COURT OF APPEAL OF ALBERTA

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TRIAL COURT FILE NUMBER:	23-3400057 and 25-3400059 (Estate No. 25-3400059; Commercial List No. B301-400059)
REGISTRY OFFICE:	CALGARY
	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:	**MEMORANDUM OF ARGUMENT**

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PART 1: STATEMENT OF FACTS

Overview

1. This is an appeal by Secure Property Development & Investment PLC ("**SPDI**") and 2815793 Alberta Ltd. ("**281**", and together with SPDI, the "**Appellants**"), two registered secured creditors of AdvEn Inc. and AdvEn Industries Inc. (together, "**AdvEn**"), from an Order of the Honourable Justice Dunlop of the Court of King's Bench of Alberta, pronounced August 19, 2026 and entered August 21, 2026 (the "**Order**"), made in AdvEn's proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").

2. The Order, among other things, authorized AdvEn to borrow up to US$650,000 from 2841034 Alberta Ltd. (the "**Interim Lender**"), a corporation incorporated fourteen days before the hearing by two former directors of the Appellant 281; granted a $500,000 Administration Charge and a $100,000 D&O Charge; and declared that all three charges (together, the "**Charges**") rank in priority to all other security interests, including the Appellants' registered security over all of AdvEn's present and after-acquired property. The Order also approved a sale and investment solicitation process (the "**SISP**") containing terms that favour the Interim Lender.

3. The Appellants ask the Court to declare that permission to appeal is not required pursuant to sections 193(a) and/or (c) of the BIA, because the Order finally determines the priority of the Charges over the Appellants' registered security in specifically identified property, and that determination is neither procedural nor speculative.

4. Alternatively, the Appellants seek permission to appeal pursuant to section 193(e) of the BIA.

Background

5. AdvEn Inc. and AdvEn Industries Inc. are Alberta-based companies engaged in the development of carbon technology, operating from a leased facility in Nisku, Alberta. AdvEn Industries Inc. is wholly owned by AdvEn Inc. The companies are still in their research and development phase and have not generated positive net income.

6. On July 20, 2026 (the "**Filing Date**"), AdvEn filed a Notice of Intention to Make a Proposal ("**NOI**") under subsection 50.4(1) of the BIA. Alvarez & Marsal Canada Inc. consented to act as trustee (the "**Proposal Trustee**"). AdvEn's own unaudited financial statements for the year ended December 31, 2025 record the book value of its assets at approximately $11.4 million against total liabilities of approximately $27.1 million — a shortfall of some $15.7 million.

7. SPDI is the first-registered secured creditor of AdvEn Industries Inc. 281 holds registered security over all of the present and after-acquired personal property of both AdvEn entities, including their intellectual property, granted pursuant to a general security agreement dated May 19, 2026 and registered under the Personal Property Security Act (Alberta) on July 9, 2026. As of August 2026, AdvEn was indebted to 281 in an amount evidenced by a grid promissory note in excess of US$550,000.

8. On August 10, 2026, AdvEn served an application seeking, among other relief, authorization to borrow up to US$650,000 from the Interim Lender under an interim financing agreement, approval of the Administration Charge, the D&O Charge, and an Interim Lender's Charge ranking ahead of all other security including the Appellants', approval of the SISP, and an extension of the stay period to October 3, 2026. The application was supported by the affidavit of Ingo Mueller, AdvEn's Acting Chief Executive Officer, sworn August 8, 2026 (the "**Mueller Affidavit**").

9. The Interim Lender, 2841034 Alberta Ltd., was incorporated on August 5, 2026, fourteen days before the hearing of AdvEn's application. Its only directors, Michael Khorassani and Jacques Demers, were, until shortly before its incorporation, directors of the Appellant 281, the entity whose registered security the Interim Lender's Charge would prime. One of them is also a principal of another secured creditor of AdvEn.

10. On cross-examination on August 18, 2026, Mr. Mueller was asked, after extensive questioning and repeated objections by counsel for AdvEn, to describe what he was personally receiving under the interim financing. He testified that, should the Interim Lender's bid succeed in the SISP, he would receive "a combination of 15 percent in

equity of the successor company based upon certain bonus milestones [and] KPIs." That personal interest was not disclosed in the Mueller Affidavit.

11. On the same cross-examination, counsel for the Appellants obtained six undertakings from Mr. Mueller, each taken "under advisement." A response to undertakings was received shortly before the hearing on August 19, 2026, including three refusals.

