

OSGOODE INVESTOR PROTECTION CLINIC

NEWSLETTER | Summer 2024

OSGOODE
OSGOODE HALL LAW SCHOOL

YORK U

IT'S TIME TO REGULATE DIY INVESTING IPC's call for action comes as the number of DIY investor complaints continues to grow

Osgoode's Investor Protection Clinic is calling on Canada's securities regulators to regulate do-it-yourself (DIY) investing after seeing the number of investor complaints grow in the first half of 2024.

The clinic's student intake team has assessed 24 DIY investor complaints since 2020. The seven files received in 2024 involve Canadians seeking legal recourse for losses incurred on order execution only (OEO) platforms. The complaints range from delayed transactions and options and margin trading to issues with increasingly complex products.

The rapid growth in DIY investing is widely attributed to the COVID-19 pandemic, which left many Canadians with time to explore self-trading and looking for somewhere to redirect their savings. According to the 2024 Investor Index report from Canadian Securities Administrators, about half of the country's investors have a DIY account and 30 per cent of those first opened that account within the last two years.

Notably, the shift away from professional advisors is concentrated in investors under age 45 and with portfolios of less than \$100,000.

The IPC has seen "a trailing indicator of the problems that are starting to emerge from novice investors wading into the investment market without training, advice or protection," confirms Neil Gross, IPC's advocacy coach. He suggests that problems arise because the discount brokerage channel was never intended to be an avenue for neophyte investors.

"It was originally intended to be for investors who have enough acumen to navigate the capital markets on their own. These are people who are experienced enough to not need advice."

Yet even seasoned investors are sometimes struggling to manage the ever-increasing array of complex investment products.

One of the IPC's recent files, for example, involves an investor who suffered a loss when his put options were impacted by a negative stock split. Although DIY investors typically have few options for recourse following a loss, IPC's student caseworkers and their supervising lawyer were able to successfully secure appropriate compensation for the client after the OEO dealer admitted that they had provided incorrect information on this complex trade.

At OSC Dialogue 2024, the Ontario Securities Commission's signature annual conference held May 22, 2024, IPC Associate Director Brigitte Catellier pointed to this case as an example of the need for OEO dealers and regulators to think differently about tailored advice.

continued on next page...



OSC Dialogue 2024 Investor Panel from l-r: Moderator Sonny Randhawa, Brigitte Catellier, Tom C. W. Lin and Sasha Tregobov

“We often refer to education and advice. OEO dealers are prohibited from providing advice to investors and, therefore, we rely on investor education to protect DIY investors. But what about information?” Catellier asked during her address. “Investors should have access to clear, informed and unbiased information from their OEO dealers.”

Catellier and the Investor Protection Clinic believe the current regulations should be amended to allow OEO dealers to inform – not advise – clients about the factual features of a security. This might take the form of a contact centre that provides clear, timely, plain language information and digital warnings, particularly around options and margin trading.

Gross questions if OEO firms might even be obliged to take it a step further by screening clients during onboarding to identify whether they possess the basic understanding to trade without inadvertently harming themselves.

“Even though OEOs don’t have a suitability obligation, they do, like all dealers, have an obligation to deal with clients fairly, honestly and in good faith. It’s an interesting angle to consider: if they don’t screen for basic trading understanding during onboarding, are they actually operating in good faith?”

Operating a living lab with one finger on the pulse of retail investors, the Investor Protection Clinic team has a mandate to ask these kinds of hard-hitting questions and sound the alarm on the need for action, says Poonam Puri, IPC’s founding academic director.

“We have a role to play in educating investors and leveraging our front-line experiences to help inform public policy,” she says. “It’s been a tumultuous few years and the impact on retail investors has and continues to be significant.”

Catellier agrees, adding, “I believe we are at the stage where the regulators have to regulate DIY investing.”



As part of its education mandate, the IPC recently released **“Do It Yourself Investors (Buyers Be Aware)”**, the latest in our Point of Interest video series available on YouTube.

