

OSGOODE INVESTOR PROTECTION CLINIC

NEWSLETTER | Winter 2025

OSGOODE
OSGOODE HALL LAW SCHOOL

YORK U



2024 Order of Ontario appointee

IPC co-founder Poonam Puri is being recognized for her outstanding contributions to corporate governance, securities regulation and access to justice in Ontario. Puri is one of 29 appointees to the 2024 Order of Ontario, announced by the Honourable Edith Dumont, lieutenant-governor of Ontario, on January 1, 2025. The appointees will be invested at a ceremony in Toronto in 2025.

RINGING IN THE NEW YEAR WITH THE LATEST TRENDS AND ACHIEVEMENTS

Osgoode's Investor Protection Clinic is taking a bold stand on the need for increased access to reliable information, tools and other supports for do-it-yourself (DIY) investors.

As a panel member at the Northwind Annual Retail Investor Forum in October, IPC Associate Director Brigitte Catellier suggested that OEO dealers should be able to protect DIY investors by providing them with the information they need to make informed decisions about high-risk and complex investment products.

We also invited Aaron Goldberg to share his expertise on the regulatory and technical aspects of DIY investing. The associate general counsel at Edward Jones presented to the 2024/25 IPC student caseworkers (see sidebar) in October.

DIY investing is just one of many trends on our minds this winter. In this issue of the IPC newsletter, we detail our take on the [Supreme Court's precedent-setting case](#) on bankruptcy and disgorgement (where the IPC was granted intervener status), and the OSC's and CIRO's proposed new policies on returning money to harmed investors. You'll also read about our [latest OBSI cases](#) and the seven-year journey of the [IPC's first ever case](#) all the way to the Ontario Superior Court of Justice.

Let us know what you think.



Poonam Puri
Founding Academic Director



Brigitte Catellier
Associate Director

IPC's 2024/25 student caseworkers

Bilal Ak

Jason Corry

Haben Dawit

Shirine Haghjou

Allyson Hamilton

Lina Kohandani

Alyssa Marchese

Raagavi Ramenthiran

Elukshayn Rishiheban

Rishab Rekhi

Shahaab Sherwani

Ani Velinova

Yubo Wang

Rita Yang

Rose Zhang

PRECEDENT-SETTING DECISION ON DISGORGEMENT

The IPC analyses the Supreme Court decision while the OSC and CIRO consult on proposed new disgorgement policies

The Supreme Court of Canada has delivered “a good result for investors” in a precedent-setting case that explored whether or not disgorgement orders and monetary penalties survive bankruptcy.

The IPC was granted intervener status in the case involving a bankrupt B.C. couple who was ordered to repay \$5.5 million to investors and another \$13.5 million in administrative penalties following an elaborate market manipulation scheme. The British Columbia Securities Commission and the B.C. Supreme Court found that Thalbinder Singh Poonian and Shailu Poonian could not be released from their debt under the Bankruptcy and Insolvency Act because sanctions resulting from fraudulent activity are exempt from bankruptcy proceedings.

PRECEDENT-SETTING DECISION

Canada’s top court ruled in August that the disgorgement orders survive bankruptcy but the other monetary penalties do not.

“This was the alternative relief that we were asking for and is a good result for investors since at least it means that any wrongful profits obtained at their expense must be repaid regardless of whether bankruptcy is declared,” says Stephen Aylward, a partner at Stockwoods LLP, which represented the IPC as an intervener in the case.

An analysis of the case by IPC student caseworkers Shirine Haghjou and Lina Kohandani confirms that the Supreme Court decision is a step in the right direction, but the JD students are also concerned that it may lead to additional barriers for harmed investors.

BARRIERS FOR HARMED INVESTORS

“The decision introduces substantial barriers for investors seeking remedies for fraudulent losses, ultimately eroding the integrity of Canada’s financial regulatory system and weakening the legal recourse available to individuals harmed by financial misconduct,” Haghjou and Kohandani wrote in their IPC comment paper.