12. On August 17, 2026, counsel for 281 wrote to the Proposal Trustee and to AdvEn's counsel enclosing an executed interim financing agreement from 281 offering AdvEn up to US$800,000 (US$150,000 more than the Interim Lender's facility), at 7.5% interest (0.5% below the Interim Lender's rate), maturing November 30, 2026 (thirty days later than the Interim Lender's facility), and otherwise on substantially the same terms (the "**Alternative Facility**").

13. AdvEn's application came on for hearing before Justice Dunlop on August 19, 2026. The Appellants sought a short adjournment of seven to ten days, together with an interim stay preserving the status quo, on the basis that: (i) the Appellants had had no meaningful opportunity to review or respond to further materials filed by AdvEn in the hours before the hearing, (ii) the interim financing agreement ultimately placed before the Court differed from, and was first placed in evidence on the day of the hearing, distinct from the agreement dated August 7, 2026 identified in AdvEn's application; (iii) the Alternative Facility, offered five days earlier, had not been evaluated.

<u>The August 19, 2026 Hearing and the Order</u>

14. Justice Dunlop refused the adjournment and granted AdvEn's application in its entirety. The Order:

    a. deemed the time for service of the application good and sufficient and the application properly returnable on August 19, 2026 (paragraph 1);

    b. granted the Administration Charge of $500,000 and the D&O Charge of $100,000 (paragraphs 10 to 12);

    c. authorized AdvEn to borrow up to US$650,000 from the Interim Lender and granted the Interim Lender's Charge (paragraphs 13 to 17);

d. declared that the Administration Charge, the D&O Charge, and the Interim Lender's Charge rank in priority to all other security interests, charges, and claims of secured creditors, including the registered security of the Appellants (paragraphs 18 to 22); and

e. approved the SISP (paragraphs 23 to 26), which provides, among other things, that a prospective bidder may not communicate with any AdvEn stakeholder (SISP, Schedule "A", paragraph 13), and that any bid submitted by the Interim Lender "shall be deemed to constitute a Qualified Bid notwithstanding the requirements set forth in [the] SISP" and reserves to the Interim Lender the right to credit bid (SISP, Schedule "A", paragraph 40(a)).

15. The Order left paragraph 9 – extending the stay period to October 3, 2026 – undisturbed, and the Appellants do not appeal that paragraph.

16. The SISP commenced on August 21, 2026; Phase I bids are due September 25, 2026; and a sale approval hearing is scheduled for the week of November 2, 2026. AdvEn has been authorized to, and is, borrowing under the Interim Facility secured by the Interim Lender's Charge, which ranks ahead of the Appellants' registered security.

17. The Appellants filed their Civil Notice of Appeal on August 26, 2026, appealing paragraphs 1 and 10 to 26 of the Order.

PART 2: STATEMENT OF POINTS AT ISSUE

18. Whether permission to appeal is required at all, given that the Order finally determines the priority of Charges exceeding US$1.25 million ahead of the Appellants' registered security in specifically identified property, in circumstances where the value at risk to the Appellants is fixed and evidenced, not speculative.

19. If permission is required, whether it should be granted because Justice Dunlop erred in law, in principle, or in mixed fact and law:

a. in refusing the Appellants' request for a short adjournment in circumstances where the interim financing agreement approved differed from, and was first placed in

evidence on, the day of the hearing, and undertakings going to the identity, independence, and provenance of the Interim Lender and to the personal interest of AdvEn's chief executive officer remained unanswered;

b. in approving a super-priority charge in favour of a lender without considering the Interim Lender's independence, the undisclosed personal interest of AdvEn's chief executive officer, or the executed Alternative Facility on more favourable terms;

c. in finding, or proceeding on the basis, that no creditor would be materially prejudiced by the Charges, in the absence of any evidence of the realizable value of the property over which the Appellants hold security, where the only financial information was unaudited book value and the Proposal Trustee's own evidence was that a bankruptcy could yield little to no recoveries to creditors;

d. in treating the willingness of the Interim Lender's principals to lend as evidence that AdvEn's management retains the confidence of its major creditors, when the Appellants – AdvEn's senior registered secured creditors and the only creditors to address the Court – had stated that they had lost that confidence;

e. in approving a SISP that prohibits bidders from speaking with AdvEn's stakeholders and deems any bid by the Interim Lender to be a Qualified Bid regardless of the SISP's own requirements, without considering the effect of those terms, and of the chief executive officer's personal interest, on the fairness and integrity of the process; and

f. in granting Administration and D&O Charges ranking ahead of all secured creditors without considering whether the amount was reasonably necessary having regard to AdvEn's cash-flow and the claims of the secured creditors being primed.

