
Court of Appeal for Saskatchewan

**Citation: *Accella Polyurethane Systems
Canada Inc. v Mod-Panel Manufacturing
Ltd.*, 2026 SKCA 105**

Date: 2026-09-21

Docket: CACV4585

Between:

Accella Polyurethane Systems Canada Inc.

*Appellant/Respondent on Cross-appeal
(Defendant/Applicant)*

And

Mod-Panel Manufacturing Ltd.

*Respondent
(Defendant/Respondent)*

And

**Graham Design Builders LP, a limited partnership established under the laws of the
province of Manitoba, by its general partner, Graham Design Builders Ltd. and
Carillion Construction Inc., carrying on business as Graham Carillion NB JV**

*Respondents/Appellants on Cross-appeal
(Plaintiffs/Respondents)*

And

**Premium Spray Products Canada GP Inc., 101172087 Saskatchewan Ltd., Intertek
Testing Services (ITS) Canada Ltd., Intertek Testing Services NA Ltd., Services
d'essais Intertek AN ltee; Intertek Inspection Services Ltd., Intertek Canada Newco
Limited, and Mule-Hide Products Co. Inc.**

*Respondents
(Defendants/Applicants)*

And

**AODBT Architecture Interior Design Ltd., AODBT Architecture Interior Design,
ABC Ltd. and DEF Ltd.**

*Respondents
(Defendants)*

Docket: CACV4586

Between

**Intertek Testing Services (ITS) Canada Ltd., Intertek Testing Services NA Ltd.,
Services d'essais Intertek AN ltee, Intertek Inspection Services, Ltd., Intertek
Canada Newco Limited**

*Appellants/Respondents on Cross-appeal
(Defendants/Applicants)*

And

**Premium Spray Products Canada GP Inc., 101172087 Saskatchewan Ltd., Accella
Polyurethane Systems Canada, Inc., and Mule-Hide Products Co., Inc.**

*Respondents
(Defendants/Applicants)*

And

**Graham Design Builders LP, a limited partnership established under the laws of the
province of Manitoba, by its general partner, Graham Design Builders Ltd. and
Carillion Construction Inc., carrying on business as Graham Carillion NB JV**

*Respondents/Appellants on Cross-appeal
(Plaintiffs/Respondents)*

And

Mod-Panel Manufacturing Ltd.

*Respondent
(Defendant/Respondent)*

And

**AODBT Architecture Interior Design Ltd., AODBT Architecture Interior Design,
ABC Ltd., and DEF Ltd.**

*Respondents
(Defendants)*

Before: Leurer C.J.S. (in Chambers)

Disposition: Application dismissed

Written reasons by: The Honourable Chief Justice Robert W. Leurer

On application from: 2025 SKKB 87, Regina
Application heard: August 19, 2026 and September 14, 2026

Counsel: Khurrum Awan for Accella Polyurethane Systems Canada Inc.
Gordon Becher for Mod-Panel Manufacturing Ltd.
Edmundo Guevara and Christopher Mah for Intertek Testing Services
NA Ltd.
Christian Halt for Graham Design Builders LP

Leurer C.J.S.

I. INTRODUCTION

[1] Two appeals, and two related cross-appeals, have been filed with this Court following a decision of a Court of King's Bench judge sitting in Chambers: *Graham Design Builders LP v Mod-Panel Manufacturing Ltd.*, 2025 SKKB 87 [*Reasons*]. The question I am called to answer is whether the appeals and cross-appeals, which I will refer to simply as the *appeals*, can be heard without the settlement and issuance of an order recording the judge's disposition of the applications that came before him.

[2] The *Reasons* concern the pleadings in a multi-party construction dispute regarding the Saskatchewan Hospital Rehabilitation Project in North Battleford. In the briefest of terms, Graham Design Builders LP, a limited partnership established under the laws of the Province of Manitoba, by its general partner, Graham Design Builders Ltd. and Carillion Construction Inc., carrying on business as Graham Carillion NB JV [collectively Graham], was retained to design and construct the project. As part of this, it determined to use insulation board manufactured by Mod-Panel Manufacturing Ltd. [Mod-Panel]. As described by the judge, within a short period of time following their installation, defects were noticed in some of these panels (see *Reasons* at para 11). On October 2, 2020, Graham commenced a claim against Mod-Panel seeking to recover damages it said it suffered because of the need to replace the panels (see *Reasons* at para 15). Mod-Panel was subsequently petitioned into bankruptcy, and many additional defendants were added to this action.

