

Upenieks' Dispositions Without Trial explores benefits of summary judgments

By Kathy Rumleski, [AdvocateDaily.com](#) Contributor



A 2014 Supreme Court of Canada decision that overhauled the summary judgment process and created a culture shift that still reverberates is explored in a new edition of *Dispositions Without Trial*, co-written by Brampton civil litigator [Edwin Upenieks](#).

"Twenty years ago, summary judgment motions weren't used that often. My partner, the late Robert Van Kessel, who was the original author of the book, was one of the first to use them," he tells [AdvocateDaily.com](#).

The summary judgment chapter in the third edition of the book looks at the changes since the landmark [decision](#), which has been referenced more than 2,000 times since it was handed down, says Upenieks, partner with [Lawrence, Lawrence, Stevenson LLP](#).

"The book deals with summary judgments from the perspectives of both the moving and the responding parties," he says.

Upenieks says this tool is an ideal way to free up valuable court time while ensuring access to justice.

"This is one mechanism where you can have the case resolved before trial," he says. "Trials can take much longer and are more expensive."

Before the 2014 case, there were abuses, where defence lawyers would bring a motion to dismiss a claim on a summary judgment to try and delay or break the plaintiff, who would have to respond and may not have the funds to continue, Upenieks says.

Since that decision, he believes summary judgments are better understood, particularly when they are appropriate and when they're not.

Dispositions Without Trial also has a section on admissions and their legal principles.

"One of the points we make is that an agreed statement of facts may be a better way to go," Upenieks says.

"It may be the best approach instead of a contentious process with admissions and hoping the other side either doesn't respond or does so inappropriately," he explains.

A theme that has carried through from the first book is causes-of-action and defences, Upenieks says.

"If you're pleading something you can't just plead a conclusion. You need the elements for a cause of action," he explains.

"The book explores the details a pleading must have in the statement of claim. It also outlines what must be included in a statement of defence to make it valid," Upenieks says.

He says a new section in *Dispositions Without Trial* is on mandatory mediations and pre-trial conferences, including spelling out Rule 50, which provides an opportunity for issues to be settled prior to a hearing.

“All of this is so that the parties can resolve their issues short of trial,” Upenieks says.

With more stresses on the judicial system and limited judicial resources, it only makes sense for parties to seek different means to find resolution, he says.

“More people see summary judgments in the appropriate cases to be an avenue to get to court,” Upenieks says.

“There are certain mechanisms in place that we explore. This book provides the guidance,” he says.

Dispositions Without Trial will be available at the end of March and can be ordered in advance [here](#).