their scores, which are determined by a team's planning, flexibility, partnership, ability to deal with ethical issues, and ultimately the ability to obtain the best possible outcome for their client.

In November 2020, the third-annual hosting of the Dentons Cup took place via Zoom. For the first time ever, the OAS was tasked with transitioning Osgoode's largest internal competition from an in-person event to a virtual format. While the OAS was responsible for the organization, facilitation, and logistical aspects of the new competition format, the willingness of the participants and judges to try something new was equally important. In total, it took 16 OAS executive members, 88 judges, and 164 participants (or 82 teams) to pull off one very successful virtual competition – the first of its kind at Osgoode!

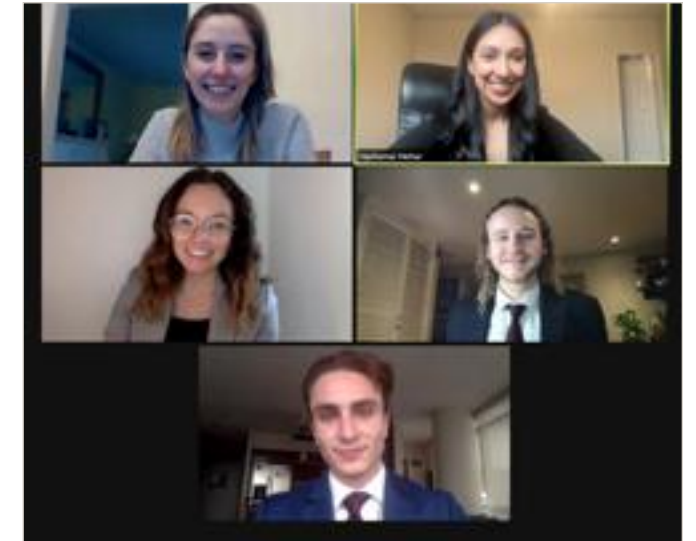
Despite transitioning to a virtual competition out of necessity, it turns out there were many advantages. Participation remained in line with prior years, registration was not restricted by available physical space, scheduling was more flexible, costs were reduced, and less time was wasted travelling. While feedback surrounding all aspects of the competition, from organization to advocacy skills, was overwhelmingly positive, many missed the in-person celebrations that typically follow after completing a job well done.

This year, Jacob Bennett and Anthony Tulipano won the competition in an impressive performance, with Valentina Galvis and Linda Mochon coming in second. Both teams that made it to the final round of the Dentons Cup qualified to represent Osgoode at the National Negotiation Competition, which was held virtually in February 2021.



Canadian National Negotiation Competition

The fourth annual (and first virtual) Canadian National Negotiation Competition took place from February 26 to February 28, 2021. Both Osgoode teams placed in the top two, with Valentina Galvis and Harkamal Hehar taking first place and Jacob Bennett and Anthony Tulipano taking second place. The two teams were coached by members of the Dentons law firm as a part of the valued partnership between the Osgoode Advocacy Society and Dentons LLP. The Dentons coaches were Rachael Andrew, Jessica Hardy-Henry, Alessandro Bozzelli and Jacob Yau. Supplemental coaching was provided by Osgoode alumni Karen Mann and Adam Voorberg. We are so proud of the students' work and are grateful for Dentons partnership in coaching.



As a result of this tremendous win, Osgoode was in the unique position of representing Canada not once but twice in both the 2020 and 2021 streams of the International Negotiation Competition, which took place virtually from June 28 to July 2, 2021. During this competition, hosted by the University of Singapore, the CNNC winners from last year, Osgoode's Alina Butt and Abiramy Uthirakumaran, placed third, while Valentina and Harkamal, Canada's 2021 team, placed fifth. An impressive and exciting feat for Osgoode indeed and certainly a big highlight of an already busy and successful year!

ICC International Commercial Mediation Competition

As part of a new and burgeoning partnership with the Schulich School of Business at York University, four JD/MBA students formed one team, coached by Jean-Paul Bevilacqua and Professor Joe Fayt, to compete in two ICC competitions. The first one was held virtually in Hong Kong during the fall and the second virtually in Paris at the beginning of February. The students, Jordan Crocker, Amy Ge, Alexander Grynszpan and Aryan Pour-Bahreini, performed admirably at each of the competitions, growing with each round and even received the Best Mediation Plan award at the Hong Kong competition!

A special thank you to Osgoode and Schulich alumni and previous competitors Alexander De Sousa and Oscar Crawford-Ritchie for their additional coaching and support.

International Law School Mediation Tournament

Osgoode had a fantastic showing at the International Academy of Dispute Resolution (IADR) International Law School Mediation Tournament the week of April 4, 2021. The competition, hosted virtually by the University of Georgia in Tbilisi, Georgia, had 40 teams from all over the world participating, with Osgoode being the only Canadian school represented.