[3] In this context, the judge was called to address several applications that settle the identity of the parties to the lawsuit and the allegations made against each, as follows:

- (a) by Graham, for an order permitting it to make further amendments to its statement of claim, including the addition of plaintiffs to the lawsuit and allegations that relate to its claim for the recovery of economic loss on the basis that the panels were dangerous;

- (b) by Accella Polyurethane Systems Canada Inc. [Acella], Intertek Testing Services (ITS) Canada Ltd., Intertek Testing Services NA Ltd., Services d'essais Intertek AN ltee, Intertek Inspection Services, Ltd., Intertek Canada Newco Limited [collectively, Intertek], as well as Premium Spray Products Canada GP Inc., 101172087 Saskatchewan Ltd., and Mule-Hide Products Co., Inc. for orders:
 - (i) striking the claims made against them by Graham;
 - (ii) striking a cross-claim filed by Mod-Panel; and
 - (iii) declaring that the claim and cross-claim are either statute-barred pursuant to *The Limitations Act*, SS 2004, c L-16.1, or fail to disclose a reasonable cause of action.

[4] The parties are *ad idem* regarding most of what the judge decided. For example, they agree that the judge struck Graham's claim for economic loss based on the dangerous/shoddy goods exception to the general rule against suing in negligence for the recovery of pure economic loss. However, they disagree as to whether the judge allowed a claim by Graham for what it describes as "transferred or relational economic loss" to continue. The dispute is helpfully summarized in Graham's brief of law, as follows:

3. Graham's understanding of the differences between the Parties' positions on the terms of the unsettled order is that the primary dispute lies with whether Graham's pure economic loss claim was struck in its entirety by the Judgment, or if only Graham's pure economic loss claim on the basis of a dangerous defect was struck, leaving Graham's relational economic loss claim intact. Graham's proposed form of order submitted on October 8, 2025 took the latter position, while Accella and Intertek's proposed form of order has taken the former position. This is a central issue of dispute between the Parties, and is likely to feature heavily in the appeal, should this Court allow this portion of the Judgment to proceed on appeal without the issuance of a formal order. Graham anticipates maintaining the position that its relational economic loss claim was not struck in its appeal alongside appealing the striking out of its claim for pure economic loss on the basis of a dangerous defect.

[5] To date, no appeal books or factums have been filed in either appeal. This is because of the parties' disagreement over the terms of the order that should issue, and the judge's sudden passing has made it impossible for him to settle those terms. However, Popescul C.J.K.B. has indicated that he is prepared to "promptly appoint another judge [of the Court of King's Bench] to determine the form of the order", if this Court determines that the appeals should not be heard without an

issued order (*Graham Design Builders LP v Mod-Panel Manufacturing Ltd.* (11 May 2026), Regina QBG-RG-01548-2020 (SKKB)).

[6] In this context, Accella has applied for an order waiving the requirement for an issued order before the appeals and cross-appeals can be heard. It argues, supported by Intertek, that it will take time and expense for them to go before a different judge of the Court of King's Bench to settle the terms of the order. Accella maintains, therefore, that it will be more efficient if this Court determines any material issues in dispute regarding the terms of the order in the context of deciding the appeal itself. Mod-Panel opposes Accella's request. Graham takes no position regarding the application and says it is prepared to have either a judge of the Court of King's Bench or this Court settle the terms of the order.

[7] I am highly sympathetic to Accella's position. Were I able to find a viable path forward to avoid another hearing in the Court of King's Bench before a different judge, I would order it. However, I reluctantly conclude that allowing the appeal to proceed without an issued order will sow procedural confusion and uncertainty and will be contrary to this Court's appellate role. For these reasons, Accella's application must be dismissed.

II. ANALYSIS

[8] Rule 10.1(1) of *The Court of Appeal Rules* requires that, where an appeal is taken against a judgment or order of the Court of King's Bench, the appellant shall file (a) "the written reasons for judgment or the written fiat", and (b) "subject to Subrule (2), the judgment or order as taken out in the Court of King's Bench". Subrule (2) provides that if, at the time of filing the notice of appeal pursuant to subrule (1), the judgment or order has not been taken out in the Court of King's Bench, the appellant shall file a copy of it within five days after its issuance. *The Court of Appeal Rules* then direct that these filed documents go before the panel of the Court constituted to hear the appeal, specifying that the appeal book in any appeal shall contain "the judgment or order issued by the court appealed from" (Rule 23(1)(c)) and the "reasons for the judgment or order appealed from, if any" (Rule 23(1)(d)).

[9] Rule 4(1) grants to the Court, or a judge of the Court, the power to relieve against non-compliance with any of its Rules "[w]hen it is in the interests of the proper administration of

justice to do so”. The question I am therefore asked to answer is whether it is in the interests of the proper administration of justice for this appeal to proceed without an issued order.

