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**COURT OF APPEAL OF ALBERTA**

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| COURT OF APPEAL FILE NUMBER: | 2601-0256AC |
| TRIAL COURT FILE NUMBERS: | 24-340057 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 |
| STATUS ON CROSS-APPLICATION: | RESPONDENTS |
| RESPONDENTS: | SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC and 2815793 ALBERTA LTD. |
| STATUS ON APPEAL: | APPELLANTS |
| STATUS ON APPLICATION: | RESPONDENTS |
| STATUS ON CROSS-APPLICATION: | APPLICANTS |
| DOCUMENT: | **RESPONDING MEMORANDUM OF ARGUMENT OF ADVEN INC. and ADVEN INDUSTRIES INC., THE APPLICANTS / RESPONDENTS BY CROSS-APPLICATION** |

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| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: | **McMillan LLP**<br>1700, 421 – 7th Ave SW<br>Calgary, AB T2P 4K9<br>Attention: Preet Saini / Tevia R.M. Jeffries<br>Telephone: (403) 531-4716<br>Fax: (403) 531.4720<br>Email: preet.saini@mcmillan.ca<br>tevia.jeffries@mcmillan.ca<br>File No. 327410<br>**Counsel to the Applicants / Respondents / Respondents by Cross-Application, AdvEn Inc. and AdvEn Industries Inc.** |

and

| | |
|---|---|
| CONTACT INFORMATION FOR ALL OTHER PARTIES: | **Blue Rock Law LLP**<br>700 – 215 9 Avenue SW<br>Calgary, Alberta T2P 1K3<br>Attention: Scott Chimuk<br>Email: scott.chimuk@bluerocklaw.com<br>**Counsel to the Respondents / Appellants / Applicants by Cross-Application, Secure Property Development & Investment PLC and 2815793 Alberta Ltd.**<br><br>**Fasken Martineau DuMoulin LLP**<br>Suite 3400, 350 7 Avenue SW<br>Calgary, AB T2P 3N9<br>Attention: Robyn Gurofsky/ Tiffany Bennett<br>Email: rgurofsky@fasken.com / tbennett@fasken.com<br>**Counsel to the Proposal Trustee, Alvarez & Marsal Canada Inc. (not a party to this appeal)**<br><br>**Warren Kachur Osadetz LLP**<br>425-1122 4 Street SW<br>Calgary, AB T2R 1M1<br>Attention: Martin Rejman<br>Email: mrejman@wkolaw.ca<br>**Counsel to the Interim Lender, 2841034 Alberta Ltd. (not a party to this appeal)** |

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## I. Overview

1. This memorandum of argument of the Respondents, AdvEn Inc. and AdvEn Industries Inc. (together, "**AdvEn**"), supplements AdvEn's memorandum of argument filed on September 14, 2026 (the "**AdvEn Application Memorandum**"). All capitalized terms used but not defined herein take the meanings from the AdvEn Application Memorandum.

2. This memorandum of argument responds to certain issues raised by the Appellants in two parts:

   a) Whether permission to appeal is required; and

   b) Whether permission to appeal should be denied.

### A. Permission to Appeal is Required: The "Fixed and Evidenced Loss" Argument Does Not Engage Section 193(c); There Are No Future Rights Engaging Section 193(a)

3. The Appellants argue that section 193(c) is satisfied because the Order "finally and unconditionally" determines that the Charges rank ahead of their registered security, and that this final determination of the priority of the Charges creates a "fixed and evidenced" loss. This is a misstatement of the law and is contradicted by the law cited by the Appellants in their memorandum of argument filed on September 16, 2026 (the "**Appellant's Memorandum**").

4. The third *Bending Lake* criterion does not ask whether the nominal value of the charges exceeds $10,000. The criterion is whether the order under appeal caused the appellant an actual, proven loss exceeding that amount[1]. The law cited by the Appellants at paragraph 21, footnote 2 of the Appellant's Memorandum confirms that orders approving super-priority charges under the *BIA* are procedural in nature. [2]

[1] *2403177 Ontario Inc v Bending Lake Iron Group Ltd*, 2016 ONCA 225 at para 64; *Re North House Foods Ltd*, 2025 ONCA 563 at para 30.
[2] *Mantle Materials Group, Ltd v Travelers Capital Corp*, 2023 ABCA 339 at para 6, leave to appeal to SCC denied 2024 CanLII 48151 (SCC) [*Mantle*].

5. In particular, the Appellants cite the *Mantle* decision.[3] In the two *Mantle* decisions, this Court first dealt with an appeal of an order approving charges. This Court denied permission to appeal, holding that section 193(c) did not apply to grant an appeal as of right[4]:

> Travelers has not filed evidence showing the value of the equipment at issue and has not shown that its recovery is in jeopardy. The order it seeks to appeal is an order extending time to make a proposal, approved various charges on the bankrupt estate, and approved payment of certain pre-filing debts. The order is procedural in nature and section 193(c) does not apply to give Travelers a right to appeal.

