Resolving Legal Disputes

There are three primary ways of resolving problems, out of court: negotiation, mediation, and arbitration. These forms of resolution can involve lawyers but they are not necessary. These forms of dispute resolution allow people to resolve their problems quickly and less expensively than a full-blown trial.

For each of the following, provide a definition (textbook, pgs. 38-40):

adjudication - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

negotiation - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

mediation – \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

arbitration – \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_



 **ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **B E T W E E N:** | ) |   |
|   | ) |   |
| W[esley] GALKA | ))) | Howard R. Blitstein, for the Plaintiff |
|   | ) |   |
| Plaintiff | ) |   |
|   | ) |   |
| **- and -** | ) |   |
|   | ) |   |
|   | ) |   |
| P[atrick] STANKIEWICZ and THE CITY OF TORONTO | ))))) | Michael W. Czuma for the Defendant, Patrick Stankiewicz and E.A. Ayers, Q.C., and Robin A.F. Squires for the Defendant, City of Toronto |
|   | ) |   |
| Defendants | )) |   |
|   | ) |   |
|   | ))) | **HEARD:**  April 21-24, 27; December 21-23, 2009; written submissions January 18 and February 1, 2010  |
|   |   |  |

**REASONS FOR JUDGMENT**

**Baltman J.**

“Fundamentally the marksman aims at himself”[[1]](https://www.canlii.org/en/on/onsc/doc/2010/2010onsc2808/2010onsc2808.html%22%20%5Cl%20%22_ftn1%22%20%5Co%20%22)

**INTRODUCTION**

[1]       One autumn day in 2000, Wieslaw Galka and his good friend Patryk Stankiewicz went out for a picnic lunch and a casual game of archery, on a range managed by the City of Toronto.  No one could have predicted the day would end in tragedy. Midway through the afternoon, as part of a bizarre scheme to find lost arrows, Mr. Stankiewicz shot an arrow which pierced Mr. Galka’s left eye and lodged itself into his brain. He has been left with grievous injuries, including partial deafness and blindness, drastically reduced mobility, and profound psychiatric needs.

[2]       Mr. Galka has sued both Mr. Stankiewicz and the City, claiming over three million dollars in damages. He concedes that he bears significant blame for this disaster, but maintains that Mr. Stankiewicz was negligent in his use of a bow and arrow and the City was negligent in its operation of a public archery range. Both defendants deny any negligent behaviour but argue, in the alternative, that any negligence on their part was not the effective cause of Mr. Galka’s losses. The issues, therefore, are:

1.         Was Mr. Stankiewicz negligent in his use of the bow and arrow?

2.         Was the City negligent in its operation of the archery range?

3.         If the answer to question #1 or #2 is yes, did that negligence cause or materially contribute to Mr. Galka’s injuries, and if so, to what degree?

4.         What is the quantum of Mr. Galka’s losses?

**THE FACTS**

[3]       Except where indicated, the facts are largely undisputed.

**Background**

[4]       At the time of this incident Mr. Galka was 45 years old, having emigrated from Poland 11 years earlier with a Masters degree in engineering. He was working as a plant manager at Assent, which manufactured plastic bottles. He was a valued and capable employee. Outside of work, he enjoyed fishing.

[5]       In the early 1990s, Mr. Galka befriended Mr. Stankiewicz, a 21 year old man also originally from Poland. Mr. Stankiewicz’s sister, who had recently started working at Assent, asked Mr. Galka to help her brother get a job at the company.  Mr. Galka obliged and Mr. Stankiewicz soon started working at Assent as a packer. Mr. Galka took the young man under his wing and Mr. Stankiewicz soon became a maintenance mechanic. With Mr. Galka’s encouragement, Mr. Stankiewicz enrolled at Ryerson University and in 1999, obtained an engineering degree. He then returned to work at Assent and eventually became Mr. Galka’s roommate.

[6]       By 2000, Mr. Stankiewicz had become a production manager at Assent, and was assigned to a new production facility that had just opened in Mississauga. The two men remained friends and roommates but did not spend much leisure time together other than fishing. Mr. Galka thought of himself as a father figure to Mr. Stankiewicz.

[7]       Mr. Galka regularly bought his fishing gear at LeBaron, a sporting goods store in Mississauga. When there, he would often admire the hunting bows on display. Although he had no experience with bows and arrows, he was interested in the sport of archery because of the physical strength and concentration required.

[8]       Sometime around the summer of 2000, Mr. Galka decided to purchase a hunting bow from LeBaron along with several aluminum arrows and some more expensive carbon arrows, the latter costing approximately $15.00 each. With no outdoor location to use his newly purchased equipment, on a few occasions Mr. Galka practiced in a hallway at the production facility of Assent, either after hours or on the weekend when no one was there. He used folded cardboard boxes as a target. He locked the doors to the facility so no one could unexpectedly walk into the narrow hallway where he was shooting.

[9]       Mr. Stankiewicz was also interested in Mr. Galka’s new archery equipment and they often discussed the sport and the equipment. Mr. Stankiewicz took the bow and arrows to his plant and shot arrows against a wooden fence in a nearby empty hydro field.

