

- (a) the court is satisfied that there is no genuine issue for trial with respect to a claim or defence; or
- (b) ...

*Rules of Civil Procedure, Rule 20.04(2).*

- 15. Rogers Wireless has paid the plaintiff \$5,309.60. The further proposed payment of \$5,000 means the plaintiff will have recovered more than what she claimed. Accordingly, any award that the plaintiff could obtain at trial will be less than what the plaintiff would obtain by accepting the offer put forward by Rogers Wireless.
- 16. It is further submitted that it would be an abuse of the court's process if a plaintiff, having chosen to commence a claim in the Small Claims Court for \$10,000, were to refuse payment of the amount claimed and proceed with the action for unrelated purposes. As a result, Rogers Wireless respectfully submits that there is and that there can be no genuine issue for trial in the Action.

**Small Claims Court Has Jurisdiction to Order Payment Into Court**

- 17. Rule 14.05(3) of the SCCR indicates that a defendant may pay settlement funds into Court. Rule 14.05(3) states:
  - (3) If a defendant offers to pay money to a plaintiff in settlement of a claim, the plaintiff may accept the offer with the condition that the defendant pay the money into court; if the offer is so accepted and the defendant fails to pay the money into court, the plaintiff may proceed as provided in rule 14.06.

The plaintiff has not accepted Rogers Wireless' offer to settle. Although the specific wording of this rule may not address that scenario, it is submitted that the intent of the rule is to provide a mechanism whereby a defendant can pay disputed monies into court