6. The appellants in *Mantle* then applied for permission to appeal the Single Court of Appeal Justice's decision specifically regarding the denial to appeal as of right pursuant to section 193(c).[5] This subsequent application for permission was also denied. This Court held again that the order under appeal was procedural in nature, because there was no element of final determination as there is no crystallization or determination of the value of loss until the restructuring process takes its course.[6]

7. The Appellants also argue that the Order engages "future rights" under section 193(a) by finally fixing the order of priority in which they may realize on their registered security. This is a present right, not a future one. The Order does not create or extinguish a future right; it determines the current priority of existing rights, in respect of which any loss is speculative and unproven pending a sale outcome[7].

### B. The Test for Permission to Appeal is Not Met:

#### i. The Procedural Fairness Grounds Lack Merit

8. The chronology leading up to the hearing before the Chambers Justice is attached as Appendix "A" to AdvEn's Application Memorandum and must be considered. The Appellants were served nine (9) days prior to the hearing. The Chambers Justice also found that the Appellants knew or ought to have known that AdvEn's application must be heard on or around August 19, 2026, even prior to service as the stay of proceedings would expire the next day.[8] The Appellants chose to wait until the day before the hearing to cross-examine Mr.

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[3] *Ibid.*
[4] *Mantle Materials Group, Ltd v Travelers Capital Corp*, 2023 ABCA 302 at para 12.
[5] *Mantle, supra* note 2 at para 1.
[6] *Mantle supra* note 2 at para 6.
[7] *Royal Bank of Canada v 1512632 Ontario Inc (Cheema & Sons Transport)*, 2026 ONCA 618 at para 46 [*Cheema*].
[8] *Re AdvEn Inc*, B301-400059 (Transcript of Proceedings, 19 August 2026) at 13:5-20 [Transcript of Proceedings].

Mueller on his affidavit, and chose to file no responding materials other than a secretarial affidavit containing a competing term sheet. While the Chambers Judge was "sympathetic to counsel being unavailable", he found that "that is just the way it is with these kind of applications. Everybody has to either drop what they are doing and focus on this, or find someone else to do it."[9]

9. The decision to decline to adjourn the application was a discretionary decision of a supervising judge managing an insolvency proceeding, and is entitled to a high degree of deference.[10]

### ii. The Good Faith Finding

10. The Appellants say the Chambers Justice's decision approving the Interim Financing is arguably an error because of a concern regarding good faith. The position argued before the Chambers Justice was that the interim financing was being proposed by two former directors of 281 who had incorporated a new entity while they were still fiduciaries of 281[11]. The Chambers Justice acknowledged the concern. The Chambers Justice carefully considered the Appellants' concerns, given the requirement of a good faith finding to grant an extension of the stay of proceedings pursuant to Section 50.4(9). Section 50.4(9)[12] of the BIA requires the Court to be satisfied that the insolvent person has acted and is acting in good faith and with due diligence before any extension can be granted.

11. Considering the totality of the evidence, including Mr. Mueller's affidavit and the Proposal Trustee's First Report, the Chambers Justice heard what the Appellants said about the officers of 281 "switching horses, and advancing interim financing proposal on behalf of another company" and found "that suggests some perhaps improper behaviour by those directors, but they are not the insolvent company".[13] The Chambers Justice identified that the Appellants "do not oppose the granting of the [stay] extension."[14]. He further held: "if I were to find that

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[9] *Ibid*, 13:26-29.
[10] *Cheema*, *supra* note 7 at para 61; *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 53; *AFC Mortgage Administration Inc v Sunrise Acquisitions (Elmvale) Inc*, 2024 ONCA 764 at para 35.
[11] Transcript of Proceedings, *supra* note 8 at 3:32-37.
[12] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 50.4(9) [BIA]
[13] Transcript of Proceedings, *supra* note 8 at 32:22-25.
[14] Transcript of Proceedings, *supra* note 8 at 32:26-27

I am not satisfied that … the two AdvEn companies, if I were to find they had not acted in good faith, boom, I cannot grant the extension."[15].

12. In other words, the Appellants did not oppose the stay extension and do not appeal the stay extension. Having elected not to challenge that relief at the Chambers or appellate level, they are bound by the underlying good faith finding and cannot now invite this Court to reach a contrary conclusion in respect of an order made on the same evidence at the same hearing.

13. The Appellants also raised a concern that Mr. Mueller would receive a benefit if the Interim Lender is the successful party in the SISP. This argument fails as well. First, the evidence before the Chambers Justice was that the SISP was intentionally crafted to exclude Mr. Mueller because of the disclosed intention of Mr. Mueller to work with secured creditors to submit a bid[16]. The SISP requires full disclosure of any insider participation or benefit, which was highlighted to the Chambers Justice[17]. The appropriateness of any benefit is not yet ripe for adjudication, and the procedural Order ensures that, when such benefit is ripe for adjudication, it must be disclosed.