Osgoode's team of Jessie Armour, Joshua Harriott and Thomas Prentice competed in the first three preliminary rounds, making it to the semi-finals in both Mediator and Client-Advocate categories, progressing then to the finals as Client-Advocate. The team won the entire competition as Client-Advocate, and also garnered additional awards—first for Individual Mediator awarded to Joshua Harriot and first for Individual Client-Advocate Pair awarded to Jessie Armour and Joshua Harriott.

Coach Jean-Paul Bevilacqua described the victory as “a truly shocking result, in the best possible way, and a testament to the students’ hard work, efforts and commitment to the process.”

Bevilacqua noted that supplemental coaching was provided by Osgoode alumni and former competitors Robert MacKenzie, Karen Mann and Adam Voorberg.

As a winner's prize, the entire Osgoode team will receive full scholarships for a Master's degree in International Business Law at the host university. In addition, the team received the Peacemakers Prize from the U.S. Embassy in Georgia.



“I am so proud of this team as they capped off an extraordinarily impressive year for Osgoode's advocacy/ADR teams which started way back in the fall with the internal Dentons Negotiation Cup, supported by the Osgoode Advocacy Society and the Winkler Institute,” Bevilacqua said

Experiential Education Symposium

The Experiential Education (EE) Symposium is an annual event that showcases experiential education at York University and celebrates the achievements of students and faculty who have participated in EE.

Students design posters that highlight the positive impact of their EE experience and present them to their peers, faculty, and staff.

In January 2021, for the first time, the EE symposium was held virtually via Zoom and was a great success. The Osgoode Mediation Clinic Program was represented by former student mediator and Winkler Research Assistant Rachele Paquet. A copy of her poster highlighting her EE experience can be found below:

OSGOODE MEDIATION CLINIC OMIC





INTRODUCTION

The Osgoode Mediation Clinic Intensive program offered at Osgoode Hall Law School provides students with theoretical and practical mediation training.

Students run the OMC and provide free community and court-related mediation services under the supervision of the program Director and other mediation professionals.

The OMC is made up of 3 divisions: Youth & Family; St. Stephen's; and Clinic & Campus.

As a member of the Clinic & Campus division, I provided mediation and other dispute resolution services to students, staff, & wider community.

TRAINING

Theoretical

- Conflict Styles
 - Competing, Accommodating, Avoiding, Compromising, and Collaborating
- Positions vs. Interests
 - Ex: "I want the orange"
- Mediation Styles
 - Facilitative, Evaluative, and Transformative
- Mediators control the process; Parties control the problem.

Practical:

- Mediation Certification Training Program
- Mediation Process
 - Case Preparation and Assessment
 - Intake, Case Development, Scheduling of Session
 - Mediation Session
 - Opening, Phase 1, Phase 2, Phase 3, Closing
 - Follow-up

MEDIATIONS

Small Claims Court (Toronto & Brampton):

- Cases
 - Dispute between employer and employee re: wages owed
 - Dispute between corporation and contractor re: invoice amount
 - Dispute between vendor and consumer re: quality of goods
- Clashes
- Insight, Impersonal, Power Imbalances & Language Barriers

80 TOTAL MEDIATIONS

21 AT BRAMPTON

59 AT SHEPPARD

17 SETTLEMENTS REACHED

Average value of plaintiff's claims re: mediation program: \$13,333.33

Average value of plaintiff's claims re: small claims court: \$13,333.33

Community Mediations

- Cases
 - Dispute between professional business partners re: ownership
 - Dispute between professor and student re: academic credit
- Insight, Personal & Emotionally-Charged

WORKSHOPS

The OMC team created content and delivered training as follows:

- "Mediation Basics" training for IADR Competition
- "Negotiation Basics" training for Seneca College Leadership Summit
- "Conflict Resolution" for York University Club Peer Mentors
- "Understanding Legislation" for Women's Mental Health Talks

SKILLS

- Client Interviewing
- Active Listening
- Information Gathering
- Effective Communicating
- Handling complex circumstances and emotions
- Balancing between preparation and adaptability
- Public Speaking

IMPORTANCE

- I am more aware of my role in dispute resolution, as both a facilitator and as a participant, in all professional and personal settings.
- I discovered a passion for helping others and a spirit of collaboration.
- I will use the mediation process in my legal practice to resolve disputes outside of the court system, thereby addressing the access to justice crisis and providing an option for parties with disputes that do not meet the legal threshold.

ADVICE

The OMC was the most impactful and rewarding law school experience. Helping parties, who would not have otherwise been able to do so, move beyond their disputes was lifechanging for the parties and myself. I would highly recommend taking any EE opportunity that interests you - the skills developed cannot be matched with in-class learning. You will gain self-confidence, self-awareness, and a better understanding of the world around you.

