

Your Application has been scheduled by the clerk.

Date: Aug 24, 2026 @ 10:00

Location: Justice Chambers

In person: 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2

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COURT FILE NO.

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

APPLICANT

VIENNA PEDATELLA BY HER GUARDIAN JANENE PEDATELLA

RESPONDENTS

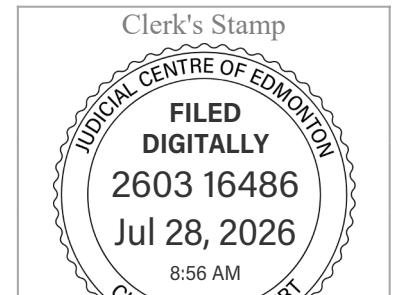
OUT-OF-COUNTRY HEALTH SERVICES APPEAL PANEL, OUT-OF-COUNTRY HEALTH SERVICES COMMITTEE AND HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF ALBERTA

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING
THIS DOCUMENT

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NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.
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:	August 24, 2026
Time:	10:00 AM
Where:	Edmonton Law Courts
Before:	Presiding Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. This is an application for judicial review of the decisions of the Out-of-Country Health Services Appeal Panel (“OOCHSAP”), and the Out-of-Country Health Services Committee (“OOCHSC”) denying Vienna Pedatella’s (“Vienna”) application for funding for Anterior Scoliosis Correction (“ASC”) surgery.

Background

2. Vienna is a 17-year-old Canadian citizen and resident of Alberta. She is an intelligent and active young woman. She graduated grade 12 with honours, and enjoys weightlifting, skiing, and other physical activities. In 2021, at age 13, she was diagnosed with progressive adolescent idiopathic scoliosis.
3. Vienna’s mother, Janene Pedatella, serves as her litigation representative.
4. In 2021 after Vienna’s diagnosis, Vienna and her parents, Janene and Anthony Pedatella inquired about vertebral body tethering (“VBT”) as a possible surgical option but were told to wait and advised to brace. Vienna wore a fitted brace 23 hours a day, as recommended for 9 months, and participated in physical therapy, strength training and other recommendations from her medical team.
5. Despite Vienna’s diligence in following the treatment recommendations, her scoliosis continued to progress and from 2021 to 2023, her spinal curve increased from 40° to over 50°. Dr. Gurpreet Dinsa, Vienna’s family physician, referred her to the BC Children’s Hospital in March 2023.
6. On May 30, 2023, Vienna was seen by Dr. Firoz Miyanji at the BC Children’s Hospital. Dr. Miyanji advised Vienna that she was no longer a candidate for VBT due to her skeletal maturity and had missed her surgical window for VBT. VBT requires there to be enough remaining growth in the spine to be successful. Dr. Miyanji put Vienna on the waitlist for spinal fusion, a procedure that permanently connects two or more vertebrae together using metal rods, screws and bone grafts, but permanently limits mobility and flexibility in the fused segments. Vienna, Janene, and Anthony were devastated.

7. Vienna was placed on a waitlist for spinal fusion and was told that it was a 2 year wait list. This was despite a recommended time frame for pediatric spinal surgery of six months.
8. In the 2 years that followed, Vienna's scoliosis continued to progress. By May 2025, Vienna's spinal curve measured at 67°, a 14° increase in spinal curve from the previous year. No surgery date had been set. Further progression of Vienna's spinal curve put her at risk for health impacts, that were expected to significantly restrict, if not prevent her, from participating in the activities she enjoys doing, even if she did eventually receive surgery. In Vienna's case, she was recommended to have 14 levels of vertebrae, from the base of her neck to her lower back, fused.
9. With the prospects of Vienna preserving some mobility in her back quickly evaporating due to the ongoing delays in receiving a surgery date, Vienna and her family explored other options.
10. On July 2, 2025, Dr. Laury A. Cuddihy of St. Peter's University Hospital in New Brunswick, New Jersey recommended Vienna for Anterior Scoliosis Correction ("ASC"). Much like VBT, but unlike spinal fusion, ASC would preserve her mobility and allow her to return to full function and participate in the activities she enjoyed without limitation.
11. On July 9, 2025, Dr. Dinsa, supported this recommendation by submitting Vienna's application to the OCHSC on her behalf, pursuant to the *Out-of-Country Health Services Regulation*, Alberta Regulation 78/2006 and its amendments (the "*Regulation*"), for funding to cover the cost of her ASC surgery in the United States.
12. On July 14, 2025, the OCHSC requested further information from Dr. Dinsa, including seeking confirmation that the ASC procedure was "not experimental". Dr. Dinsa provided this information on July 15, 2025, and the OCHSC marked Vienna's application complete, to be reviewed at the July 30, 2025, meeting of the OCHSC.
13. On July 24, 2025, the OCHSC provided Dr. Dinsa the full application, including research that the OCHSC completed regarding ASC. The OCHSC advised that Vienna's application would be reviewed with a decision rendered by July 29, 2025, with

written reasons to follow.

