Citation: Stewart v Auch, 2026 MBCA 57
Date: 20260615
Docket: AI25-30-10226

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella

***B E T W E E N**:*

	)	***S. M. Auch***
	)	*on their own behalf*
	)	
	)	***R. Y. Mamucud***
	)	*for the Respondent*
HEATHER ANNE STEWART	)	
	)	*Appeal heard and*
(Applicant) Respondent	)	*Decision pronounced:*
	)	***February 24, 2026***
- and -	)	
	)	*Written reasons:*
SUSAN MARGARET AUCH	)	***March 6, 2026***
	)	
(Respondent) Appellant	)	***Motion under rule 46.2***
	)	***of the Court of Appeal***
	)	***Rules (Civil)***
	)	
	)	*Decision pronounced:*
	)	***June 15, 2026***

PER CURIAM

Introduction

[1] This is a motion by the appellant for an order pursuant to rule 46.2 of the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R [the *CA Rules*] for a rehearing of her appeal (the motion), which was dismissed on

February 24, 2026 (see *Stewart v Auch*, 2026 MBCA 21 [*Stewart 2026*]), as well as other ancillary relief.

[2] For the following reasons, the motion is dismissed.

Background

[3] On March 24, 2026, the appellant filed the motion pursuant to rule 46.2 of the *CA Rules*. No certificate of decision for *Stewart 2026* has been entered yet.

[4] The appellant requested that the motion be heard "before" the same panel of this Court who heard and determined *Stewart 2026*. The motion cites three "exceptional" circumstances warranting the granting of a rehearing of *Stewart 2026*:

> (a) there is a patent error on a material point on the face of the reasons;
>
> (b) the appeal was decided on a point of law that counsel had no opportunity to address and which could not reasonably have been foreseen; and
>
> (c) this Court has overlooked or misapprehended the evidence or the law in a significant respect, giving rise to a serious risk of a miscarriage of justice.

[5] On March 24, 2026, the appellant also filed a memorandum of argument to support the motion. In her memorandum of argument, the appellant makes three submissions.

[6] First, she says that this Court erred in its application of section 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [the *BIA*] to the circumstances of the loan that was in dispute in the civil action giving rise to *Stewart v 6551450 Manitoba Ltd et al*, 2023 MBCA 72 [*Stewart 2023*], leave to appeal to SCC refused, 40992 (2 May 2024), 40967 (2 May 2024). She asserts that it was an error to conflate the test for piercing a corporate veil with the statutory test governing non-dischargeable debts under section 178(1)(e), as discussed in *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28 [*Poonian*].

[7] Second, the appellant argues that this Court erred in its application of section 178(1)(e) of the *BIA* by affirming the application judge's declaration in the absence of any finding that the appellant personally made or knowingly participated in any fraudulent misrepresentation.

[8] Third, she submits that this Court applied the incorrect standard of review and did so in a manner that the parties had no opportunity to address.

[9] The appellant claims that, in its decision of *Stewart 2026*, this Court misapprehended the law and the evidentiary record such that there is a serious risk of a miscarriage of justice.

[10] On March 30, 2026, the appellant communicated with this Court's registry. By way of separate letters, she requested that each member of the *Stewart 2026* panel recuse themselves from deciding the motion (the recusal letters). She advised the registry that "[e]ach letter requests that the named judge recuse themselves from any further participation in the Rule 46.2 rehearing proceedings, on the basis that formal complaints have been filed

with the Canadian Judicial Council regarding each of these judges in connection with these very proceedings."

[11] In each of the recusal letters, the appellant requests that the addressed judge "recuse [themselves] from any further participation" in the motion. In each of the recusal letters, the appellant sets out her claims of a reasonable apprehension of bias in relation to the particular judge based on either conflicts of interest or their conduct during litigation relating to the appellant before this Court, including *Stewart 2026*.

[12] In her recusal letters, the appellant highlights that she has made a complaint to the Canadian Judicial Council (the CJC) against every member of the panel who sat on *Stewart 2026* and the three judges who sat on the earlier related civil case of *Stewart 2023*.

[13] On April 21, 2026, the respondent filed her memorandum of argument, opposing the granting of a rehearing of *Stewart 2026*. The respondent submits that the arguments raised by the appellant are "baseless and frivolous".

[14] On April 23, 2026, a judge of this Court, sitting in chambers, dismissed the appellant's motion for a stay of execution of *Stewart 2026* pending an application for leave to appeal to the Supreme Court of Canada.

[15] On May 7, 2026, the appellant filed her reply memorandum of argument. In her reply, the appellant says the decision of this Court in *Stewart 2026* did not decide a central legal issue in relation to section 178(1)(e) of the *BIA*. She also submits that the motion is marred by procedural unfairness. She points to her complaints to the CJC in relation to each member of the panel in

Stewart 2026 and the refusal on May 7, 2026 of the registry to accept her supplemental affidavit, which she asserts are "relevant to the fairness and integrity of the rehearing process."