NEVER TOO BUSY TO ACCEPT YOUR CLIENT REFERRALS

It's been a busy start to 2024, so busy in fact that our Winter newsletter became the Spring and now the Summer edition.

That's owing in part to a surge in do-it-yourself trading losses from clients who can't afford a lawyer (as you'll read about in our headline story). The growing number of cases through our clinic doors have prompted a bold move – [the IPC is calling on Canada's securities regulators to regulate DIY investing](#) with a clear delineation between advice and informed and unbiased information about the factual features of a security.

Read on for details of our efforts to inform public policy from the front lines of investor protection.

Fortunately, we have a driven team of [student caseworkers](#) and a new advocacy coach working together to support the increasing number of intake interviews and files. An Osgoode graduate who describes himself as “experienced on both sides of the street,” Neil Gross brings to the IPC a 30-year background in litigation, regulatory enforcement and public policy. Welcome Neil!



Neil Gross

This issue of our newsletter also features profiles of supervising lawyer [Garth Myers](#); alumni [Aryan Pour-Bahreini](#) and [Marco Castell](#); and the latest recipient of the [Bennett Jones Investor Protection Clinic Prize](#).

We'll close by saying the clinic may be busy, but we're never too busy to hear from you. Reach out by email, phone or on social media with your comments, ideas and client referrals.



Poonam Puri

Founding Academic Director



Brigitte Catellier

Associate Director



WE'RE MAKING OUR MARK!

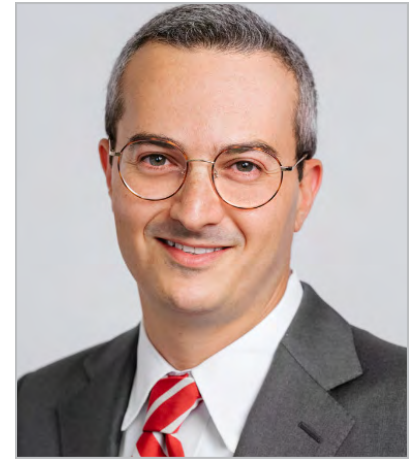
The IPC's directors have been recognized with several recent, noteworthy awards and speaking engagements:

At their June 2024 Gala, the Institute of Corporate Directors honoured Poonam Puri with the Fellowship Award, the highest distinction for corporate directors in Canada.

Brigitte Catellier was renewed for a second three-year term on the Canadian Securities Administrators' Investor Advisory Panel.

Brigitte Catellier was an invited speaker on DIY investments at the OSC Dialogue 2024 in May.

Also in 2024, Poonam Puri contributed to McCarthy Tétrault's ESG Shareholder Proposals Roundtable; the Long Run Institute/Ivey New York City Roundtable on ESG; the Canadian Securities Administrators' conference on mergers and acquisitions; and the Banff Capital Market Roundtable: The Character of the Corporate Fiduciary Duty.



SOMEWHERE TO TURN

When class action litigator Garth Myers meets with a client he can't help, he refers them to Osgoode's Investor Protection Clinic

Garth Myers used to worry about the clients he turned away. The class action litigator and founder of Toronto's Kalloghlian Myers LLP is sometimes approached by individual investors whose losses aren't substantial enough to justify a class action, but "huge and life altering" just the same.

Six years ago, he would have taken on some of those clients as pro bono and referred many others to the Ontario Law Society Referral Service.

Today he calls Osgoode's Investor Protection Clinic.

"I used to be left with this awful feeling that they weren't going to find a lawyer and they were going to be left alone to navigate a complex case in a challenging system," Myers says. "Being able to send them to the IPC really helps because you know someone will be there for them."

Ironically, Myers is one of the legal experts on call to help investors who believe they have been harmed and are unable to afford a lawyer. A volunteer supervising lawyer at the IPC since its founding, he and his firm has overseen multiple IPC cases, including one that he says took a new immigrant family from "totally devastated to extremely grateful."