Advocacy Week

Advocacy Week, formerly known as ADR Week, is a week-long program of events that provides Osgoode students with an opportunity to learn about and engage with the dispute resolution practice. It is organized and facilitated in partnership between the Osgoode Mediation Clinic (OMC), the Osgoode Advocacy Society (OAS) and the Winkler Institute.

Although Advocacy Week 2020 was cancelled due to the start of the COVID-19 pandemic, all the hard work that went into developing the events was adopted, amended, and transformed into a successful virtual edition for 2021 that took place between February 1 and February 5, 2021.

An overview of each event that took place over the course of the week-long program follows:

Monday Event: Mediation 101

Advocacy Week kicked-off on February 1, 2021. Upper-year students Mihail Salariu, Valerie Sedlezky, and Hai Tran, from the OMC, started the week with a Mediation 101 presentation to a great turnout of around 60 students. They presented the basics of dispute resolution options that range from mediation to litigation.

The goal of the presentation was to leave students with a better understanding of what mediation could look like, its place in the toolbox of dispute resolution options, and their role as future mediation advocates. The presentation included small-scale considerations like the configuration of a mediation room (and the variations presented by the virtual mediation option), as well as other relevant considerations such as addressing power imbalances and factors that bolster the durability of mediation settlements.

They emphasized the importance of the parties' participation in the resolution and reminded the group of future lawyers that their role in the process is different when supporting a client through mediation than it is when representing a client in court. The presentation also took the audience through the process of preparing a client for mediation and some considerations that a mediation advocate should consider in developing the mediation strategy.

The presentation was well-received and will likely be part of future events.

Tuesday Event: Professional Mooting Demonstration

The second event of Advocacy Week sought to highlight the practice of courtroom advocacy through a Professional Mooting Demonstration. The event planned to place two professors on either side of the Supreme Court of Canada's decision from *R v Le* to moot in front of a panel of accomplished student mooters.

While the original event was cancelled due to unforeseen circumstances, a replacement event took place on February 24, 2021 featuring esteemed Osgoode Professor David Lepofsky, as well as Justice Shandler and Justice Burstein from the Ontario Court of Justice. Each discussed advocacy-related techniques and spoke to effective - and perhaps ineffective - examples of courtroom advocacy.

Professor Lepofsky and Justice Burstein used *R v Sherry* – a case they argued against one another at the Supreme Court of Canada – to highlight how to properly outline submissions and effectively answer questions for event attendees.

Students were able to learn from some of the best advocates in Canada and took away valuable lessons for their mooting skills moving forward.

Wednesday Event: ADR Panel—Real-World Solutions

Advocacy Week resumed on February 3, 2021 with the ADR Panel: Real-World Solutions led by OMC students Nolan Cattell and Valerie Sedlezky. Osgoode students were privileged to have a panel of experienced mediators and negotiators to provide them with an overview of alternative dispute resolution and a nuanced discussion on how the practice has evolved over the years. Jeremy Ablaza of Borden Ladner Gervais LLP brought forth the enlightening perspective that ADR is as simple as picking up the phone or sending a text message. From there, the panelists elaborated on how ADR can take on an unlimited number of forms, which occur many times throughout the course of everyday life.

One topic the panelists heavily focused on was how they have adapted to the transition to a virtual workplace, and the benefits and drawbacks that come with it. Jacob Klugsberg of McCarthy Tetrault LLP emphasized how the changes have led to a much-needed increase in accessibility to forms of ADR by eliminating barriers such as unnecessary travel and allowing for greater flexibility. The panel concluded with some wise words from Kristjan Surko of Dentons and Ivan Luxenberg from Malach Fidler Sugar + Luxenberg LLP, stressing the importance of preparing for a mediation case and maintaining impartiality to balance the interests of all parties while guiding them through the case.

The panel was a resounding success, with Mr. Luxenberg's props being a big hit. This event will certainly be continued in future years.

Thursday Event: 1L Winkler Negotiation Competition

The inaugural 1L Winkler Negotiation Competition was led by the Osgoode Advocacy Society and sponsored by the Winkler Institute for Dispute Resolution.

This competition was designed to promote greater interest among first-year law students in legal negotiation and to provide a means for them to practice and improve their advocacy skills in a fun, low-pressure manner. The competition was similar in nature to the Dentons Cup, except that it was one-round only, the dispute was multi-party (3 or 4 teams of 2 in each room) and set in an international commercial context.

Despite the fact that multi-party disputes are quite complex, this new 1L-exclusive competition drew in 30 participants (or 15 teams) that were divided into four rooms and culminated with one winning team.

The participants were extremely grateful for the opportunity, and the judges were impressed by the young talent. The competition was a success and will be part of Advocacy Week in the future. The winners, James Papaeliou and Herman Wong, in addition to their prizes, got the opportunity to compete as a ghost team at the Canadian National Negotiation Competition (CNNC) later in the month, adding another fantastic learning experience to their 1L experience.

