

In the Court of Appeal of Alberta

Citation: AdvEn Inc (Re), 2026 ABCA 310

Date: 20260929
Docket: 2601-0256AC
Registry: 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.**

Between:

AdvEn Inc. and AdvEn Industries Inc.

Applicants/Cross-Respondents

- and -

Secure Property Development & Investment PLC and 2815793 Alberta Ltd.

Respondents/Cross-Applicants

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

Application to Strike an Appeal
Application for Extension of Time
Application for Permission to Appeal

**Reasons for Decision of
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Introduction

[1] The respondents on this appeal, AdvEn Inc and AdvEn Industries Inc (collectively, AdvEn), brought an application to strike the Notice of Appeal on an urgent basis. The appellants, Secure Property Development & Investment PLC (SPDI) and 2815793 Alberta Ltd (281), brought a cross-application seeking permission to appeal.

[2] On July 20, 2026, the respondents filed separate Notices of Intention to Make a Proposal pursuant to s 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, with Alvarez & Marsal Canada Inc acting as Proposal Trustee.

[3] On August 19, 2026, a chambers justice granted an extension, procedurally consolidated the respondents' bankruptcy estates into one estate, granted an Administration Charge of \$500,000 and a D&O Charge of \$100,000, authorized AdvEn to borrow up to US\$650,000 from 2841034 Alberta Ltd (284) as Interim Lender, granted an Interim Lender's Charge, declared that the three Charges rank in priority to all other security interests, charges and claims of secured creditors, and approved a Sale and Investment Solicitation Process (SISP).

[4] The appellants appealed the order. They are registered secured creditors, as is Excelsior Management Limited.

[5] The respondents applied to strike the Notice of Appeal on the basis that permission to appeal was required but not sought under s 193(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and the appellants should be denied a filing extension.

[6] The appellants subsequently applied for an order declaring that permission to appeal is not required and, if it is required, for an extension of time to file and an order granting permission.

Chambers Hearing

[7] At the chambers hearing, which was held on the deadline for an extension application triggered by service of the Notice of Intention, the appellants supported moving toward restructuring of AdvEn.

[8] AdvEn had filed materials with respect to an interim financing agreement with 284. The appellants wished to put forward a competing proposal for financing by 281. They had filed a secretarial affidavit within the previous 48 hours containing a competing interim lending facility contingent on unspecified changes to the SISP but did not forward it to the trial coordinator and it was not before the chambers justice. They sought a 7 to 10 day adjournment to provide additional

material and “to allow competing creditors to continue to try to resolve their dispute regarding interim financing”. The chambers justice found it was not reasonable to adjourn in the circumstances. The chambers justice noted everyone had been aware of the stay extension deadline triggered by the Notice of Intention, service had been effected 9 days prior, AdvEn was facing a cash flow crisis the following week and there was no available time for the matter to be heard on the commercial list until the end of the following week.

[9] The appellants raised a concern that they would be prejudicially affected as secured creditors by 284’s proposed interim financing as it would have the effect of priming their asserted priority.

[10] During oral argument, the interim financing proposals on both sides were modified. The appellants removed their requirement that the SISP be revised.

[11] The appellants also argued that the former directors of 281 who were now involved in 284 were not acting in good faith, referring to a cross-examination of AdvEn’s CEO from the previous day, the transcript of which the appellants had received the morning of the chambers hearing. 284 had been incorporated 14 days before the hearing by two former directors of 281. 281 had been involved in discussions with the CEO of AdvEn regarding an interim financing proposal until early August 2026 when 284 was formed and put together a proposal. One of the directors of 284 is a director of Excelsior. The appellants raised concerns that the CEO had concealed, “intentionally or by omission”, his discussions with 284 from some of the individuals involved in 281. Counsel for the Proposal Trustee advised the Court that although there was a dispute between the parties, the Proposal Trustee had seen nothing in the evidence to suggest a lack of good faith on the part of the companies.

