COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NUMBER:	2601-0256AC
TRIAL COURT FILE NUMBER:	23-3400057 and 25-3400059 (Est No. 25-3400059; Commercial List B301-400059)
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Court of Appeal of Alberta

IN THE MATTER OF THE *BANKRUPCTY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ADVEN INC.AND ADVEN INDUSTRIES INC.

APPLICANTS:	SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC and 2815793 ALBERTA LTD.
STATUS ON APPEAL:	APPELLANTS
STATUS ON APPLICATION:	APPLICANTS
RESPONDENTS:	ADVEN INC. and ADVEN INDUSTRIES INC.
STATUS ON APPEAL:	RESPONDENTS
STATUS ON APPLICATION:	RESPONDENTS
DOCUMENT:	**APPLICATION FOR DECLARATION THAT LEAVE TO APPEAL IS NOT REQUIRED AND FOR PERMISSION TO APPEAL**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	**BLUE ROCK LAW LLP** 700-215 9 Avenue SW Calgary, AB T2P 1K3 Attention: David W. Mann KC / Scott Chimuk Phone: (587) 317-0643 / (587) 390-7041 Fax: (825) 414-0831 Email: david.mann@bluerocklaw.com scott.chimuk@bluerocklaw.com File No.: 2315-00001

- And -

CONTACT INFORMATION OF ALL OTHER PARTIES:	**McMILLAN LLP** 1700, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Tevia R.M. Jeffries / Preet Saini Telephone: (403) 531-4716 Fax: (403) 531-4720 Email: tevia.jeffries@mcmillan.ca preet.saini@mcmillan.ca File No.: 327410 **Counsel for the Respondents, AdvEn Inc. and AdvEn Industries Inc.** **WARREN KACHUR OSADETZ LLP** 425, 1122 4th Street SW Calgary, Alberta T2R 1M1 Attention: Martin Rejman Telephone: (587) 430-3125 Fax: (587) 430-2971 Email: mrejman@wkolaw.ca File No.: 26-6296-05518 **Counsel for 2841034 Alberta Ltd., the Interim Lender (not a party to this appeal; for service)** **FASKEN MARTINEAU DuMOULIN LLP** 3400, 350 7th Avenue SW Calgary, Alberta T2P 3N9 Attention: Robyn Gurofsky / Tiffany Bennett Email: rgurofsky@fasken.com tbennett@fasken.com **Counsel for Alvarez & Marsal Canada Inc., in its capacity as Proposal Trustee (not a party to this appeal; for service)**

NOTICE TO RESPONDENTS: ADVEN INC. and ADVEN INDUSTRIES INC.

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENTS:

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	September 23, 2026
Time:	9:30 am
Where:	Suite 2600, 450 – 1 Street SW
	Calgary, AB T2P 5H1
Before:	A single Justice of the Court (Rule 14.37)

Nature of Application and Relief Sought:

1. The Applicants, Secure Property Development & Investment PLC ("**SPDI**") and 2815973 Alberta Ltd. ("**281**") seek an Order:

    a. Declaring that leave to appeal the decision of the Honourable Justice Grant Dunlop, pronounced on August 19, 2026 and entered August 21, 2026 (the "**Decision**") is not required;

    b. In the alternative, if leave is required to appeal the Decision, granting leave to appeal same;

    c. Granting leave to appeal the Decision under s 193(e) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**");

d. Directing that the resulting appeal shall be heard on an expedited basis, in accordance with a litigation schedule to be agreed to by parties or set by this Honourable Court; and

e. Such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

2. SPDI and 281 have a right of appeal and do not require leave to appeal pursuant to sections 193(a) and 193(c) of the BIA:

   a. The Order under appeal declared that court-ordered charges of not less than US $650,000 and CAD $600,000 rank in priority to the Appellants' registered security over all the property of AdvEn, engaging both the future rights of the Appellants and involving property that exceeds $10,000 in value.

3. In the alternative, if leave to appeal is required then it should be granted pursuant to section 193(e) of the BIA because: the appeal raises issues that:

   a. <u>are significant to the practice</u>: The points raised are of significance to the NOI and interim-financing practice generally. Section 50.6(5) of the BIA requires a court, before approving a super-priority interim financing charge, to consider, among other things, whether the debtor's management retains the confidence of its major creditors, the nature and value of the debtor's property, and whether any creditor would be materially prejudiced. This appeal raises the questions of what independent scrutiny a court must bring to bear where the proposed interim lender is a newly incorporated entity controlled by former directors of the very secured creditor it is to prime; whether the "confidence" of major creditors within the meaning of section 50.6(5)(c) can be inferred solely from the willingness of the proposed lender's own principals to lend, in the face of an objecting major secured creditor; and what account must be taken of an executed, materially superior competing facility that was before the court. These are recurring issues in restructuring practice, not questions confined to the facts of this case.

   b. <u>are significant to the proceedings</u>: The appeal is of clear significance to this action. The Charges exceed US$1.25 million and rank ahead of the Appellants' registered security over substantially all of AdvEn's property, in circumstances where AdvEn's own books already disclose a shortfall of some $15.7 million between assets and liabilities. A determination in the Appellants' favour on any of the grounds of appeal would materially alter the priority of recovery as between the parties and, on the SISP grounds, the conduct of the sale process itself.