Friday Event: Osgoode Mediation Clinic Open House

The final event of an incredibly successful virtual Advocacy Week was the Osgoode Mediation Clinic Open House. OMC students Jonathan Mertz, Shaun Odes, Mihail Salariu, and Nolan Cattell were joined by the Clinic Co-Director Jean-Paul Bevilacqua. Coming just weeks after the Osgoode Clinical Education Fair, our hope for this open house was not to just speak about the role of mediation in ADR and our mediation experiences; rather, it was important to us to also talk about the challenges that we encountered. We were excited that, notwithstanding an action-packed week that included guest speakers and a negotiation competition, over 30 students decided to drop in for the event.

Following Jean-Paul's opening remarks on the structure and work of the OMC, the OMC students took turns discussing their respective journeys at the OMC. Mihail talked to the challenges he encountered in evaluative mediation; Nolan and Shaun touched on the importance of open and earnest communication with persons who experienced harm and weighing the pros and cons of attending mediation, and Jonathan spoke about issues surrounding client-competency and the difficulty of saying "no" to a proposed mediation. A common theme of all the students' experiences was that despite the challenges of COVID-19 and the digital nature of the OMC, they were able to provide a real service to our community.

Being a student mediator at the OMC is not easy; it is, however, immensely gratifying. As evidenced by the challenging and thoughtful questions of our open house attendees, this message came across. We hope that those in attendance will join the OMC in subsequent years to continue the amazing work being done here.

PBSC Partnership

In the fall of 2018, the Winkler Institute hosted three roundtables on dispute resolution with the Conciliation and Arbitration Board of Canada. The roundtables were hosted in Toronto, Calgary, and Montreal to improve the dispute-resolution capacity of the communities that we serve. Participants in the roundtables expressed the need for deliverables 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.

Stemming from these findings, the Winkler Institute partnered with the Osgoode Chapter of Pro Bono Students of Canada (PBSC) during the 2019–2020 and 2020–2021 academic years to create resources meant to inform and empower both ADR professionals, as well as the public.

The first of these resources is a [database](#) of recent Canadian-focused tools and published works spanning various categories and areas of practice in the field. PBSC students focused on Canadian research and articles with an emphasis on recent work from the past five years. They compiled a list of 120 resources that ADR professionals could use to help their practice. Resources ranged from papers on Indigenous dispute resolution to consumer contract dispute resolution, and included a blend of academic articles, practical papers, and encyclopedia entries. The database can be accessed [here](#).

The second phase of this partnership was to create [PLE \(Public Legal Education\) documents](#) based upon the resources contained in the database, that succinctly summarizing ADR from multiple perspectives so that potential litigants and parties to a conflict can quickly and efficiently get a sense of the options that are available to them outside of the formal litigation system. These graphics can be found on the following pages of this report and downloaded as a set [here](#).

The Winkler Institute is grateful for PBSC students, Braelyn Rumble and Nyasha Size for their fantastic work on creating these incredibly useful graphics. Below are excerpts from Braelyn and Nyasha's reflections on this project. You can read their full reflections on the [Justice Innovation Blog](#).



A Deep Dive Into ADR

by Braelyn Rumble

“My placement with the Winkler Institute for Dispute Resolution in partnership with Pro Bono Students Canada has been one of the most informative experiences that I have had in my first year of law school... I realized our task of taking scholarly articles intended for practitioners and turning them into digestible materials for the public would not only be an interesting experience but would also assist in my own understanding ... When it came down to distilling academic articles into a few words fit for an infographic, it became apparent that amongst various types of ADR, there are core underlying values such as communication and transparency ... Ultimately, my internship at the Winkler Institute broadened my perspective of what type of professional work I might pursue with my law degree. I’m looking forward to exploring the world of ADR in the future!”

Getting Better Acquainted with ADR

By Nyasha Size

“Working with The Winkler Institute as a PBSC volunteer has been an experience of a lifetime, I feel privileged to have been chosen to be part of the team... Working with my partner Braelyn and supervisor Jean-Paul made the experience exciting and his passion for the project was obvious from the onset... Braelyn and I were able to combine our strengths and produce multiple graphics while gaining understanding of the database ... One article that stood out for me was the one on community-based conflict and how to navigate it and make it accessible to everyone [A Toolkit for Developing Community-based Dispute Resolution Processes in First Nations Communities](#). This article was eye-opening because this was the first time, I had to think about conflict in First Nations Communities. This article provided the tools necessary for First Nations as well as other communities to navigate conflict in a way that is respectful ... I have grown as a person due to this experience and I know I will take the knowledge that I have learnt with me.”



