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COURT OF APPEAL OF ALBERTA

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COURT OF APPEAL FILE NUMBER:	2601-0256AC
TRIAL COURT FILE NUMBER:	24-3400057 and 25-3400059 (Estate No. 25-3400059; Commercial List No. B301-400059)
REGISTRY OFFICE:	CALGARY
	IN THE MATTER OF *THE BANKRUPTCY 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:	ADVEN INC. and ADVEN INDUSTRIES INC.
STATUS ON APPEAL:	RESPONDENTS
STATUS ON APPLICATION:	APPLICANTS
RESPONDENTS:	SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC and 2815793 ALBERTA LTD.
STATUS ON APPEAL:	APPELLANTS
STATUS ON APPLICATION:	RESPONDENTS

DOCUMENT: **MEMORANDUM OF ARGUMENT**

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 FOR 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)**

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PART 1: OVERVIEW

1. AdvEn applies to strike the notice of appeal filed on August 26, 2026 or, if dismissed, for an order to lift or vary the s 195 automatic stay under the BIA. AdvEn's Applications should be dismissed. The Appellants have applied for a declaration that leave is not required. Alternatively, the Appellants seek leave and an extension per Rule 31(1) of the General Rules.
2. The Appellants adopt the definitions, Statement of Facts, Law, and Argument contained in its Memorandum of Argument filed on September 16, 2026 concurrently with its Application. The purpose of this Memorandum is to address points raised in AdvEn's application to strike.

PART 2: ISSUES

3. Do the Appellants have leave as of right pursuant to section 193(c) and/or (a) of the BIA?
4. If the Appellants require leave to appeal pursuant to 193(e) of the BIA, should an extension to file an application for leave be granted pursuant to Rule 31(1) of the BIA General Rules?
5. If yes, should leave to appeal be granted pursuant to section 193(e) of the BIA?
6. Should the section 195 stay be lifted or varied?

PART 3: ARGUMENT

7. Section 193 of the BIA provides that an appeal lies from any order if the issue involves future rights; if the property involved exceeds ten thousand dollars; or by leave of the Court.[1]

A. The Appellants have a right of appeal pursuant to section 193(c) of the BIA

8. This case involves the priming of secured creditors in the amount of US$1.25 million, where there is an estimated deficiency of $15.7 million by the Trustee.[2] There is no reasonable prospect of recovery with Charges of US$1.25 million ranking ahead of the Appellants' security. On any view, there is loss in excess of $10,000.
9. Section 193(c) "does not apply to (i) orders that are procedural in nature, (ii) orders that do not bring into play the value of the debtor's property, or (iii) orders that do not result in a loss."[3] The distinction is between orders on the method by which an estate is monetized, which are

[1] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 at s 193.
[2] First Report of the Proposal Trustee dated August 13, 2026 at paras 19 and 44(c).
[3] *2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONCA 225 [*Bending Lake*] at para 53.

procedural, and orders determining the status and entitlement of competing claimants, which are not."[4] Where an order determined status and entitlement, section 193(c) applied.[5]

10. The authorities relied upon by AdvEn concern 'method', which is procedural. [6] None involved finally fixing the priority of a secured claimant's security. Where an order does, an appeal lies as of right under 193(c)."[7] Paragraphs 18 to 22 of the Order are of that character. They declare, finally, that the Charges rank ahead of the Appellants' registered security. The priority declaration is subject to no further court approval and is not contingent on the SISP. It took effect on pronouncement and the Interim Facility has been drawn upon since, which crystallizes the loss. The Order subordinated 281's registered security, where 281 had offered to advance funds itself on matched terms and in greater amount.

B. <u>The Appellants have a right of appeal pursuant to section 193(a) of the BIA</u>

11. In the alternative, the point at issue involves the Appellants' "future rights" per section 193(a). None of the authorities concern the subordination of a registered security interest. This consideration has twice been left open.[8] The application of 193(a) to a priming charge remains undetermined.