The Governing Principles

[16] Normally, a motion for rehearing under rule 46.2 of the *CA Rules* is heard by the panel who decided the original appeal (see *College of Registered Nurses of Manitoba v Hancock*, 2023 MBCA 94 at para 10 [*Hancock*]).

[17] Motions for a rehearing under rule 46.2 are typically decided on the basis of the written materials filed by the parties without oral argument (see *Hancock* at para 13).

[18] Fidelity to the procedures set out in the *CA Rules* is necessary to the fair and orderly administration of appellate justice. A party, even if self-represented, does not have the right to supplement their position by sending correspondence to the registry or individual judges or attempting to file materials in a manner not permitted by the *CA Rules* (see *Hancock* at paras 11-12).

[19] There is a strong presumption of judicial impartiality that is not easily displaced absent cogent evidence (see *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 25 [*Yukon*]).

[20] The test for a reasonable apprehension of bias is inherently contextual and fact-specific. It was explained in *Yukon* at para 20 this way:

> The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:
>
> . . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted.]
>
> (*Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. (dissenting))[.]

[21] While judges must give careful consideration to any recusal request, they must also be on the lookout for "unreasonable and unsubstantiated recusal demands" by manipulative litigants seeking an advantage (*Beard Winter LLP v Shekhdar*, 2016 ONCA 493 at para 10).

[22] A party making a claim of actual bias or a reasonable apprehension of bias against a judge must act in a timely manner and promptly raise their claim at the first reasonable opportunity (see *R v Curragh Inc*, 1997 CanLII 381 at para 113 (SCC)). Undue delay in raising such claims casts doubts on the bona fides of the claim, particularly where the claim is only raised after the litigant has lost their case on its merits (see *R v Van Wissen*, 2018 MBCA 100 at paras 13-14).

[23] The analysis required for determination of a motion under rule 46.2 of the *CA Rules* was discussed this way in *Schrof v Schrof*, 2025 MBCA 71 at para 7 [*Schrof*]:

> The threshold for a rehearing under rule 46.2 is a heavy one, "not only to avoid the risk of rehearing requests being made following an appeal judgment, almost as a matter of course, but, more importantly, to ensure that rehearings are granted only in exceptional circumstances, where the interests of justice

> manifestly compel such a course of action" (*Willman v Ducks Unlimited (Canada)*, 2005 MBCA 13 at para 9; also see *Samborski Garden Supplies Ltd v MacDonald (Rural Municipality)*, 2015 MBCA 53 at para 16 [*Samborski*]). As was noted in *Hancock v College of Registered Nurses of Manitoba*, 2021 MBCA 59, "[a] rehearing is not available when a party disagrees with the result on the appeal. It is not an opportunity to reargue the appeal" (at para 14).

[24] Examples of where the heavy burden is required to satisfy granting a rehearing under rule 46.2 include *Willman v Ducks Unlimited (Canada)*, 2005 MBCA 13 at para 10 [*Willman*]:

> 1) there is a patent error on a material point on the face of the reasons;
>
> 2) the appeal was decided on a point of law that counsel had no opportunity to address, and which point could not have reasonably been foreseen and dealt with at the hearing; or
>
> 3) the court has clearly overlooked or misapprehended the evidence or the law in a significant respect and there is a consequential serious risk of [a] miscarriage of justice.

Analysis

Recusal Requests

[25] The appellant was represented by counsel during the *Stewart 2026* appeal. There was no mystery as to the identity of the panel members. No timely objection was raised in relation to any member of the panel based either on their historic associations or their conduct during the appeal. In our view, the appellant's claims of a reasonable apprehension of bias were not brought in a timely manner.

[26] Moreover, the recusal claims make little sense on their face. In the motion, the appellant specifically asked that the panel who decided *Stewart 2026* also decide the motion. If the appellant was content when she filed the motion on March 24, 2026 to have the *Stewart 2026* panel decide the motion, what happened in the roughly one-week period during which the recusal letters were sent to warrant a change in procedure? This important deficit in the appellant's recusal claim is unanswered on the record.

[27] There is merit, in this Court's view, to the argument of the respondent that the appellant is taking every opportunity to delay the efforts of the respondent to collect on the civil judgment owing (see *Stewart 2023*). It is not lost on this Court that the tone of the appellant's letters to the registry and the individual judges is that she—and she alone—is in control of the process. This is a fundamental misunderstanding of the proper administration of justice. This Court would echo the comments made in *Hancock* at para 16:

> A significant problem with the motion is that it largely does not comply with the rules of court. It is trite but important to recall that there are not two sets of rules of court; one for a party with a lawyer and one where the party is self-represented (see *Bazan v The Assiniboine South School Division et al*, 2013 MBQB 68 at paras 67-69). As Monnin JA noted in *Dewing v Kostiuk et al*, 2017 MBCA 22, "there is a responsibility on self-represented persons to familiarize themselves with the relevant legal practices and procedures pertaining to the case and to 'prepare their own case'" (at para 21).

[28] Given this Court's view that the recusal requests were not made in a timely manner, it is unnecessary to say much on their merits other than it would point out that many of the claims made by the appellant are factually inaccurate or raise largely irrelevant matters to the test set out in *Yukon*. This

Court is also of the view that the record is far short of the compelling evidence necessary to displace the presumption of judicial impartiality with respect to any member of the panel of *Stewart 2026*.