THE IMPACT OF COVID-19 ON ALTERNATIVE DISPUTE RESOLUTION

The ADR community has adapted to the reality of online dispute resolution due to the COVID-19 pandemic. Below are some highlights of how things have changed, and considerations for moving forward with ADR in the online realm.



The Core Values of Alternative Dispute Resolution Have Stayed the Same.

Accessibility, confidentiality, fairness, innovation, security and transparency are applicable to all forms of alternative dispute resolution, whether online or in person.



The Increasing Need to Expand What "Accessibility" Means.

Technological advances have limited the need for clients to physically attend meetings. As a result, lawyers and mediators need to ensure clients have access to online systems and an understanding of how the process works.



Understanding the Unique Online Experience.

Online communications can pose unique difficulties that may interrupt the process such as lost connections, poor quality, or privacy issues. Parties will need to communicate a plan ahead of time in the event that there are technological interruptions.



Reconceptualizing Human Connection Online.

In-person meetings often encourage a unique dynamic between parties in a shared space. Online, parties will need to rely on greater oral communication versus traditional in-person cues such as body language, eye contact, and physical reinforcement such as shaking hands.

For more information, visit <http://www.winklerinstitute.com/2020/09/01/alternative-dispute-resolution-making-a-covid-19-connection/>
Scan QR code to access the source









What is Community Based Dispute Resolution?

Information condensed from "A Toolkit for Developing Community-Based Dispute Resolution Processes in First Nations Communities" by the Human Rights Commission. Scan QR code to access the source.

Perspectives by and for Indigenous Communities on Restoring Community Balance and Harmony



A dispute-resolution process is what an employer or service provider develops to handle disputes or complaints.



The process includes allowing the entire community to have control during the stages of development.



Measures are in place to guarantee that there is a power balance between everyone involved in the complaint or dispute.



One of the aims of the process is to help people involved find reconciliation, or a common ground so individuals are empowered.



The end goal is to offer a fair way for everyone involved to find a solution and a safe space to be heard.



Arbitration & International Dispute Resolution



The process of resolving disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts.

International disputes are usually solved through arbitral bodies that deal with a specific type of dispute.

Examples of Arbitral Bodies



Investment Disputes
e.g. International Centre for Settlement of Investment Disputes.



Court of Arbitration for Sport
e.g. Court of Arbitration for Sport.



Intellectual Property Disputes
e.g. World Intellectual Property Organization.



Specialized Industries
e.g. Society of Maritime Arbitrators.



World Trade Organization Dispute Settlement System
Only available to states or member governments.



States or Private Party Disputes
e.g. Permanent Court of Arbitration.

More information can be found in the 2007 Report on International Dispute Resolution by ICANN. Scan the QR code to visit the ICANN report.





Alternatives to Court? Family Dispute Resolution



Negotiation

- Negotiation involves both parties voluntarily communicating back and forth until an agreement is reached.
- This can be between the parties or with the help of someone both parties trust.
- No lawyer is needed.



Mediation

- Mediation is a voluntary way of resolving disputes.
- A trained mediator helps parties of relatively equal bargaining positions to resolve disputes about family issues.



Collaborative Process

- A collaborative family lawyer can help both parties resolve legal issues.
- This is a voluntary process in that parties agree to use it, and the decision cannot be forced.



Arbitration

- A third person (an arbitrator) resolves your dispute.
- An arbitrator cannot grant a divorce or an annulment but can decide on custody, support, access and how to divide property.



Traditional Dispute Resolution: Litigation

- Litigation is a traditional method of resolving family law disputes.
- It involves both sides being represented by a lawyer who advocates on each parties behalf.
- Typically, litigation provides parties with a decision by a Family Court Judge about custody of children, access/time with and support for their children, spousal support for themselves and their property.



Traditional vs. Alternative Dispute Resolution

<p>Advantages of Alternate Dispute Resolution:</p> <ul style="list-style-type: none"> •High success rate. •Offers a chance for parties voices and concerns to be heard. •The process can be informal, creative, informative. 	
<p>Disadvantages of Alternate Dispute Resolution:</p> <ul style="list-style-type: none"> •No guaranteed resolution. •Parties are not compelled to continue negotiations or mediation. 	

Adapted from: "Advocacy in Non-Adversarial Family Law: A Recommendation for Revision to the Model Code" by Deanne Stewart.
Scan QR code to access the source.











ONLINE DISPUTE RESOLUTION (ODR)



A mechanism for resolving disputes through the use of electronic communications.

Mediations and arbitrations carried out via Zoom and other online platforms.
ODR can be used in various disputes including family disputes, business disputes, as well as any other conflict that may arise.





About ODR

Voluntary: Parties can choose to proceed in ODR.
Confidential: Unless the parties agree otherwise, ODR is confidential.
Neutral Third Party: Neutral third party chosen by the parties in some cases to help resolve disputes.