The family had recently arrived in Canada from Guatemala only to find their accounts frozen by a bank that mistakenly believed they were involved in criminal activity. Myers and his team of IPC student caseworkers worked with the bank to resolve the misunderstanding and free up the family's funds.

"Had they not had the representation of the clinic, who knows how long it would have taken to unlock their savings," he says.

Myers also points to the value of the experience for students who might otherwise not have the opportunity to help represent a client while still in law school and also to practicing lawyers looking for meaningful pro bono opportunities.

"The IPC makes it so easy to get involved. They vet the cases, provide staffing. Every lawyer has an obligation to give back. This is a great way to do it."

To learn how you can support Osgoode's Investor Protection Clinic as a supervising lawyer or donor, contact the clinic at ipc@osgoode.yorku.ca or 416-736-5538

A FULL-CIRCLE MOMENT SPONSORED BY BENNETT JONES

IPC names fourth recipient of the *Bennett Jones Investor Protection Clinic Prize*



Muzammil Chatha's eight months as an Investor Protection Clinic student caseworker began and ended with Bennett Jones.

The soon-to-be third year Osgoode JD student was recently awarded the *Bennett Jones Investor Protection Clinic Prize* for his outstanding leadership and contributions to the clinic in 2023/24. Chatha says the news was made all the better by the fact that his year in Osgoode's IPC began with the internationally recognized Canadian law firm.

For two weeks every fall, Bennett Jones's downtown Toronto office serves as a training hub for the new cohort of IPC student caseworkers. In addition to presentations from the firm's lawyers, the students learn from experts in the investor protection field, including regulators and financial advisers.

“The time they took, the resources they provided were amazing to see. It set the bar for what it means to be an accomplished lawyer,” Chatha says. “I realized then that it’s not just about winning cases, but about cultivating a practice that reaches into the community, into adjacent institutions like Osgoode and to the next generation of lawyers.”

Chatha took the onboarding lessons learned to heart, working to help a client who had experienced a devastating financial loss with nowhere to turn for help. He also helped to draft IPC's comment letter on new policies proposed by the Financial Services Regulatory Authority of Ontario (FSRA).

He sees the Bennett Jones prize as recognition of his hard work.

“I’d like to thank them for all they’ve done for the IPC and for me. They’re shaping the kind of lawyer I will become.”

To learn how you can support Osgoode's Investor Protection Clinic as a supervising lawyer or donor, contact the clinic at ipc@osgoode.yorku.ca or 416-736-5538

HOW TO GET NOTICED

Two members of the Osgoode IPC Class of 2020 share how time spent on the clinic's front lines raised their profile and helped them discover the kind of lawyers they want to be.

The file that launched a career

Aryan Pour-Bahreini, JD/MBA'21, had passed the baton to the next class of IPC caseworkers and was well into his final year of law school when the call came. The case file that had occupied his attention throughout most of his eight months in the clinic had received a settlement offer.

"The client accepted the offer and received back a portion of the \$50,000 he had lost in a pyramid scheme," Pour-Bahreini recalls.

It was a moment the law student wouldn't soon forget, and not just because of the winning outcome.

"The client was so grateful that he donated some of the funds back to the clinic. This wasn't about the money; he wanted to see this righted."

Four years later, Pour-Bahreini says the skills he learned on this file and in the IPC are a cornerstone of his work as a business law associate at Toronto's Goodmans LLP. "It taught me a lot about the client-lawyer relationship and how to speak to clients in a reasonable, measured way without legal jargon."

He also learned how to draft compelling legal missives that get results.

Pour-Bahreini says his IPC experience caught the attention of his employer and the nearly 20 other law firms that invited him to interview. "Almost every one asked about the clinic, either because they were already involved or fascinated with the idea and interested in learning more," he says.

As a law student looking to jumpstart a career, "my job was to promote myself as an interesting person doing great things. There's no better way to show that than through my work on the front lines helping harmed investors achieve justice. It was invaluable."