[10] The distinction between an issued judgment or order and reasons is an important one. There is also an important purpose served by requiring that both be put in an appeal book in a civil appeal.

[11] A judgment or order is the operative judicial act that determines the parties’ rights and obligations. The court registry enters and records that judgment or order which becomes the basis for enforcement and the application of the principle of *res judicata*. On the other hand, reasons, whether embodied in what are sometimes styled as *judgments*, *fiats*, *decisions* or *reasons for judgment*, explain the legal and factual basis upon which a judge of the Court of King’s Bench gives a binding direction. Said in more simple terms, the issued judgment or order answers the question of *what* a judge has decided (i.e., has the judge granted or dismissed an action or application – who has won, who has lost – and what relief is granted). The reasons explain *why* the case has been decided the way it has.

[12] Appeals are taken from *what* a court decides. In part, this is because a judge may have reached the correct result, but for a flawed reason. In such case, the appeal court may identify the error but still dismiss the appeal.

[13] In keeping with these principles, one leading text aptly describes it as a “fundamental premise in the law of appellate review that an appeal is taken against the formal judgment or order, as issued and entered in the court appealed from, and not against the reasons expressed by the court for granting the judgment or order” (J. Sopinka, M.A. Gelowitz & W.D. Rankin, *Sopinka, Gelowitz and Rankin on the Conduct of an Appeal*, 6th ed (LexisNexis, 2026) at para 1.14. See also: *Saskatchewan (Energy and Resources) v Areva Resources Canada Inc.*, 2013 SKCA 79 at para 107, referring to *R v Sheppard*, 2002 SCC 26 at para 4; *United Food and Commercial Workers, Local 1400 v Wal-Mart Canada Corp.*, 2012 SKCA 131 at para 124; *Tapp v 626170 Saskatchewan Ltd.*, 2000 SKCA 6 at para 4; *Meier v Saskatchewan Institute of Agrologists*, 2016 SKCA 116 at para 34; *Boardwalk General Partnership v Olson*, 2016 SKCA 135 at para 14; and *Saskatchewan v Capitol Steel Corporation*, 2018 SKCA 3 at para 2).

[14] Some cases have gone so far as to say that if no order has been entered, “there is nothing to appeal against” (*McColl v Leamy* (1894), 3 BCR 360 at para 6 (Westlaw) (BCSC)). See also, *R. v S.*, 1946 CanLII 255 at p 239, 54 Man R 221 (MBCA). Chief Justice Bayda was slightly more equivocal on this point, when he wrote that, in a case where there was no formal order or judgment taken out, “*there is much doubt* in my mind whether the appeal is valid” (*Madech Mortgage Corp. v Kensington Developments Inc.*, 2000 SKCA 54 at para 2, emphasis added).

[15] As a starting proposition, therefore, long-standing precedent, grounded in sound policy, stands behind the requirement that an order must be entered before an appeal proceeds.

[16] Accella and Intertek say that, in this case, the absence of an issued order can be ignored for the purposes of the appeal hearing. I am compelled to reject this suggestion, as the disagreement implicates important aspects of both the procedure and substance of the appeals.

[17] In regard to procedure, the differences between the parties make it unclear what specific disposition or order is being attacked. On the issue of relational economic loss, since both Accella and Graham claim to have prevailed, who is the appellant and who is the respondent? This uncertainty affects not only how both written and oral argument is to be made, but much more. The difficulties that are created are exemplified by the position staked by Accella that *if* the judge is to be taken to have allowed the relational economic loss claim to survive, it would seek leave to appeal that decision. However, when, and in what procedural context, will it seek that leave to appeal?

[18] It may well be that with case management and (perhaps) a fluid process for the filing of supplemental arguments, and full-court hearings, the panel could resolve issues of procedure that flow from the absence of a settled order. Nonetheless, the problems created by the absence of an issued order also go into matters of substance.

[19] The parties, the Court of King’s Bench *and this Court* should be able to discern from the issued order what the pleadings are, until and unless this Court varies or sets aside that order. The appeals now before this Court may well turn on the precise wording of the pleadings that the judge has either countenanced or censored. Without an issued order, it is impossible to know which

particular allegations the judge ordered to be part of the statement of claim. What are the pleaded words that this Court is being asked to review?

[20] The need to pay close attention to the specifics of what is pled is well-illustrated by the central role that the precise words of pleadings played in the judge's decision to dismiss Graham's claim for economic loss based on the dangerous goods exception. This claim was struck, and proposed amendments were refused, only after the judge had carefully examined the details of what Graham had pleaded and proposed to plead.