Advantages of ODR

- Flexible, creative tool for resolving disputes.
- Reduced litigation costs.
- Appropriate for disputes that have to be resolved quickly.
- Eliminates issues of physical proximity.
- Removes mobility barriers.
- Appropriate for social distancing during a pandemic.










Disadvantages of ODR

- All parties have to have adequate technology, and stable internet to participate.
- Considered less personal because the parties are not physically together in the same room.
- Parties with difficulty in communication such as different languages will be disadvantaged.

For more information, visit <https://www.osgoode.yorku.ca/odr/> or scan QR code to access the source.
Scan QR code to access the source.





Why Choose Alternative Dispute Resolution?

Dispute resolution draws on the following principles to make the process fair for participants:


1

Make the process accessible to persons from all backgrounds.

2

Obtain community input about the process.

3

Ensure the process is acceptable to everyone involved in the dispute.

4

Make sure the decision-maker knows about human rights.

5

Ensure impartiality and independence.

6

Allow people to bring a representative.

7

Give people the opportunity to be heard.

8

Encourage people in a dispute to share information.

9

Keep information confidential.

10

Give reasons for decisions.

11

Help ensure no retaliation.

Information condensed from
"A Toolkit for Developing Community-
Based Dispute Resolution Processes
in First Nations Communities"
by the Human Rights Commission.

Scan QR code to access the source.



The Winkler Institute's (NEW) Website and Justice Innovation Blog!

The Winkler Institute is proud to present its new website and "Justice Innovation Blog." If you are interested in reading more about how the Winkler Institute was formed, its mandate, initiatives and its access to justice goals, you can now visit Winkler Institute's website [here](#). As part of its mission to increase exposure to ADR in the legal profession, the Winkler Institute has introduced a student-run [Justice Innovation Blog](#). Students contribute to the blog year-round by writing about their experiences in the mediation clinic, their unique perspectives on ADR and reflections on a range of related topics.


"Recognizing the flaws of the legal systems must be a starting point for legal education. We should not worry whether law students will become too critical of the legal system, that criticism is necessary for change."

This year, Winkler students were faced with the obstacle of adjusting to an online reality. While the legal profession as a whole had to adjust to the many challenges of facing dispute resolution in a virtual environment, Winkler students took advantage of the benefits that it presented. They quickly introduced Online Dispute Resolution (ODR), which allows for mediation services to be provided entirely online. Operating amidst a global pandemic provided clear evidence that processes can change and remain effective. Dispute resolution processes should continue to improve as a preventative measure, not only as a response when left with no other option.

"Luckily, the rapid adaptation of legal processes during the pandemic has shown how reform is possible. The increased accessibility of online hearings and online dispute resolution services have the capacity to shed socio-economic barriers... This increase in accessibility can be a great reform strategy to provide more equal opportunities in pursuing justice. We, as a society, must push to continue providing accessibility of legal services in this manner and to explore further opportunities for reform. With societal values changing, the laws and processes responsible for representing them are far overdue for a change."

Our summer students continued to contribute pieces about conflict resolution from various perspectives throughout the summer months. These contributions form part of the Summer Blog Series, which is featured on the OMC's social media accounts with visual graphics.

Exploring the Role of Restorative Justice in the ADR Process
Contributor: Nushrah Amod



"Many Indigenous communities place significant value on restoring harmony after a dispute-induced disruption."

o|ic Summer Blog Series

Nushrah Amod explored the role of restorative justice and how Indigenous practices can help improve the ADR process. She explained that many Indigenous communities place significant value on restoring harmony after a dispute-induced disruption. So in answering *"What exactly does Restorative Justice restore?"* it is apparent that collective harmony—harmony within individuals as well as within communities – is an overarching goal of Restorative Justice that stems directly from Indigenous dispute resolution practices.

"In the Restorative Justice process, victims and involved parties are given the space to express both the emotional and material impact of the offenders' actions. Offenders are encouraged to take responsibility for their harm-causing actions – through apology, community service or otherwise agreed upon solutions. ... Ultimately, one of the principal goals of Restorative Justice is to serve meaningful justice - justice that extends beyond precedent and legislation, and is firmly rooted in empathy."

Linda Mochon and Behnam Nadimfard both attended a learning session hosted by the St. Stephen's Community House and the Neighbourhood Group, which explored mediation from a neuroscientific perspective. In their individual blog posts, they both highlighted the idea that conflict resolution is about changing people's minds, literally! This introduces a new way for mediators to approach conflict resolution. Since we are asking people to alter their neural structures, we should not expect that change to be easy. Understanding that parties must change their perceptions of the situation to reach an understanding through the process is critical for empathy.

Mediators can use insights from neuroscience to improve the mediation process, increase mutual understanding between parties in a conflict and reduce the risk of miscommunication.

