

OSGOODE INVESTOR PROTECTION CLINIC

NEWSLETTER | Fall 2020

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AFTER THREE YEARS, WE'RE TAKING IT UP A NOTCH

A message from IPC's co-directors

To say the world is in flux would be an understatement. What hasn't changed, though, is the urgent need for access to justice. It's what inspired us to launch Canada's first Investor Protection Clinic in 2016 and it's what continues to inspire us today as our clinic, much like the rest of the world, embraces new realities.

In just three years, we've become a gamechanger in the retail investment landscape, providing urgently-needed, free access to legal services for vulnerable investors. We've helped many clients, from seniors who lost their entire retirement savings, to people swindled by trusted members of their community, to investors who had their portfolio mishandled by advisers. We are grateful to our talented team of supervising lawyers who have supported the clinic since 2016. Together, they have provided exceptional learning experiences for 51 Osgoode students, many of them now proud alumni who are parlaying into practice the lessons learned in the clinic.

We have much to celebrate, as you'll read about in this, our inaugural IPC e-newsletter.

Inside, we'll introduce you to supervising lawyer [Ron Podolny](#) of Rochon Genova LLP and to IPC alumna [Ankita Gupta](#), now a law clerk with the Chief Justice of the Supreme Court of Canada. You'll also find stories



IPC co-directors Poonam Puri (first row, second from left) and Brigitte Catellier (first row, second from right) celebrate the launch of Year 3

that illustrate how, after three years in the game, we're taking things up a notch to contribute even more broadly to legal practice and reform.

By all accounts, the need for our unique services is growing. We are seeing increased demand from harmed investors needing legal advice that they cannot afford to pay for, and we are filling an important void in ensuring that Canada's laws and practices reflect the needs and interests of retail investors.

We're delighted to continue this important work with the support of The Law Foundation of Ontario the Investment Industry Regulatory Organization of Canada (IIROC) and others. We are incredibly grateful to our partners.

We also extend our thanks to you for being by our side on this exciting journey. We look forward to keeping in touch.

Poonam Puri
Founding Academic Director

Brigitte Catellier
Co-Director

WHAT'S TRENDING?

RAISING THE RED FLAG ON LEVERAGED INVESTMENT LOANS

Osgoode IPC is speaking out about the need for new practices and legal reform



Byungjin Lee



Luigi Rulli



Cameron Teschuk

An uptick in the number of leveraged investment cases at the Investor Protection Clinic has prompted calls for more stringent evaluation of investment loans and obligations for the advisers recommending them. The IPC is raising a red flag on the issue after the market uncertainty of the last year revealed an increasing number of potentially fraudulent cases.

“Mismanaged accounts can sometimes go unnoticed when the market is up. When market returns decline, however, there can sometimes be a big gap between the investment returns and the leveraged loan payment obligations,” explains Cameron Teschuk, a third year Osgoode student working in the Investor Protection Clinic this year and slated to join Sullivan & Cromwell LLP in New York City in 2021 as an associate.

Luigi Rulli, JD/MBA'20, agrees. Now an articling student at Davies, Ward, Phillips & Vineberg LLP, he worked on a leveraged investment file during his year at the Investor Protection Clinic in 2019-20. A young couple lost the better part of their savings and were at risk of defaulting on their loan after their financial adviser recommended they borrow to invest and then falsified their loan application to ensure that they were approved for a substantial investment loan.

“When their investments plummeted, the adviser began taking disbursements out of their principal in order to pay the lender,” remembers Rulli. “When the lender inquired about the declining principal, the adviser disappeared, leaving his clients to pay the outstanding balance on the loan.”

Fortunately, the couple found their way to IPC. Guided by a supervising lawyers Michael Nowina and Glenn Gibson of Baker & McKenzie LLP, Rulli and his student colleagues helped the clients secure partial compensation after a recommendation from Canada's Ombudsman for Banking Services and Investments (OBSI).

This is just one example among many. Between May and August of this year, the number of active leveraged investment files at IPC has increased significantly.

“We're committed to raising awareness among investors so that when their adviser comes to them with the idea, they can ask the right questions,” explains IPC student Byungjin Lee. The clinic is also looking at possible regulatory responses to both prevent these situations and increase options for clients to recover their losses ([read about IPC's submission to the Capital Markets Modernization Taskforce](#)).

Adds Rulli: “The Investor Protection Clinic isn't just a source of legal advice for those who have suffered an investment loss; it also has a role to play in preventing this type of activity from happening again.”

“Know that this is not just another case you solved. Also remember the impact you made and the many lives you potentially changed. I thank you from the bottom of my heart.”

— from an email from an IPC leveraged investment client

IPC's leveraged loan recommendations

- Advisers should have full and frank conversations with clients about leveraged investment strategies, highlighting the risks and costs of borrowing.
- Advisers should implement a rigorous suitability assessment. Leveraged investment strategies are not for everyone.
- Regulators should evaluate investment loans and consider imposing specific obligations on advisers when recommending them.

BRIDGING THE GAP

Class action lawyer Ron Podolny delivers access to justice as a supervising lawyer at IPC

Few things frustrate Ron Podolny, JD'08, more than being unable to represent a client who deserves access to justice.

A partner and class action lawyer at Rochon Genova LLP in Toronto, he has seen more than his share of Canadians who have suffered an investment loss as a result of someone else's wrongdoing, but also don't meet the criteria for a class action and don't have the funds to hire their own lawyer.

"Too often, these people are left without representation," he says. "It's a giant gap in the system."