[10]        One day in the fall of 2000, Mr. Stankiewicz was reading an article in a local newspaper about an Olympic archer who practiced at a public archery range just south of the Ontario Science Centre near Don Mills and Eglinton, in Toronto. On Monday October 9, 2000 – the Thanksgiving holiday, and certainly a misnomer in this case – he and Mr. Galka decided to visit the archery range

[11]        The two men packed the bow and arrows, a lunch and a portable barbeque and headed for the Science Centre. They parked their car behind the Centre, went down a set of stairs and along a grass pathway, and came upon the northwest entrance to the archery range.

**The Archery Range**

[12]        The archery range at the E.T. Seton Park is the only public archery facility in Canada. It came into being in the late 1960s following an 800 person petition requesting that the City designate the unused field just south of the Science Centre on the west side of Don Mills Road as an archery range. The range is approximately 400 feet wide from north to south and 1000 feet long from west to east, i.e. more than two full size soccer fields. It is bordered at the east end by a forested area.

[13]        From all accounts, the range has stayed the same since its inception, apart from the City’s installation of a perimeter fence in 1987. The range was and continues to be set up in accordance with international archery standards of the Fédération Internationale de Tir à l’Arc (“FITA), with targets (known as “butts”) set at distances of between 15 to 90 metres from the firing line. The range is maintained by city staff who cut the grass and remove litter on a weekly basis, and inspected by a supervisor regularly to ensure that that work is being completed properly.

[14]        There is no formal supervision at the range. It is accessible to anyone, 24 hours a day, at no charge. At the time of this incident, there were two entrances to the archery range, and they were always open. One was located at the southwest corner of the range and consisted of a single door opening into the chain link fence. Just inside this entrance was a posted sign (the “Rules Sign”) which read:

|  |  |  |
| --- | --- | --- |
|   | **THIS IS A PUBLIC****ARCHERY RANGE – ALL****PERSONS MUST WITHOUT EXCEPTION OPERATE****UNDER THE****FOLLOWING RULES** 1.   All persons to be clear of range before shooting can  commence 2.     Arrows must be shot from designated shooting line only 3.     Arrows must be aimed and released at Target (butts) only 4.     Archers shall shoot arrows at the same time      Archers shall retrieve arrows at the same time 5.     Archers under 16 years of age must be accompanied                 by an adult at all times on the range 6.     Target arrows only may be used on this range**PERSONS USING THIS RANGE****DO SO AT THEIR OWN RISK**For information concerning instructors and club activities telephone the Metro Parks and Property Dept. for scheduled times of use                             392-2531 |   |

|  |  |  |
| --- | --- | --- |
|   | **NO****DOGS****A L L O W E D****METRO BY-LAW 129-92** |   |

[15]        The second entrance was located towards the northwest corner of the range and consisted of a double door entry through the fence. At the time of this incident, there was a sign attached to the fence just to the left of the entrance which stated “No Dogs Allowed”.

[16]        Further to the left or north of this entrance and inside the fence, almost in the corner of the range, was another Rules Sign which was identical to the one reproduced above, but absent the reference to “No Dogs”.

[17]        There were three additional signs spread along and just west of (behind) the shooting line which state “Shoot From Firing Line Only”.

[18]        The targets, known as “butts”, are spaced out in pairs across the field at steadily increasing distances from the firing line, with butts “A”, at the south end, at a distance of 18 metres from the firing line, and butts “F”, at the north end, at a distance of 90 metres.  The evidence regarding the distances laterally among the various butts was both sparse and unclear.

[19]        Andy Swanenberg is the parks supervisor who testified for the City. He stated that outside of the signage there are no further safeguards in place to ensure that participants conduct themselves safely on the range when shooting and retrieving arrows. Essentially, the City relies entirely on the signs to control behaviour on the range.

[20]        The range is open to any member of the general public. Everyone from Canadian Olympic team members and their coaching staff, members of private archery clubs and experienced recreational archers, to novice archers and total beginners can use the range without restriction.

[21]        The City provides no equipment other than the butts. Players bring their own bows and arrows to the range and retrieve them on their own.

[22]        Since the range opened in 1968, this is the only known case where someone has been injured.

**Events of October 9, 2000**

[23]        When the two men arrived at the northwest entrance to the range, Mr. Galka noticed the sign restricting access to dogs attached to the left side of the double door. He also noticed the sign saying “Shoot from Firing Line Only”. He did not notice any other signs at the range before he and Mr. Stankiewicz began shooting.

[24]        Mr. Stankiewicz testified he recalled taking one or two trips to bring all of their gear down from the car into the range. They brought a barbeque, a basket of food, the bow and arrows, binoculars and a shooting glove, and set it all on the first picnic table to the right of the northwest entrance. He could not recall what signs he read upon arriving at the range.

[25]        The two men began shooting at butts C and D, which were approximately 50-60 metres from the firing line. As they had only one bow between them, they took turns shooting at targets and then retrieving their arrows. While they hit the targets on some occasions, on others they missed. They also lost a few of the more expensive carbon arrows.