Our other summer student Valentina Galvis started a series where she discusses methods to identify, assess and resolve conflict that arises in interactions with colleagues, classmates, friends and other parties when interacting virtually.

"Due to the pandemic, we have been forced to work with individuals we have never met in person, and this can be difficult due to the complexities associated with virtual communication. It is much easier to gauge different personalities when starting a new job, or attending a new class, but in this virtual environment, it becomes difficult to get to know new people and to understand their communication styles. Inevitably, this can lead to increased conflict which can contribute to us feeling more isolated than we already do when working and studying from home."

Same Word, Different Interpretation: Your Neural Structure's Effects on Mediation
Written by: Behnam Nadimfard



"Conflict resolution is about changing peoples' minds, literally!"

o|ic Summer Blog Series

Neuroscience and Mediation: How Our Experiences Shape Who We Are Within Conflict
Contributor: Linda Mochon



"Conflict resolution is about change – it involves asking parties to change their understanding of the conflict and themselves within the conflict."

o|ic Summer Blog Series

Applying Quick Conflict Intervention Skills in A Virtual Environment
Contributor: Valentina Galvis



"Dealing with conflict allows us to learn, engage in dialogue and develop an increased understanding of the needs and wants of those around us."

o|ic Summer Blog Series

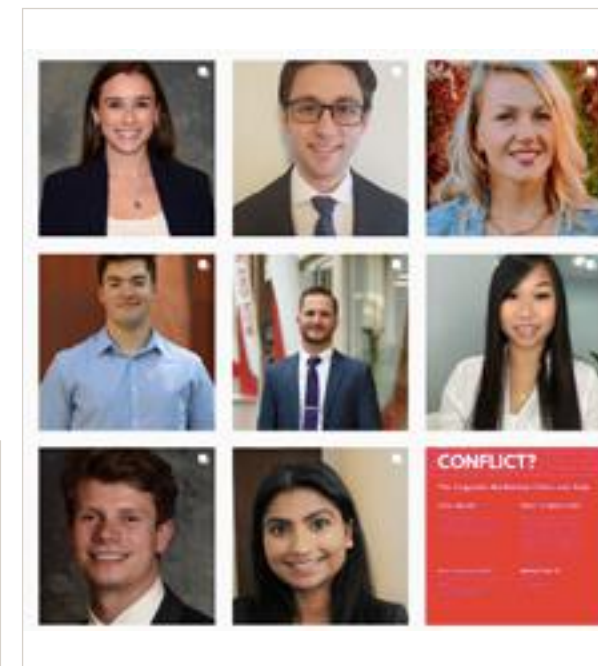
OMC Pivot to Online Services

The OMC focused on branding and rebranding clinic marketing materials and online presence to reach a wider audience.

The first step in the mission to modernize the clinic was branding. Logos were redesigned to comply with York University branding requirements. Next, an Instagram page was launched to introduce the student mediators in short videos. Instagram allowed the clinic to reach more potential clients and provide information on the services offered at the clinic.

The students also led an “Information Campaign” posting creative infographics with information and links to articles about mediation on Facebook, Twitter and Instagram. This contained information on family law disputes, labour and employment matters, academic and professional concerns, small business issues, landlord and tenant issues and neighbourhood disputes. The infographics would always be accompanied by a link to an article outlining more information about that topic.

The articles and social media links were routinely updated on Linktree to ensure accessibility to information for those interested in learning more.



Conference on Mediation



Taking place on May 13, 2021, the Winkler Institute/IAM/OsgoodePD Annual Conference on Mediation culminated an interactive multi-party dispute case analysis where participants worked with expert facilitators in discussing best strategies for navigating through the impasse, resolving ethical dilemmas, and reaching an agreement. This intensive program was developed by a faculty of leading Canadian and international experts that aims to assist counsel and mediators in understanding their obligations, particularly in the face of the numerous potential ethical dilemmas.

This intensive program ensured that:

- Participants are up-to-date on the current law and best practices
- Participants know the range of strategic and tactical options and can advise clients/parties on the pros and cons of each (both from the mediator’s and counsel’s perspective)
- The mediation process is respected and the goal in coming to an agreement takes priority even in the face of conflict
- Counsel and mediators understand their obligations, particularly in the face of the numerous potential ethical dilemmas

Mindfulness Podcast

In this [episode of the Law Actually podcast](#), the Institute's former academic director and current research advisor Nicole Aylwin discusses various topics such as practices she uses to aid people, including legal professionals, to manage stress by utilizing mindfulness and yoga therapy. These practices are aimed at both the mind and the body of participants.

[You can listen to this beneficial podcast here.](#)



Cyberjustice

As a part of the Autonomy Through Cyberjustice Technologies (ACT) partnership with the Cyberjustice Laboratory at the University of Montreal, the Winkler Institute continues to explore online dispute resolution as a tool to achieve access to justice.