[12] It was not in dispute that a going concern sale was preferable for creditors to a liquidation. With respect to the factors under s 50.4(9) regarding an extension, the chambers justice noted the appellant’s concerns coming out of the cross-examination of the CEO but held that suspicion did not overcome the evidence in the CEO’s affidavit and the Proposal Trustee’s report that the AdvEn companies were acting in good faith. He found AdvEn would likely be able to make a viable proposal and no creditor would be materially prejudiced if the extension was granted. With respect to the competing interim financing proposals, the chambers justice found they were roughly similar. He was not prepared to choose the appellant’s proposal which was not before him. He held that the fact the CEO had been in discussions with 284 did not prevent the appellants from putting forward a financing term sheet of their own. He approved 284’s proposal, along with the other terms sought.

Analysis

[13] On these competing applications, the Court must consider:

- a) whether permission to appeal is required
- b) if so, whether an extension of time to file and permission to appeal should be granted.

Is permission to appeal required?

[14] According to the Notice of Appeal, the appellants take issue with the chambers justice:

- deeming time for service of the application good and sufficient, declaring the application properly returnable on the oral hearing date, limiting the persons entitled to service and denying the adjournment
- authorizing the respondents to borrow from 284 under the interim financing agreement which was modified during oral argument
- granting the Administration, D&O and Lender's Charges
- declaring that the Charges rank in priority to all other security interests, charges and claims of secured creditors, including the registered security of the appellants, and
- approving the SISP.

[15] The appellants referred in their written memorandum to ss 193(a) and (c) to argue that permission is not required.

Section 193(a)

[16] The exceptions to the requirement for permission to appeal in ss 193(a) to (d) of the *BIA* have been interpreted so as to ensure that bankruptcy and insolvency proceedings are administered efficiently and expeditiously.

[17] Section 193(a) provides that no permission is required if the point at issue involves future rights.

[18] Future rights are not procedural rights or commercial advantages that may accrue from the order challenged on appeal, they are future legal rights; they do not include presently existing rights that may be exercised in the future: *North House Foods Ltd (Re)*, 2025 ONCA 563 at paras 25-26; *2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONCA 225 at paras 20-26; *Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282 at paras 15-16; *Ravelston Corp (Re)*, 2005 CanLII 63802 at para 17 (ONCA). A right to enforce on security is a present right even though it may have to be enforced in the future due to an insolvency. Whatever may be the appellants' rights as secured creditors, those crystallized prior to

the order. The order did not finally fix the priority of any secured claimant's security, as suggested by the appellants.

[19] The appellants rely on *Manitok Energy Inc (Re)*, 2022 ABCA 260 and *PricewaterhouseCoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433. *Manitok* concerned entitlement to post-sale proceeds in an insolvency proceeding that had already concluded. *PricewaterhouseCoopers* related to approval of an allegedly improvident sale proposed by a receiver following a sale process. The Court's decision in *PricewaterhouseCoopers* not to address issues respecting permission under s 193(a) and (c) is not significant in the context of this application.

[20] Further, the procedural fairness issues raised in relation to the refused adjournment do not relate to a present right: *Re Ting*, 2021 ONCA 425 at para 13; *MNP Ltd v Skyview Parking and RV Storage Ltd*, 2026 ABCA 91 at para 5; *Royal Bank of Canada v 1512632 Ontario Inc (Cheema & Sons Transport)*, 2026 ONCA 618 at para 46.

[21] Although the Notice of Appeal indicates an intention to appeal the part of the order pertaining to the SISP, no basis for such a challenge has been formulated, and in fact any objections to the SISP itself were withdrawn during the oral hearing. Therefore, an appeal on this ground would require permission in any event under Rule 14.5(1)(d) of the *Alberta Rules of Court*, Alta Reg 124/2010

Section 193(c)

[22] Section 193(c) provides that no permission to appeal is required if the property involved in the appeal exceeds \$10,000 in value.

[23] Section 193(c) does not apply to orders that: are procedural in nature, do not bring into play the value of the debtor's property, or do not result in a loss: *2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONCA 225 at para 53.

[24] The grounds relating to service, adequacy of notice and the denied adjournment are procedural. Therefore, s 193(c) does not apply to them. As well, Rule 14.5(1)(b) requires permission regarding appeal of a decision respecting an adjournment.