**The Experiment**

[26]        After shooting for nearly two hours they stopped to eat lunch. During lunch they discussed the possible location of the missing arrows. Mr. Stankiewicz believed they were in the grass behind the butts but in front of the forested area, while Mr. Galka thought they were further back, possibly in the forest itself.

[27]        At trial, Mr. Stankiewicz recalled that the two men came up with an experiment to find the arrows, whereby one of them would shoot an arrow over the top of the target while the other stood downrange near the line of fire to watch where the arrow landed. Presumably, this missile would lead them to their lost arrows. Mr. Galka could not recall such a conversation when asked about it at trial, but did not deny that it took place.

[28]        At some point during the lunch hour both men read the Rules Sign in the southwest corner of the range. By the time lunch ended they were the only players on the entire range.

[29]        After lunch, Mr. Galka walked approximately 130 to 150 metres downrange, behind one of the targets at which the men had been shooting. Mr. Stankiewicz testified that Mr. Galka then stood 15-20 metres off to the side of butt “C” and parallel to the line of fire, to watch where the arrow landed. Mr. Stankiewicz yelled at Mr. Galka and raised his bow to signify that he was preparing to shoot in accordance with the plan. He saw Mr. Galka acknowledge him by waving back. He then proceeded to load the bow, aimed over the left butt of target “C”, and fired.

[30]        Mr. Galka does not deny that this plan may have been agreed to, but has no recollection of discussing it with Mr. Stankiewicz. Mr. Galka testified that he was looking for arrows in the grass 10-20 metres off to the side of the target. He suddenly caught a glimpse of an arrow flying toward him in the air. The arrow entered his left eye and lodged itself in his brain, causing serious injury.

[31]        Following a police investigation, Mr. Stankiewicz was charged with criminal negligence causing bodily harm. Part way through the preliminary inquiry the matter was adjourned. Mr. Stankiewicz subsequently pleaded guilty to unlawfully causing bodily harm under [s. 269](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec269_smooth) of the [*Criminal Code*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html)*.*

**B.         Damages**

**1.         General Damages**

[90]        The arrow which entered Mr. Galka’s left eye shot through his brain and came to rest against the back of his skull. He was taken from the range to the Sunnybrook Hospital and then immediately into the operating room, where the arrow was removed under general anaesthesia. After one month in hospital he was transferred to the Toronto Rehabilitation Institute, where he remained until the end of March 2001. He underwent intense and prolonged physiotherapy, and graduated from being bedridden to a wheelchair and then a walker. He currently uses a cane for mobility. His gait is uneven and he has limited control of his previously dominant right hand. Because he cannot eat, write or groom himself with his right hand he has learned to become left handed.

[91]        According to Dr. Seyone, Mr. Galka’s treating neuropsychiatrist, he sustained a severe brain injury. His major problems are deafness in his right ear, minimal vision in his left eye, reduced cognitive function and poor mobility. He has also been diagnosed with profound depression, which has manifested itself in persistent feelings of helplessness, regular panic attacks, and suicidal ideation. He relies on numerous medications to control his symptoms.

[92]        Mr. Galka is now 54 years old. He is divorced (from before this incident), and his former wife and two grown children live in Poland. He lives by himself in subsidized housing in Mississauga and now survives through a combination of CPP and ODSP benefits. He is competitively unemployable and spends much of his time watching TV or using the Internet.

[93]        Given the severity and permanence of his injuries, I would assess general damages at $200,000.

**2.         Lost Income**

[94]        In 1999, the year preceding the accident, Mr. Galka earned $50,000, plus benefits which included health and dental insurance with 100% of the premium paid by his employer. The undisputed evidence is that but for the accident, he would have continued to work at a comparable level until at least age 65. His former employer, Assent, dissolved in 2005. However, given the strong evidence from his employer regarding his capabilities and work ethic, I am satisfied he would have found comparable work to at least age 65. On that basis, his past and future income losses ring in at $1,200,000. In an alternative scenario, if one accepts that he may have been underpaid at Assent compared to the average wages of male workers with university degrees, his losses come in at $1,600,000.

[95]        In this case I am satisfied that at the time of this incident he was earning a relatively modest income for his skills and experience, and therefore place his loss near the higher end, at $1,500,000.

**3.         Future Care**

[96]        Gail Liffshiz, an occupational therapist and certified life care planner, testified regarding the goods and services Mr. Galka will require over the rest of his lifetime to cope with his physical, cognitive and psychosocial limitations. All of her recommendations are based on what she viewed as reasonable medical possibilities. Their cost has been estimated at $1,000,000 before a gross up for income taxes, and at $1,200,000 with the tax gross up included.

Mr. Galka is asking for a total of $2,800,000 to be paid by the defendants (Mr. Stankiewicz and the City of Toronto).

**Your Task:**

Each of you will be representing either the Plaintiff, Wesley Galka, or the defendants (Mr. Stankiewicz and the City of Toronto. You are going to attempt to resolve this dispute out of court. There will be 3 groups; each group will be attempting to resolve the dispute using 1 of the 3 methods we’ve discussed.

**Questions:**

1. Which of the 3 methods do you think is best? Explain.

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1. Which of the 3 methods did you use? Did you think this method of dispute resolution was successful? Explain.

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