Aryan Pour-Bahreini

Busting myths and charting your own path

Four years after graduating from Osgoode and participating in the IPC, Marco Castelli, JD'20, is still busting stereotypes.

Although law was his ultimate goal, Castelli chose to first explore his creative side, completing a Master's degree in theatre and performance studies at the York University School of Arts, Media, Performance and Design in 2016. When he joined Osgoode a year later, "most people naturally assumed I wanted to be a litigator," he laughs.

But it was corporate law that really spoke to him. After summering at Borden Ladner Gervais LLP in 2019, Castelli joined the IPC as a caseworker. It was there, on the clinic's front lines, that he saw the real benefits of his arts background.

"I was able to think on my feet and adapt to changing circumstances and I was comfortable sharing my thoughts and opinions and coming up with creative ways of framing things as a result of my arts background," he says.

He put his skills to good use in the IPC, working on two files that both led to financial recovery for the clinics' clients, including an investor who was encouraged to invest in an unsuitable product.

After graduating, Castelli applied his unique skill set as a corporate and capital markets associate at BLG and, more recently, as legal counsel at Mackenzie Investments. He is also a director and the treasurer of the Canadian Association of LGBTQ2S+ Lawyers (Call-Acal) and co-chair of its annual PRISME Conference, which he co-founded in 2021.

"My colleagues and I noticed a lot of people were self-selecting out of the formal recruitment processes because they felt the legal profession wasn't a welcoming, open or inclusive place," he says. By creating a safe forum for discussion and a national support network for LGBTQ2S+ law students, lawyers and allies of the queer community, he hopes to send a message that there is room for everybody at the legal table.

"We wear many hats and have many parts of ourselves," Castelli says. "I think you should always try to be intentional and forge your own path regardless of what others think."



Marco Castelli

FIVE NEW SUMMER STUDENTS JOIN THE IPC TEAM

This year's top candidates were chosen from a record number of Osgoode JD applicants

Five talented student caseworkers joined the IPC as summer students in May. Selected from a record number of IPC applicants, this team of outstanding lawyers-in-training will be joined by another 10 student caseworkers in September.

Here's what the summer caseworkers had to say about the opportunity to work with the clinic's directors and supervising lawyers in support of the growing need for pro bono legal advice on investor protection:

"Before attending law school, I worked as a law clerk at a litigation firm, where I had the privilege of working with clients from minority communities. Witnessing firsthand how information asymmetry and limited legal literacy can wrongfully impact individuals, I became passionate about demystifying the law and advocating for those in need. The IPC provides an invaluable opportunity for me to further cultivate my interests."
– **Rita Yang**



"I am a Sri-Lankan Tamil law student and my parents immigrated to Canada with little to nothing during the Civil War in Sri Lanka. There are still so many individuals in similar circumstances with limited resources who require legal assistance, and I have always found legal clinics such as the IPC to be a great place for me to work towards my passion of helping those in need."
– **Elukshayn Rishihsan**



"I'm most looking forward to learning about practice management: how to prioritize client requests, how to express sympathy while also delivering tough truths and how to change my communication style for each client. I want to develop my own style as a lawyer, while also recognizing that every client has different needs and expectations that will require me to alter my approach."
– **Ani Velinova**



"At the IPC, I aim to delve deeper into securities law and other related areas by working on real-life cases and applying my classroom knowledge to actual legal matters. I am eager to understand how the regulatory regime functions in practice and the challenges retail investors face when investing, whether via an OEO platform or following the advice of regulated professionals."
– **Yubo Wang**



"As a real estate agent, I honed my creative thinking, risk analysis and interview skills to understand each client's unique needs and help them resolve complex issues. These experiences have equipped me with the adaptability and problem-solving abilities I need to assist IPC clients and ensure meaningful and personalized assistance."
– **Raagavi Ramenthiran**