[21] There is a second substantive reason I am concerned about the absence of an issued order. In this case, the uncertainty as to who has prevailed therefore implicates who carries the burden of establishing error. The Supreme Court of Canada has emphasized that courts are to pay careful attention to the standards of appellate review. Appellants are responsible for disrupting rulings made by trial courts. In the case of questions of fact and mixed fact and law they must show palpable and overriding error. Discretionary decisions attract their own unique standard of review.

[22] If the issues on the appeals are to be resolved applying the appellate review standard of correctness, the details of what the judge ordered may be less important. I say this because on a correctness standard, it matters less who is the appellant and who is the respondent given that this Court can substitute its judgment for that of the judge whose decision is under review. On the other hand, when the standard of review is something other than correctness, it very much matters who is seeking to displace the judgment or order under review. However, when I asked the parties if they agreed that the correctness standard would apply to all of the issues implicated by the disputed order, I was met with only a qualified agreement.

[23] Accella points to several cases where courts have allowed appeals to proceed without an order or judgment having been entered. However, it is a common feature of the cases it cites that there was no dispute between the parties as to what order had been made. For example, in *Mann v Mann*, 2023 SKCA 100 at para 39, the Court noted that "[a]lthough no judgment or order was issued, in oral argument, the parties agreed that we should understand the *Chambers Decision* as having granted judgment in the following terms", which were then set out. In *Roman Catholic Episcopal Corporation of St. John's v Guardian Insurance Company of Canada*, 2025 NLCA 5 at para 21, it was "clear from the reasons of the trial judge what his disposition was and what is being

appealed”. To like effect are *Maynard Holdings Limited v IForm Works Inc.*, 2022 NSCA 54 (see para 18, where the intent of the judge was described as “clear” and “unambiguous”) and *MTM Commercial Trust v Statesman Riverside Quays Ltd.*, 2022 ABCA 328 (see para 16, wherein it is stated that the “formal order would essentially have read ‘application dismissed’”).

[24] The distinction between these cases and the present facts is much like that described in *Walsh v Johnson*, 2010 NLCA 6:

[8] No formal order dismissing the claim was ever taken out. Nevertheless, the appellant filed a notice of appeal against the decision to dismiss. Although an appeal is regarded as against the formal order recording the result of the decision, and not the judge’s reasons for decision, in this case no confusion will result by the failure to file a formal order before launching the appeal. The order, if filed, could only say that the proceeding was dismissed with costs. *There may well be cases, however, where the judge’s disposition is more complicated. In such cases, it would be important to know precisely the dispositive provisions of the decision and the court would be justified in requiring that a formal order reflecting the judge’s disposition be settled and filed under Rule 49 before proceeding to deal with the appeal.* This case is not one of them.

(Emphasis added)

[25] The parties first appeared before me on August 19, 2026, to speak to Accella’s application. At that hearing, it became evident that two fiats issued by the judge subsequent to the *Reasons* may cast some light on what he decided. After this first hearing, Accella presented what it described in a letter as a “template order” that it said it was “prepared to accept ... as reflecting the intended ruling” by the judge. It suggested that the parties may agree on the terms of such an order that would not be formally issued but could be taken by the panel as embodying what the judge ordered. Considering this advice, I invited the parties to appear again to explain why, if the so-called “template order” is intended to reflect the judge’s order, the parties have not chosen to have it (or a version of it) issued? In the course of that hearing, it became apparent that the parties have *not* agreed on the terms of an order, let alone caused one to be issued by the Court of King’s Bench.

[26] In summary, I reluctantly conclude that it is necessary for the Court of King’s Bench to settle the terms of the order to bring the proper structure to the proceedings in this Court. This will, in the long run, better serve the interests of the parties and the economical use of judicial resources more generally.

[27] One final consideration compels me to conclude that the parties should turn to the Court of King's Bench to settle the terms of the order. While Accella argues that the panel will be able to sort all of this out, in the context of an argument of the appeals, it would change this Court's role were it to determine this issue. In this regard, both Accella and Graham presented lengthy written arguments as to why their interpretation of what the judge ordered should be preferred. These submissions delve deeply into the merits of the dispute that the judge was called to adjudicate. I can see no path by which a panel would determine *what* the judge decided without a deep examination of the merits of dispute itself. In doing so, the panel would, in effect, be asked to simultaneously make the order and determine if it should have been made. On the facts here, were a hearing to be held without initially sorting out the specifics of the order, this Court will not be sitting in *review* of the *Reasons*. Instead, it would become the *first instance* decision-maker. In short, in this case, the present uncertainty around *what* the judge decided means that this Court cannot properly fulfil its appellate function.

III. CONCLUSION

[28] Accella's application is dismissed. No party, including Mod-Panel which opposed it, requested costs and none are ordered for or against any party.

“Leurer C.J.S.”

Leurer C.J.S.