They point to the Court’s decision to allow fraudsters to discharge administrative penalties in bankruptcy, arguing that monetary penalties serve as both a deterrent and a means of promoting market fairness.

“Allowing fraudsters to avoid these penalties weakens the deterrent effect, which is essential for maintaining market integrity and protecting retail investors,” says Haghjou, adding that the decision could erode public confidence in securities regulation and make it even more difficult for investors to recover their losses.

PROPOSED REGULATORY FRAMEWORK

The Supreme Court decision came just weeks after the Ontario Securities Commission published a rule proposal that, if accepted, would establish a new process for returning money to harmed investors.

In a comment letter submitted this fall, the IPC praised the ability of the new rules to provide redress to investors harmed by securities law violations while also suggesting the OSC consider additional strategies for addressing the accessibility and efficiency of the new processes.

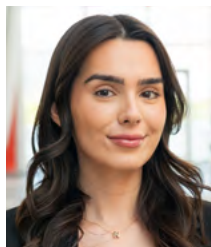
“We represent many clients with limited financial and digital literacy who will struggle to navigate the OSC website, access and understand the disgorgement order and submit online resources,” says Rita Yang, who signed the comment letter with fellow student caseworkers Raagavi Ramenthiran and Yubo Wang.

The caseworkers also proposed standards to help keep administrative costs in check and put more money back in the hands of harmed investors.

The Canadian Investment Regulatory Organization (CIRO) representing investment and mutual fund dealers is also currently accepting comments on the second phase of their proposal to return some of the money collected in enforcement proceedings. The IPC is preparing a submission for the January 20, 2025 deadline.



Stephen Aylward



Shirine Haghjou



Rita Yang

FINANCIAL COMPENSATION FOR OBSI CLIENTS

The IPC's latest OBSI negotiations confirm the need for binding authority

Consultation around the Canadian Securities Administrators' proposed binding regime for investment-related disputes looms large as the IPC secures financial compensation for two clients through the Ombudsman for Banking Services and Investments.

While both retail investors received financial compensation with the support of the IPC, neither recouped all of their alleged losses and one of the clients received a low-ball offer that could have been avoided if investment firms were bound to act on the OBSI's compensation recommendations.

LOW-BALL OFFER REJECTED

"The OBSI recommended compensation covering a substantial portion of our client's losses only to have the firm offer approximately half the recommended amount. Firms only have that kind of bargaining power because the OBSI's recommendations aren't binding," says Yubo Wang, an IPC student caseworker who assisted with one of the clinic's two OBSI case files over the past year.

Acting in consultation with their client, Wang and supervising lawyer Liz McLellan, an associate at Stockwoods LLP, rejected the firm's offer.

The OBSI investigated more than 3,000 consumer complaints in 2023 with 30 per cent of investment cases and 24 per cent of banking cases ending in a recommendation, says Sarah Bradley, OBSI's ombudsman and CEO. When considering recommendations and the issue of low settlements, Ms. Bradley explained: "Smaller value recommendations are typically paid. Where we see a challenge is when making more significant recommendations of \$50,000 or even \$100,000 and up."

While outright refusals are rare, some firms will make a low offer, leaving the consumer with the choice to accept it or risk getting nothing.



Yubo Wang



Liz McLellan



Sarah Bradley

INVALUABLE ADVICE AND GUIDANCE

In the IPC's case, the risk paid off. The client ultimately received the full OBSI-recommended settlement.

"When I first reached out to IPC, I was already losing a lot of sleep worrying about my investments, which had dropped in value by 70 per cent," says the IPC's grateful client. "I knew I had valid reasons to seek a remedy, but no idea how to start. The guidance I received was invaluable and I'm incredible grateful for their support throughout this entire process."

CSA PROPOSES BINDING DISPUTE RESOLUTION

The IPC's latest OBSI cases unfolded in the wake of a move by the Canadian Securities Administrators (CSA) to revamp the dispute resolution process. In November 2023, Canada's securities regulators proposed a new regulatory framework that includes binding dispute resolution and a new second stage of investigation during which the OBSI could use additional processes, such as the examination of additional documents, to reach an efficient, fair outcome.