So when Poonam Puri reached out to his firm four years ago with an idea for an investor protection clinic for people who can't afford a lawyer, Podolny was among the first to answer her call. He's been an IPC volunteer lawyer ever since, helping to fill the gap for investors in need while schooling dozens of Osgoode students in the practice of securities law. Of the multiple cases he's overseen, one has spanned the entire three years and is still before the Ontario Securities Commission.

"I carry these files much like I would a case in my practice," he explains. "It's more involved than some types of pro bono work."

But he says it's also significantly more rewarding.

"This is my chance to give back as a lawyer and to use my professional skills to have the biggest impact," he says.



Ron Podolny

Osgoode students, meanwhile, get to work with a practicing lawyer to support real clients, apply the skills they learned in the classroom and experience the same kinds of cases they will see when they graduate.

"The practical component is important," Podolny says. "It's a competitive market for lawyers and Osgoode IPC graduates will have an advantage."

Lawyers interested in volunteering with Osgoode's Investor Protection Clinic can contact the clinic at ipc@osgoode.yorku.ca or 416-736-5538

A SPRINGBOARD TO SUCCESS

Supreme Court of Canada law clerk Ankita Gupta gained a new appreciation of the law in Osgoode's Investor Protection Clinic

Ankita Gupta, JD'19, remembers her first meeting with an Investor Protection Clinic client like it was yesterday.

"She started telling us her story and we were transfixed. It was the first time I had spoken to someone who had been harmed and was looking for a remedy through the law."

The 30 minute meeting turned into 90 and Gupta and her two colleagues, all second-year Osgoode students, left before realizing they hadn't gathered all the information they needed to assess with their supervising lawyer whether they could even help the client.

"It was my first true glimpse of the challenges of law in practice," Gupta laughs, "and it stuck with me."

Now a law clerk with the Chief Justice of the Supreme Court of Canada, she credits the year she spent with Osgoode's Investor Protection Clinic as one of the highlights of her legal education. Beyond the opportunity to refine her research, writing, analytical thinking, communication and negotiation skills, she gained invaluable experience in helping to operationalize the clinic, assisting with everything from intake policies and marketing strategies to the development of the clinic website and client database.

"It was such a different experience from what students typically learn in law school," she says. "Aside from the unique experience of being able to provide legal services to financially harmed Ontarians, I saw a side of legal practice that I couldn't have learned in the classroom and many lawyers don't see until a few years into practice."



Ankita Gupta

Gupta used those experiences as a springboard to her articling year with the Ontario Court of Appeal and, following her virtual call to the bar this summer, to her job in Canada's highest court.

"My time in the IPC informed how I think about the law and not just how it relates to investor protection. I had an opportunity to see how the practical application of the law can impact different people in different, and sometimes inequitable, ways. Having the opportunity to work directly with a wide range of clients is something every student should experience," she says.

"The clinic prepared me well for my clerking roles."

GIVING RETAIL INVESTORS A VOICE

IPC builds on three years of success with the “Living Lab”

Through its “Living Lab,” Osgoode’s Investor Protection Clinic is sharing its unique, on-the-ground perspective and stories as part of two Canada-wide policy consultations.

“Our focus in our first three years was establishing a solid operational framework to best support our clients and students,” explains IPC co-founder and academic director Poonam Puri. “Now that our clinic has matured and we have a steadily growing stream of students, supervising lawyers and case wins, we think it’s an appropriate time to contribute more broadly by providing greater thought leadership.”

Puri established the Living Lab to gather and analyse client data and demographic information and identify trends in investor protection. Covering topics such as age, racial background, income and investment knowledge, the data is drawn from intake interviews and client surveys and reported anonymously in the clinic’s [annual reports](#).

Puri, co-director Brigitte Catellier and their team are now leveraging those findings to benefit a Canadian Securities Administrators consultation asking whether Canada’s securities regulatory regime is best serving the interests of investors.

“We want to add the retail clients’ voice to the conversation,” says Trevor Fairlie, JD’19, who is overseeing the clinic’s response on a volunteer basis.

“We’re hearing that investors are overwhelmed. They don’t know where to go when they have a problem. Our submission will reflect those concerns.”

The Osgoode IPC is also weighing in on a review of Ontario’s capital market ecosystem led by the Capital Markets Modernization Taskforce. The submission focuses on several topics important to clinic clients, including the taskforce’s preliminary recommendation that the Ontario Securities Commission introduce financial restitution for wronged investors.

“This is something we’re very much in favour of,” says Fairlie. “When we take investors through the process, they’re sometimes dismayed when they learn that the offending party may get punished, but they won’t necessarily get their money back.”

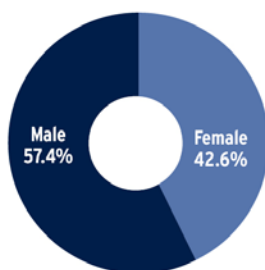
When combined with feedback from other industry stakeholders, Puri believes both submissions will have the ability to contribute to system-wide change.

“We’re uniquely capable of bringing investors’ lived experiences, needs and interests to the process,” she says. “This is another important way we can serve our clients.”

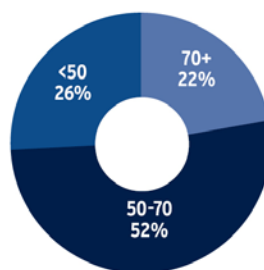


Trevor Fairlie

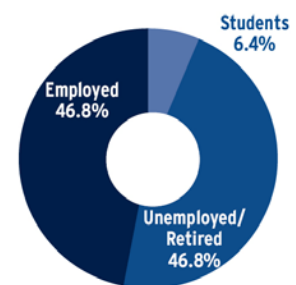
Three years of IPC clients



57.4% men



One-half are 50 to 70 years old and 1 in 4 are under age 50



50/50 employed versus unemployed or retired