[25] Orders approving sales processes, interim financing and super-priority charges under the *BIA* have been found to be procedural in nature: *Mantle Materials Group, Ltd v Travelers Capital Corp*, 2023 ABCA 339 at para 6, leave denied 2024 CanLII 48151 (SCC); *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66 at paras 12-16. The value of the debtor's property is not brought into play by the order: *Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282 at para 17. Given the appellant's agreement to the restructuring and the SISP, the Charges were inevitable. Without granting priority to the Charges, the necessary professionals would not undertake the required work.

[26] While the Court in *Manitok* at para 29 held that not every appeal regarding an approval and vesting order will be procedural, it is distinguishable on the facts.

[27] Therefore, the terms of the order relating to the SISP are procedural. As noted, the appellants agreed to the terms of the SISP during the oral hearing and therefore they would require permission in any event under Rule 14.5(1)(d).

[28] The appellants submit the terms of the order relating to the interim lending facility, the quantum of the Charges and the priming of the Charges over other secured creditors result in a loss of over \$10,000.

[29] The question under s 193(c) in this regard is whether the order caused the appellants an actual, proven loss exceeding that amount; there must be some element of a final determination of the economic interests of a claimant in the debtor: *Bending Lake* at para 64; *North House* at para 30. Further, there must be some basis in the evidentiary record considered by the justice that the granting of the order resulted in a loss of more than \$10,000 – bald assertions or allegations are not enough: *Bending Lake* at para 64. Nor is mere speculation of a risk of loss: *Mantle* at para 7.

[30] As in *Bending Lake*, the appellants did not object to the restructuring or the SISP during the oral hearing, notwithstanding they risked a shortfall on the sale. They also did not object to the quantum of the Charges. Their submissions at that time focused on whether 281 or 284 should be interim lender based on the competing proposed financing terms.

[31] They argue on this application that the magnitude of AdvEn's indebtedness, the information regarding realizable value and the appellants' positions as secured creditors provide a clear evidentiary basis to conclude that the priming of the Charges will result in a loss to them of over \$10,000.

[32] AdvEn's business is pre-revenue. The valuation in the Proposal Trustee's First Report was based on AdvEn's book value. There has been no assessment on a deficiency and it is not possible to do such an assessment at this point as the SISP has not run its course. The actual realisable value has not been crystallized in that process. There is no way to know what its assets may be worth at the end of the sale process.

[33] Further, the Proposal Trustee has not assessed the validity of the appellants' security. The Proposal Trustee indicated it does not have clarity on amounts advanced by 281. There has been no evidence filed by 281 regarding indebtedness. The appellants did not file any responding evidence at the lower level, including any evidence regarding the validity of their security and the amounts owed to them, or why the restructuring process and the associated required charges would cause loss to their security.

[34] As for priority, the Proposal Trustee has completed an initial security review indicating a complex scenario wherein 281, SPDI and Excelsior are each secured in first position on different assets in different companies.

[35] The sale process was designed to take into account that insiders were expected to be involved in a bid for the business.

[36] The appellants have not established a basis in the evidentiary record considered by the justice that the granting of the order resulted in a loss. The sale process is interlocutory; it makes no determination of economic interests: see *Skyview* at para 6. The order did not crystallize a loss or realisable value. Nor did it determine the entitlement of any party with an economic interest in AdvEn to the sale proceeds.

[37] The appellants also cite *Royal Bank of Canada v Patterson Dental Canada Inc*, 2025 ABCA 391 at para 2, however that case dealt with the post-closing distribution of proceeds of sale of a debtor's assets. It appears the applicability of s 193(c) was not in dispute.

[38] I conclude that the order relates to procedural matters, does not bring into play the value of the debtor's property and does not result in a loss.

Should an extension of time be granted?

[39] As permission is required, this Court must consider whether to grant an extension of time.

[40] Rule 31(1) of the *Bankruptcy and Insolvency General Rules*, CRC c 368 R 31(1) permits an appeal to be brought "within such further time as a judge of the court of appeal stipulates".