14. On July 24, 2025, five days earlier than had been communicated to Dr. Dinsa, and without notifying the Pedatellas, the OOHSC held a meeting where it reviewed Vienna's application.
15. On July 28, 2025, Dr. Dinsa, in response to his review of the OOHSC research included in Vienna's application package, wrote to the OOHSC to provide further medical research in support of ASC's non "experimental" status.
16. On July 31, 2025, the OOHSC, in a written decision, denied Vienna funding for her ASC surgery.
17. On August 20, 2025, Vienna underwent ASC surgery in the United States, paying the full amount of \$199,074 themselves.
18. On October 27, 2025, Vienna, through counsel, filed a Notice of Appeal to the OOHSA, pursuant to the *Regulation*. The OOHSA dismissed Vienna's appeal on February 6, 2026.
19. Vienna seeks judicial review of the OOHSC and OOHSA Decisions.
20. The OOHSC breached Vienna's right to procedural fairness by:
 - (a) Failing to notify Vienna that her application would be reviewed on July 24, 2025;
 - (b) Failing to notify Vienna of the case to be met and be given the opportunity to fully respond to the OOHSC's research regarding the "experimental" nature of ASC; and
 - (c) Failing to fully consider the research provided by Dr. Dinsa supporting the non "experimental" nature of ASC before rendering a decision.
21. The OOHSC and OOHSA Decisions were unreasonable in that:
 - (a) The OOHSC and OOHSA misinterpreted and misapplied the standard of whether appropriate treatment was "available in Canada" and came to an

unreasonable conclusion that an equivalent procedure or service was available in Canada;

- (b) The OCHSC and OCHSAP improperly categorized ASC as “experimental” by failing to engage with the peer reviewed evidence before it, and relying on non-peer reviewed web content;
 - (c) The OCHSC and OCHSAP failed to consider the impact of denying funding on Vienna’s life, liberty, dignity and livelihood; and
 - (d) The OCHSC and OCHSAP mischaracterized ASC as a “preference” when surgery was not available within the generally accepted reasonable time and was necessary to prevent further pain and permanent damage.
22. The OCHSC and OCHSAP Decisions failed to provide adequate reasons, including, but not limited to:
- (a) Failing to refer or to consider and apply section 1(2) of the *Regulation* including by deciding what waiting period is generally accepted as reasonable by the medical or dental profession for any resident with a similar condition; and
 - (b) Failing to refer to or to consider the medical literature provided by Dr. Dinsa in support of the non-experimental nature of the ASC procedure that funding was being sought for.
23. The OCHSC and OCHSAP Decisions cannot be supported on any reasonable view of the Record, including but not limited to, the finding that no referral to receive health services at an out-of-country medical centre was provided by an Albertan or Canadian Physician, when Dr. Dinsa had recommended the treatment plan and supported Vienna’s application.
24. Further, the OCHSC and OCHSAP, in denying funding to Vienna, breached her section 7 *Charter* rights to life, liberty, and security of the person.

Remedy sought:

25. An order in the nature of *certiorari* quashing the decision of the OCHSAP and OCHSC Decisions and ordering the OCHSAP to reimburse the Pedatella's for the ASC procedure, or, alternatively, remitting this matter to the OCHSC for reconsideration.
26. A declaration that the OCHSC and OCHSAP Decisions denying Vienna funding breached her section 7 *Charter* rights not to be denied life, liberty and security of the person except in accordance with the principles of fundamental justice and that this breach was not justified under section 1 of the *Charter*.
27. Costs.
28. Such other relief as counsel may request and this Honourable Court allow.

Affidavit or other evidence to be used in support of this application:

29. Record to be produced by the OCHSC and OCHSAP under Form 8.
30. Any other evidence proposed by counsel and permitted by this Honourable Court.

Applicable Acts and regulations:

31. *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.*
32. *Out-of-Country Health Services Regulation*, Alberta Regulation 78/2006
33. *Judicature Act*, RSA 2000, c J-2.
34. *Alberta Rules of Court*, Alta Reg 124/2010.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.