14. Additionally, on the record before the Chambers Justice, 281 and the Interim Lender stood in identical positions. Mr. Mueller's evidence is that he was offered the same benefit by 281 should 281 be successful in acquiring AdvEn's assets[18]. The Appellants chose to file no evidence on this issue and do not mention same in the Appellant's Memorandum.

### iii. The Charges And Section 50.6 Arguments Are Not Significant to Practice and Are Not *Prima Facie* Meritorious

15. The questions raised are highly fact-specific and do not raise novel legal principles that would benefit the broader restructuring practice. Courts regularly assess the independence of interim lenders and the adequacy of competing financing offers on a case-by-case basis under

[15] Transcript of Proceedings, *supra* note 8 at 32:27-29.
[16] Transcript of Proceedings, *supra* note 8 at 10:24-32, 15:25-37, 21:10, 22:11.
[17] Order of Justice Dunlop pronounced on August 19, 2026 at Schedule A at para 43-45, Exhibit H to the of Brenda Lewis-Besler sworn September 14, 2026 at pgs. 566-587.
[18] *Re AdvEn Inc*, B301-400059 (Transcript of Questioning of Ingo Wilhelm Mueller, 18 August 2026) at 46:22-23 [Transcript of Questioning].

section 50.6(5), and the existing jurisprudence already provides sufficient guidance. As held by this Court:[19]

> The approval of interim financing and sales of assets under sections 50.6 and 65.13 of the BIA are matters of judicial discretion and are highly fact dependent. The BIA includes a list of non-exhaustive factors to inform the exercise of that discretion.

16. The Appellants argue that the Administration Charge and D&O Charge required an assessment of "reasonable necessity" by reference to detailed cash flow evidence, and that the Chambers Justice erred in failing to conduct that analysis[20]. There is no such statutory requirement of reasonable necessity for approval of these charges.[21] The Chambers Justice expressly addressed the statutory test on the record, stating that AdvEn had to be able to keep going through the proposal or sale period and that he was satisfied the test for the charges was met.[22] A cash flow forecast showing the fees anticipated during the forecast period was before the Court. That is what section 64.2(1) requires.

17. The Chambers Justice found on the record that, in the context of AdvEn's going concern value, the priming of existing secured creditors would not materially prejudice creditors, and that in a liquidation the specialized equipment would yield minimal proceeds regardless.[23]

18. The Appellants assert that the Chambers Justice found confidence of the major creditors under section 50.6(5)(c) based on the willingness of the Interim Lender's principals to fund. A review of the transcript does not support that characterization: the Chambers Justice did not address confidence of major creditors under section 50.6(5)(c) as a standalone finding. His decision to proceed with the Interim Lender's interim financing rather than 281's was grounded in the fact that the Appellants had not agreed with AdvEn on terms for their interim financing facility and had not put the complete terms of their competing proposal before the Court in admissible form[24].

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[19] *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd,* 2021 ABCA 66 at para 19.
[20] *Re AdvEn Inc*, B301-400059 (Memorandum of Argument of Secure Property Development & Investment PLC and 2815793 Alberta Ltd. filed September 16, 2026) at p 12.
[21] BIA, *supra* note 13, s 64.2(1).
[22] Transcript of Proceedings, *supra* note 8 at 33:22-25.
[23] Transcript of Proceedings, *supra* note 8 at 33:12-17.
[24] Transcript of Questioning, *supra* note 19 at 36:18-25.

19. AdvEn respectfully requests the relief sought in its application and AdvEn's Application Memorandum.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED at Calgary, Alberta this 18th day of September 2026.**

Estimated Time for Argument: 30 minutes

**McMillan LLP**

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Per: Preet Saini and Tevia R.M. Jeffries,
Counsel for the Respondents/Applicants:
AdvEn Inc. and AdvEn Industries Inc

## II. TABLE OF AUTHORITIES

| TAB | AUTHORITY |
|---|---|
| **1.** | *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 |
| **2.** | *9354-9186 Québec inc v Callidus Capital Corp,* 2020 SCC 10 |
| **3.** | *2403177 Ontario Inc v Bending Lake Iron Group Ltd*, 2016 ONCA 225 |
| **4.** | *AFC Mortgage Administration Inc v Sunrise Acquisitions (Elmvale) Inc*, 2024 ONCA 764 |
| **5.** | *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66 |
| **6.** | *Mantle Materials Group, Ltd v Travelers Capital Corp,* 2023 ABCA 302 |
| **7.** | *Mantle Materials Group Ltd v Travelers Capital Corp*, 2023 ABCA 339 |
| **8.** | *Re North House Foods Ltd*, 2025 ONCA 563 |
| **9.** | *Royal Bank of Canada v 1512632 Ontario Inc (Cheema & Sons Transport)*, 2026 ONCA 618 |