Filing Complaints with Registry

[29] There is no merit to the appellant's concerns that she was restricted from filing materials so as to give rise to procedural unfairness (see *Hancock* at paras 12, 16). The appellant had no right to file affidavit evidence on the motion to supplement the record. The registry was correct to refuse the filing of any materials by the appellant not in conformity with the *CA Rules*.

No Need for an Oral Hearing

[30] The appellant makes no submission as to why the motion cannot be dealt with in writing alone. Based on this Court's familiarity with the circumstances of *Stewart 2026*, the arguments that were raised in it and this Court's review of the materials filed on the motion, this Court is persuaded that the motion can be decided without oral arguments.

Standard of Review Issue

[31] The standard of review as to a decision made under section 178(1) of the *BIA* is well-known (see *Garlicki (Bankrupt), Re*, 2010 MBCA 73 at paras 24-29 [*Garlicki*]). Questions of law are decided on a standard of review of correctness. Questions of fact are decided on a standard of review of palpable and overriding error. Questions of mixed fact and law are decided on a standard of review of palpable and overriding error absent an extricable question of law, in which case the standard of review is correctness.

[32] At the hearing of *Stewart 2026*, the parties' misstatement of the correct standard of review was raised by the panel and an opportunity was provided to counsel to comment on the correct standard of review. As made clear in *Garlicki*, whether a particular set of facts does or does not satisfy a legal standard created by the *BIA*, such as section 178(1)(e), is a question of mixed fact and law absent an extricable legal question.

[33] This Court is not persuaded that *Stewart 2026* was decided on a point that counsel did not have an adequate opportunity to address at the hearing, particularly given that the standard of review for a decision under section 178(1) of the *BIA* is long-standing (see *Samborski Garden Supplies Ltd v MacDonald (Rural Municipality)*, 2015 MBCA 53 at para 20) and the parties were given ample opportunity at the hearing of *Stewart 2026* to address the correct standard of review.

Re-Arguing Stewart 2026

[34] The appellant's submissions about this Court erring in its application of section 178(1)(e) of the *BIA* are nothing more than an attempt to re-argue *Stewart 2026*, which is outside the parameters of rule 46.2 due to concerns about finality (see *Willman* at paras 8-9).

[35] In the civil litigation that gave rise to *Stewart 2023*, this Court accepted the trial judge's decision that the corporate veil of a company the appellant controlled should be pierced to find the appellant liable for an unpaid loan (see *ibid* at paras 40-41). The appellant refuses to accept this finding and continues to challenge it in bankruptcy proceedings under the *BIA*. As was stated in *Hancock v College of Registered Nurses of Manitoba*, 2021

MBCA 59, "[a] rehearing is not available when a party disagrees with the result on the appeal. It is not an opportunity to reargue the appeal" (at para 14).

[36] The appellant also seeks to re-argue this Court's conclusion that the application judge did not make a reversible error in his application of *Poonian* to the facts of the appellant's case (see *Stewart 2026* at para 25). The arguments made by the appellant do not satisfy this Court that the interests of justice manifestly compel a rehearing; allowing a rehearing on these facts is not required in the interests of justice and is contrary to the principle of finality (see *Schrof* at para 8).

[37] In *Stewart 2026*, the panel decided it was not necessary to consider one aspect of the application judge's decision as it had no bearing on the result (see *ibid* at para 26). That is, in this Court's view, not sufficient reason to allow a rehearing of the appeal. Even if this Court had come to the conclusion that the application judge erred in his interpretation of an alternative way in which section 178(1)(e) of the *BIA* applied to the appellant (which it did not), the appeal would have been, nevertheless, dismissed because such an error would not have affected the result (see *Papasotiriou-Lanteigne v Tsitsos*, 2023 MBCA 66 at para 17).

No Miscarriage of Justice

[38] The appellant makes repeated claims that proceedings related to *Stewart 2026* have given rise to a miscarriage of justice. As was explained in *Hancock* at para 15, this is an exacting standard that is not easily established.

[39] In this Court's view, the reasonable observer, properly apprised of the relevant circumstances, would conclude that the appellant received a fair

hearing before an independent panel in *Stewart 2026*. She does not have the right to delay the legal process by untimely and dubious claims of judicial bias; to file whatever she wants, whenever she wants, notwithstanding the *CA Rules*; to reopen negative factual findings made against her in *Stewart 2023*; or to endlessly debate how section 178(1)(e) of the *BIA* should apply to her personal circumstances.

Disposition

[40] In the result, the motion filed by the appellant for a rehearing of *Stewart 2026*, as well as other ancillary relief, is dismissed with costs in the amount of $500 in favour of the respondent.

[41] In accordance with rule 46.2(3.1) of the *CA Rules*, when the appellant filed the motion, she paid the sum of $500 as security for costs. These funds are ordered to be paid out to the respondent's counsel to satisfy the costs order for the motion.

Rivoalen CJM

Cameron JA

Mainella JA