[41] The relevant factors for an extension for filing permission to appeal are:

- a) a *bona fide* intention to appeal within the relevant period;
- b) a reasonable explanation for the delay;
- c) prejudice to the respondent;
- d) whether the applicants have taken the benefit of the order; and
- e) a reasonable prospect of success.

2003945 Alberta Ltd v 1951584 Ontario Inc, 2018 ABCA 48 at para 28; *Cairns v Cairns*, 1931 CanLII 471 (AB SCAD).

[42] There is no reasonable explanation for the failure to file an application for permission to appeal in a timely manner. The appellants should have understood from the case law that it was likely permission would be required.

[43] As for a reasonable prospect of success, this entails consideration of the permission to appeal factors.

Should permission to appeal be granted?

[44] On an application for leave to appeal under s 193(e) of the *BIA*, the Court must consider:

- 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; and
- d) whether the appeal will unduly hinder the progress of the action.

[45] Permission should only be granted if the judgment appears contrary to law, amounts to abuse of judicial power, or involves an obvious error causing prejudice for which there is no remedy: *Dykun v Odishaw*, 1998 ABCA 220 at para 5; *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.

[46] The points on appeal are not of significance to the practice. The chambers justice's impugned determinations were based on the particular evidence that was before him. His decisions denying the adjournment and granting the relief sought were heavily fact driven, specific to the circumstances, and involved his assessment of the quality of evidence before him and the weight to be attributed to it. The issues do not raise novel legal principles that would benefit the broader restructuring practice.

[47] As for significance to the action itself, the appellants argue the order alters the priority of recovery between the parties. Again, it does nothing to change secured creditors' priority as it existed prior to the order.

[48] The standard of review is relevant. The approval of interim financing and sales of assets under s 50.6 of the *BIA* involves judicial discretion of the supervising judge managing insolvency proceedings, informed by a non-exhaustive list of factors, and is highly fact dependent: *Athabasca* at para 19. The decision to deny an adjournment is also entitled to a high degree of deference: *Cheema* at para 61. The impugned determinations were discretionary decisions of a supervising judge managing an insolvency proceeding which are generally entitled to a high degree of deference: *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 53.

[49] The appellants have not pointed to case law that is particularly supportive of their arguments on the merits of the appeal.

[50] As for the appellants' concern about bad faith, the CEO's evidence on cross-examination was to the effect that he would not gain any greater benefit in terms of his participation under 284's financing than he would have according to the discussions that had previously occurred with 281.

Further, the SISP process includes protections regarding insider participation. The stay extension, which required a finding of good faith, was not opposed nor has it been appealed.

[51] With respect to the appeal unduly hindering the progress of the action, the appellants assert the stay could be lifted and the appeal proceed. However, an appeal will cause delay and additional costs. More to the point, in the absence of certainty that the Charges would prime, it is unrealistic to expect professionals to undertake the work required or for the interim lender to advance funding. Not all expenses can be deferred. It appears from the information before the Court that AdvEn will imminently be unable to meet its ongoing obligations as they come due - as required during the proposal proceedings generally and in the upcoming application for a further stay extension. All parties agreed during the chambers hearing that bankruptcy would not benefit any of the creditors. At a minimum, granting permission would disrupt the SISP timeline, likely chill bidder interest and impair the Proposal Trustee's mandate to the detriment of every stakeholder, including the appellants who have expressed an intention to bid. It is more likely, based on the available information, that it would result in immediate bankruptcy.

[52] All the relevant factors militate against permission to appeal in this case. As a result, there is not a reasonable chance of success and an extension is denied.

Conclusion

[53] Permission to appeal is required. The application for an extension of time is denied. Even if an extension were to be granted, the application for permission to appeal would be denied. The application to strike is granted.

Applications heard on September 23, 2026

Reasons filed at Calgary, Alberta
this 29th day of September, 2026

Fagnan J.A.

Appearances:

T. Jeffries (no appearance)

P. Saini

for the Respondents

D.W. Mann, KC (no appearance)

S.C. Chimuk

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R. Gurofsky

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M.M. Rejman

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