The CSA's stakeholders, including the IPC, were invited to submit their comments on the proposal by February 2024.

Among the many recommendations outlined in its 10-page submission, the IPC suggested that retail investors not be bound by the ombudsman's final decision in circumstances where the amount of their claim is less than \$35,000, the maximum allowable for Small Claims Court.

GIVING RETAIL INVESTORS A VOICE

"Complainants [should] have the option to pursue their case in the Small Claims Court, as an additional avenue for compensation for the harm they have suffered," the IPC student caseworkers wrote in their submission.

This fall, the CSA announced plans to issue a second publication for comment in the second half of 2025 that includes a proposed new approach to oversight.

"We look forward to the opportunity to continue to bring the retail investors' voices to this process," says the IPC's founding academic director, Poonam Puri.

The IPC has guided **22** retail investors through the OBSI complaint process since 2017.

CASE CLOSED

The IPC puts its inaugural case file to rest with thanks to pro bono lawyer and Osgoode graduate Frank Pinizzotto

The Investor Protection Clinic has closed its inaugural case file and the only one to be heard at the Ontario Superior Court of Justice.

The IPC accepted the case involving an alleged fraudulent investment scheme in 2017. Nine student caseworkers and multiple supervising lawyers, including Ronald Podolny of Rochon Genova LLLP, supported the file as it wound its way through both the civil and criminal courts and the Ontario Securities Commission.

The case reached a turning point two years ago when the defendant was convicted of criminal fraud and found to be in violation of Ontario's Securities Act. He was ordered by the OSC and criminal court to pay more than \$1 million in penalties and restitution.

JUSTICE WITHOUT RESTITUTION

"The swindler had been brought to justice," notes Neil Gross, the IPC's advocacy coach, "but the civil case before the Superior Court remained unresolved because the defendant had no known assets."

With no reasonable prospect of recovery and the five-year administrative dismissal deadline looming, the IPC recommended that their client terminate his civil lawsuit. But that raised another pressing challenge: Gross is no longer practicing, students can't appear at the Superior Court and the clinic's supervising lawyers had agreed to provide oversight only.

"We needed someone to go to court for us," says Gross.



Neil Gross

FILLING A CRUCIAL GAP

Frank Pinizzotto, a 2016 Osgoode LLMCL graduate and an associate at Lawrence, Lawrence, Stevenson LLP in Brampton, stepped into this crucial role. With support from legal assistant Amy White and IPC student caseworker Raagavi Ramenthiran, Pinizzotto submitted an opposed motion seeking the discontinuance of the civil claim without costs.

"IPC's student caseworkers spent significant time and effort preparing the materials that the Court ultimately found persuasive," says Pinizzotto, who closed the file with the agreement of both parties this fall, seven years after the case began.



Frank Pinizzotto



Raagavi Ramenthiran

GIVING BACK

Although the client ultimately didn't recover his losses, Pinizzotto and the student team take heart in knowing that they were able to provide critical legal advice and support for a client who had nowhere else to turn.

"I've always wanted to give back to the community," says Pinizzotto. "This was a chance to work with the IPC and to help out someone who had suffered a wrong and was in a no-win situation."

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

Thank you to the following former IPC student caseworkers who also supported this file:

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Ilona Larionova, JD'20, Legal Counsel, Ontario Securities Commission

Shruti Ramesh, JD'20, Legal Counsel, Ontario Ministry of Attorney General

Anxhela Adhamidhis, JD'21, Associate, Torys LLP

Jin Lee, JD'21, Lawyer, DMC LLP

Karan Randhawa, JD'23, Associate, Dorsey + Whitney LLP

Jenny Peng, JD'23, Policy Analyst, Innovation, Science and Economic Development Canada

Muzammil Chatha, Osgoode JD candidate