This year's annual meeting, titled "ACT Project Year 3: Interim Assessment and Directions for the Future," occurred across two consecutive days. Day 1, which took place on June 14, 2021 began with preliminary remarks delivered by Professor Karim Benyekhlef, the president of ACT. He outlined the agenda of this year's meeting and discussed the Mid-term report follow-up, ACT's third-year retrospective, and the upcoming International Conference happening in March 2022. The participants were then given the option to attend three breakout rooms covering subjects such as assessment of AI's state in the legal sector, accessibility and vulnerability in the technology design, and virtual justice amid the COVID-19 pandemic.

Day 2 of this event which took place on June 15, 2021 followed a similar structure. The plenary discussion began by comparing AI regulation across the US, Europe, and Canada. Mr. Charles Morgan from McCarthy Tétrault LLP provided some insightful remarks about Canada's approach to AI regulation, where he highlighted how the Canadian practice, similar to its European counterpart, focuses on the societal consequences of AI regulation while underscoring the importance of principles and regulations, such as PIPEDA in informing our nation's approach on this matter. Akin to Day 1, participants had the option to attend breakout rooms, where Canadian scholars and professionals, such as Professor Ryad Titah from HEC Montréal and Professor Benoît Dupont from Université de Montréal spoke about ethical issues and risks associated with implanting AI technologies in the justice system respectively.

This two-day meeting came to an end with the final plenary session outlining the direction of ACT's subproject for the next three years.

Shield Your Rights Project

Due to the necessity of in-person collaboration and the diverse geographic location of its participants, [Shield Your Rights](#), our youth-led and -centred collaborative project supported by the Law Foundation of Ontario, will be resuming in the upcoming year, once it is safe to do so.

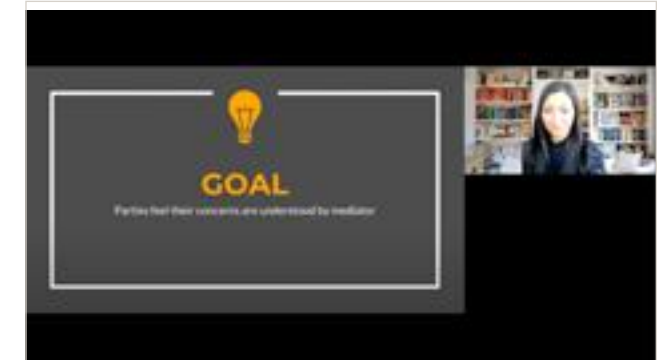
Small Claims Court Program

Due to changes in operations as a result of the pandemic, our long-running Small Claims Court Mediation Program had to be put on pause during the past academic year. We are looking forward to bringing it back in a big way this upcoming year. Stay tuned!

Engagement with York Campus

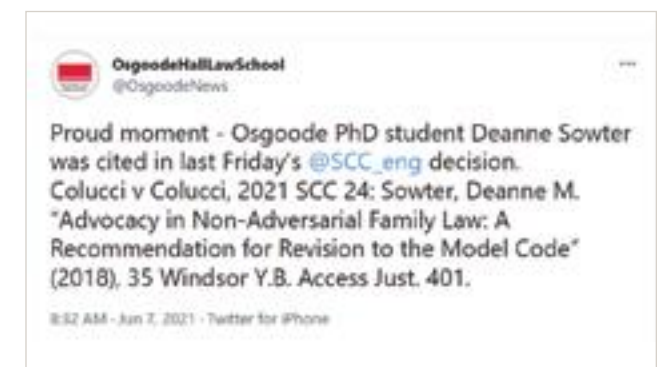
Our engagement with the broader York campus continued despite us being apart this year. As a part of the Peer Leader Training Professional Development Series from the Office of Student Community & Leadership Development, our valued research assistant Rachelle Paquet created and facilitated a conflict resolution and mediation webinar for the student community. This partnership continued into the summer with our team working with Residence Life at York to present conflict mediation training with dons and other student staff.

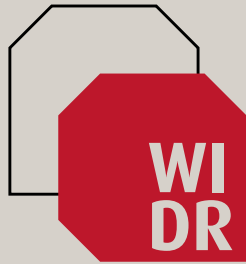
Link: <https://youtu.be/DAPT0xTBELs>



Winkler Institute Fellow Cited by the SCC

Deanne Sowter, Winkler Institute Research Fellow and PhD Student at Osgoode, authored "Advocacy in Non-Adversarial Family Law: A Recommendation for Revision to the Model Code" (2018), 35 Windsor Y.B. Access Just. 401. Her work, which was supported by the Winkler Institute, was recently cited by the Supreme Court in *Colucci v Colucci*, 2021 SCC 24.





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