c. are *prima facie* meritorious and are not frivolous:

i. Procedural fairness. Sections 50.6(1), 64.1(1) and 64.2(1) of the BIA, and the general principles of procedural fairness, require that secured creditors whose security is to be primed be given notice and a genuine opportunity to respond. Here, the interim financing agreement ultimately approved was not the agreement identified in AdvEn's application, was first placed in evidence on the day of the hearing by affidavits sworn that same day, and two inconsistent versions bearing the same date were before the Court; undertakings given the previous day on matters going directly to the independence of the Interim Lender and the personal interest of AdvEn's chief executive officer remained unanswered. It is at least arguable that refusing a short adjournment in these circumstances, and deeming the application properly returnable notwithstanding them, was an error in principle.

ii. The gatekeeper function. It is arguable that a supervising judge errs in principle by approving a super-priority charge in favour of a related-party lender without considering its independence, particularly where – as here – the lender's principals include two individuals who, until fourteen days before the hearing, owed fiduciary duties to the very secured creditor being primed, where the debtor's chief executive officer stood to receive a personal, undisclosed 15% equity interest contingent on that lender's success, and where an executed and materially superior alternative facility from an existing secured creditor was in evidence and, so far as appears, unaddressed. Section 4.2 of the BIA imposes a duty of good faith on any interested person in proceedings under the Act, a duty engaged squarely by these facts.

iii. Material prejudice and the confidence of major creditors. It is arguable that a finding of no material prejudice under section 50.6(5)(f) requires some evidentiary foundation as to realizable value, and that unaudited book value, in a case where the Proposal Trustee's own evidence is that a bankruptcy could yield little or no recovery to creditors, does not suffice. It is similarly arguable that "confidence of major creditors" within section 50.6(5)(c) cannot be established solely by reference to the willingness of the proposed lender's own principals to lend, particularly where the only other secured creditors to appear had expressly disavowed such confidence.

iv. The SISP. It is arguable that a sale process which forecloses communication between bidders and stakeholders, and which deems any bid by a related-party lender to be automatically "Qualified" regardless of the SISP's own stated requirements,

undermines the fairness, transparency, and integrity that a court-supervised sale process is meant to ensure, particularly where that lender's principal has an undisclosed personal stake in the outcome.

v. Quantum of the Charges. It is arguable that Administration and D&O Charges ranking ahead of all secured creditors require some assessment of reasonable necessity by reference to the cash-flow evidence and the interests of the creditors being primed, an assessment that does not appear to have occurred here.

d. will not unduly hinder the progress of the action: The Appellants do not appeal, and do not seek to disturb, paragraph 9 of the Order, extending the stay period in the underlying NOI proceedings to October 3, 2026; that extension remains in force regardless of the outcome of this appeal. The Appellants intend to seek an expedited hearing of the appeal, which can and should be heard well within the runway afforded by that extension and in advance of the SISP's sale approval hearing scheduled for the week of November 2, 2026. In these circumstances, the appeal will not unduly hinder the progress of the underlying restructuring.

4. Further, permission should be granted where the decision appears contrary to law, amounts to an abuse of judicial power, or involves an obvious error causing prejudice for which there is no remedy. The Decision in this Honourable Court below respectfully erred as follows:

a. Refusing the Appellants' request for an adjournment of ten days to file responding evidence and proceeding to approve an interim financing agreement that was not the agreement dated August 7, 2026 identified in AdvEn's application.

b. Proceeding to approve the Interim Financing Agreement in circumstances where AdvEn had, on the morning of the hearing, refused to answer undertakings given on the cross-examination of its only deponent, going to the identity and provenance of the Interim Lender and to the personal interest of AdvEn's chief executive officer in the outcome.

c. The Appellants, being secured creditors whose registered security was to be primed by the Decision, were denied the notice and opportunity to respond as required by sections 50.6(1), 64.1(1), and 64.2(1) of the BIA and by the principles of procedural fairness.

d. Deeming the time for service of the Respondents' application to approve the Interim Financing Agreement to be good and sufficient and properly returnable on August 19, 2026.

e. Approving a super-priority charge in favour of the Interim Lender, a corporation incorporated on August 5, 2026, whose only directors were then

or had recently been directors of the Appellant 281, and one of whom is a principal of another existing secured creditor of AdvEn, without considering the provenance and independence of the Interim Lender.

f. Finding or proceeding on the basis that no creditor would be materially prejudiced by the Administration Charge, D&O Charge, and Interim Lender's Charge within the meaning of section 50.6(5)(f) of the BIA and in failing to consider the nature and value of AdvEn's property as required by section 50.6(5)(e).

g. Treating the willingness of the Interim Lender's own principals to lend as evidence that AdvEn's management has the confidence of its major creditors within the meaning of section 50.6(5)(c) of the BIA.

h. Approving a SISP which includes a prohibition enjoining a Potential Bidder or Bidder from speaking with any stakeholders of AdvEn and that includes that any bid submitted by the Interim Lender shall be deemed to constitute a Qualified Bid, and which reserves to the Interim Lender a credit bid without considering the effect of those provisions on the fairness, transparency, and integrity of the process and on its capacity to attract superior third-party offers.

i. Granting an Administration Charge of $500,000 and D&O Charge of $100,000 ranking ahead of all secured creditors.

Material or evidence to be relied on:

5. The Order of the Honourable Justice Grant Dunlop, dated August 19, 2026 and entered August 21, 2026;

6. Memorandum of Argument, to be filed;

7. Such further and other evidence as counsel for the Appellants may advise and this Honourable Court may permit.

Applicable Acts, regulations and rules:

8. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;

9. The *Judicature Act,* RSA 2000, c J-2;

10. Such further and other Acts, regulations, and rules as counsel may advise and this Honourable Court may permit.