C. <u>If leave is required, an extension should be granted under Rule 31(1)</u>

12. Rule 31(1) of the General Rules of the BIA permits an appeal to be brought within such further time as a judge of the court of appeal stipulates.[9] The considerations include: a bona fide intention to appeal; a reasonable explanation for the delay; prejudice to the respondent; the benefit of the judgment; and a reasonable prospect of success. [10] "Consideration must be given to all factors in deciding whether the overall justice of the case requires that leave be granted."[11]

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[4] *Bending Lake* at para 58s and 56 citing *Alternative Fuel Systems Inc. v EDO (Canada) Ltd.,* 1997 ABCA 273. *Manitok* at para 29.
[5] *Manitok* at para 31.
[6] *Bending Lake* at para 60; *Royal Bank of Canada v 1512632 Ontario Inc (Cheema & Sons Transport)*, 2026 ONCA 618 [*Cheema*] at para 46; *MNP Ltd v Skyview Parking and RV Storage Ltd*, 2026 ABCA 91 [*Skyview*] at para 6.
[7] *Royal Bank of Canada v Patterson Dental Canada Inc*, 2025 ABCA 391 at para 2.
[8] *Manitok* at para 24; *PricewaterhouseCoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433 at para 19.
[9] *Bankruptcy and Insolvency General Rules*, CRC c 368 at R 31(1).
[10] *2003945 Alberta Ltd v 1951584 Ontario Inc,* 2018 ABCA 48 at para 28; *Cairns v Cairns,* 1931 CanLII 471 (AB SCAD) at p 69.
[11] *Liu v Chan*, 2024 ONCA 699 at para 17; *Cheema* at para 74, quoting *Leighton v Best,* 2014 ONCA 667 at para 14.

13. The considerations favour extension. The Appellants' notice of appeal was filed in the ten-day period on the good faith position that leave is not required. That the interpretation may prove incorrect is not disqualifying.[12] Nor is AdvEn prejudiced: the delay is short, [13] nothing is unwound, and the Appellants have taken no benefit under the paragraphs they appeal.

D. <u>If leave is required, it should be granted pursuant to section 193(e) of the BIA</u>

14. If leave is required, the Court considers whether the point on appeal is of significance to the practice or the action; is *prima facie* meritorious; and if it will hinder the action.[14] Leave should only be granted where the decision below appears contrary to law, amounts to an abuse of judicial power, or involves an obvious error causing prejudice for which there is no remedy. [15]

The Points on Appeal are Significant to the Practice

15. This is not a fact-specific complaint about scheduling or choice of lender. Section 50.6(5) directs the Court to consider whether the management retains the confidence of its major creditors and whether any creditor would be materially prejudiced. Section 50.4(9) directs a separate inquiry into the insolvent person's good faith. The question is whether a finding of good faith on the part of the debtor can stand in place of an independent assessment a proposed interim lender's independence. None of the militating factors in the authorities are present.[16] Unlike Athabasca,[17] the secured creditors who appeared objected; the Court observed that the prime charges might prejudice a secured creditor; and no assessment of the Interim Lender's independence was made. The application of 193(a) to a priming charge is itself an undetermined question. Secured creditors are entitled to notice to assess the proposed charges.[18] That right was not properly afforded here, which is prejudicial.

The Points on Appeal are of Significance to the Action Itself

16. A determination in the Appellants' favour alters the priority of recovery between the parties.

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[12] *Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited*, 2015 ABCA 206 at para 7.
[13] *Cheema* at para 78.
[14] *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66 at para 17 [*Athabasca*].
[15] *Athabasca* at para 18; see also *West Edmonton Mall Property Inc. v Duncan & Craig*, 2001 ABCA 40 at para 9; *DGDP-BC Holdings Ltd. v Third Eye Capital Corporation*, 2020 ABCA 442 at para 18.
[16] *Canacol Energy Ltd, Re*, 2026 ABCA 57 at paras 3, 5, 7, 12, and 15 [*Canacol*].
[17] *Athabasca* at paras 19 and 22.
[18] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 at ss 50.6, 64.1 and 64.2

The Points on Appeal are Meritorious

17. AdvEn's answer on merit rests on deference,[19] which does not insulate a failure to consider a mandatory statutory consideration or the application of a test directed at one statutory question in answer to another. That is what occurred.

    a. The agreement approved was not the agreement applied for. AdvEn's Application sought approval of an agreement dated August 7, 2026, but the agreement approved was amended that day after changes during the hearing.[20] Approving an agreement executed the day of the hearing was an error in principle.

    b. The competing facility was not rejected on its merits. Justice Dunlop was not prepared to choose 281's financing because it was not before him and he declined to rely on counsel alone.[21] However, AdvEn's revised term sheet, signed "[that] day" with changes accepted on counsel's description alone, was accepted.[22] The arguable error lies in the asymmetry.

    c. The independence of the Interim Lender was not assessed. Justice Dunlop acknowledged that " there may be some reason for suspicion", but resolved the concern by reference to AdvEn's good faith, reasoning that the individuals in question "are not the insolvent company."[23] Section 50.6(5) asks a different question. It is arguable that answering the s. 50.4(9) question left the s. 50.6(5) question unaddressed.

    d. Material prejudice was addressed within the extension analysis. The finding was that "[n]o creditor would be materially prejudiced if the extension being applied for were granted."[24] However, the Court found that prejudice may exist elsewhere.[25] It is arguable that the prejudice arising from the priority of the Charges under s. 50.6(5)(f) was not determined.