PART 3: STATEMENT OF ARGUMENT

Permission to Appeal is Not Required

20. Section 193 of the BIA provides, in relevant part, that unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court (a) if the point at issue involves future rights; … (c) if the property involved

in the appeal exceeds in value ten thousand dollars; … and (e) in any other case, by leave of a judge of the Court of Appeal.[1]

21. Sections 193(a) to (d) have been narrowly interpreted to ensure that bankruptcy and insolvency proceedings are administered efficiently and expeditiously. That narrow interpretation exists, however, to screen out orders that are procedural in nature – orders that do not result in a gain or loss to an interested party, or that do not yet contain "some element of a final determination of the economic interests of a claimant in the debtor."[2] Where an order does contain that element, and where the value in jeopardy is fixed and evidenced rather than speculative, section 193(c) is satisfied.

22. This is such a case. Paragraphs 18 to 22 of the Order do not merely extend a stay or authorize preparatory steps; they declare, finally and unconditionally, that the Charges – now exceeding US$1.25 million in the aggregate – rank in priority to "all other security interests, charges and claims of secured creditors, including the registered security of the Appellants." That is precisely the final determination of the economic interests of a claimant in the debtor that the jurisprudence requires. Further, the loss is fixed and evidenced: AdvEn's own unaudited financial statements disclose a shortfall of approximately $15.7 million between the book value of its assets and its total liabilities; the Proposal Trustee's First Report records that a bankruptcy could result in little to no recoveries to creditors; the quantum of 281's registered indebtedness is fixed and documented by a grid promissory note; the Interim Lender's Charge is already being drawn upon under an operative facility; and the SISP that the Charges are designed to fund is proceeding to a sale approval hearing the week of November 2, 2026. The diminution of the estate available to satisfy the Appellants' security is accordingly immediate, quantified, and irreversible absent a stay – not a mere possibility of a future loss.

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[1] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 at s 193.
[2] *Mantle Materials Group, Ltd v Travelers Capital Corp*, 2023 ABCA 339 at para 6; *Manitok Energy Inc (Re),* 2022 ABCA 260 at para 27; *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225 at para 53.

23. In the further alternative, the point at issue also involves the Appellants' "future rights" within the meaning of section 193(a): the right of the Appellants to realize on their registered security, and the order of priority in which they may do so, has now been finally fixed by the Order.

24. Permission to appeal is accordingly not required with respect to paragraphs 1 and 10 to 26 of the Order.

<u>If permission is required, it should be granted</u>

25. If permission is required, this Court considers the following factors, all to be assessed collectively, on an application for leave under section 193(e) of the BIA:

    a. whether the point on appeal is of significance to the practice;

    b. whether the point raised is of significance to the action itself;

    c. whether the appeal is *prima facie* meritorious, in that it is not frivolous; and

    d. whether the appeal will unduly hinder the progress of the action.[3]

26. In addition, permission should 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. The standard is not high: the proposed appeal need only raise a point of significance for which there is at least an arguable case.[4]

The Points on Appeal are Significant to the Practice

27. The points raised are of real 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

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[3] *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd,* 2021 ABCA 66 **at para 17.**
[4] *Ibid* at para 18; see also *Dykun v Odishaw*, 1998 ABCA 220 at para 4; *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.

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.

The Points on Appeal are of Significant to the Action Itself

28. The appeal is of 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.

The Points on Appeal are Meritorious

29. Each of the following grounds discloses at least an arguable error of law, principle, or mixed fact and law.

    a. 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 arguable that refusing a short adjournment in these circumstances, and deeming the application properly returnable notwithstanding them, was an error in principle.

b. 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 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.

c. 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.

d. 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.

e. 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 cash-flow evidence and the interests of the creditors being primed, an assessment that does not appear to have occurred here.

30. None of these points is frivolous or unarguable; each meets the modest threshold required at this stage.

The Appeal will not unduly hinder the progress of the Action

31. 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 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.

PART 4: RELIEF REQUESTED

32. The Appellants respectfully request:

a. a declaration that permission to appeal is not required with respect to paragraphs 1 and 10 to 26 of the Order, pursuant to sections 193(a) and/or 193(c) of the BIA;

b. in the alternative, permission to appeal the said paragraphs of the Order pursuant to section 193(e) of the BIA;

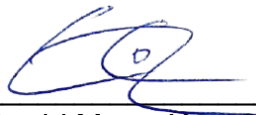
c. an order that the appeal be heard on an expedited basis;

d. costs of this application; and

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

RESPECTFULLY SUBMITTED THIS 16th day of September, 2026

BLUE ROCK LAW LLP



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