[19] *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 53.
[20] *Transcript of Proceedings*, August 19, 2026 at 35:1-3 and 32:03-05.
[21] *Transcript of Proceedings*, August 19, 2026 at 33:31-35.
[22] *Transcript of Proceedings*, August 19, 2026 at 32:01-04 and 35:02-03
[23] *Transcript of Proceedings*, August 19, 2026 at 32:31-33 and 32:23-27.
[24] *Transcript of Proceedings*, August 19, 2026 at 33:01-04.
[25] *Transcript of Proceedings*, August 19, 2026 at 33:07-10.

The Appeal will not unduly hinder the progress of the Action

18. The Appellants do not appeal paragraph 9 of the Order, extending the stay period to October 3, 2026; that extension remains in force regardless of the outcome. Further, a secured creditor that bids to protect its economic position does not thereby accept the displacement of its registered priority, and AdvEn cites no authority suggesting otherwise.

E. The section 195 stay should not be lifted

19. For the reasons in paragraph 30, the prejudice asserted is overstated: the issue is the ranking of the Charges, a question that can be determined on the timeline described without disturbing the restructuring. AdvEn has not established that the stay should be lifted in the interim.

PART 4: RELIEF REQUESTED

20. The Appellants respectfully request:

a. dismissal of AdvEn's Application to Strike the Appellants' Civil Notice of Appeal;

b. a declaration that leave is not required per sections 193(c) and/or 193(a) of the BIA;

c. in the alternative, an order extending the time to file the application for leave to appeal pursuant to R 31(1), such that the application filed September 16, 2026 is deemed filed in time and the Notice of Appeal filed August 26, 2026 is deemed compliant with R 31(2);

d. in the further alternative, leave to appeal pursuant to section 193(e) of the BIA;

e. an order that the appeal be heard on an expedited basis;

f. dismissal of AdvEn's application to lift or vary the stay under section 195 of the BIA;

g. costs of this application; and

h. such further and other relief as counsel may request and this Honourable Court may grant.

RESPECTFULLY SUBMITTED THIS 18th day of September, 2026

BLUE ROCK LAW LLP



David Mann KC / Scott Chimuk
Counsel for the Appellants

PART 5: TABLE OF AUTHORITIES

	AUTHORITY
1	*2003945 Alberta Ltd v 1951584 Ontario Inc*, 2018 ABCA 48.
2	*2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONCA 225.
3	*9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10.
4	*Alternative Fuel Systems Inc v EDO (Canada) Limited*, 1997 ABCA 273.
5	*Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66.
6	*Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited*, 2015 ABCA 206.
7	*Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282.
8	*Cairns v Cairns*, 1931 CanLII 471 (AB SCAD).
9	*Canacol Energy Ltd (Re)*, 2026 ABCA 57.
10	*DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2020 ABCA 442.
11	*Dominion Foundry Co Ltd v Continental Forwarding Ltd*, 1965 CanLII 596, 52 DLR (2d) 79 (MB CA).
12	*Leighton v Best*, 2014 ONCA 667.
13	*Liu v Chan*, 2024 ONCA 699.
14	*Manitok Energy Inc (Re)*, 2022 ABCA 260.
15	*Mantle Materials Group, Ltd v Travelers Capital Corp*, 2023 ABCA 339.
16	*MNP Ltd v Skyview Parking and RV Storage Ltd*, 2026 ABCA 91.
17	*North House Foods Ltd (Re)*, 2025 ONCA 563.
18	*Peakhill Capital Inc v 1000093910 Ontario Inc*, 2024 ONCA 59.
19	*PricewaterhouseCoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433.
20	*Royal Bank of Canada v 1512632 Ontario Inc (Cheema & Sons Transport)*, 2026 ONCA 618.
21	*Royal Bank of Canada v Patterson Dental Canada Inc*, 2025 ABCA 391.
22	*Trimor Mortgage Investment Corporation v Fox*, 2015 ABCA 44.
23	*West Edmonton Mall Property Inc v Duncan & Craig*, 2001 ABCA 40.
	LEGISLATION
26	*Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
27	*Bankruptcy and Insolvency General Rules*, CRC, c 368.