

CITATION: Pedersen v. Advanced Bionics LLC, 2026 ONSC 4140
COURT FILE NO.: CV-23-00698642-00CP
DATE: 20260716

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: PAUL PEDERSEN, Plaintiff

– and –

ADVANCED BIONICS LLC, NATIONAL HEARING SERVICES INC. c.o.b. as
CONNECT HEARING CANADA, ADVANCD BIONICS AG, and SONOVA
CANADA INC., Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Margaret L. Waddell, Jordan D. Assaraf, Michael Steven Rastin, Sumaiya Akhter,
and Luca Bellisario*, for the Plaintiff

Sarah J. Armstrong, Paul J. Martin, and Philippe L. Desrosiers, for the
Defendants

HEARD: Cost submissions in writing

COSTS ENDORSEMENT

[1] In April 2026, I released my decision certifying this action as a class action: *Pedersen v. Advanced Bionics LLC*, 2026 ONSC 2239. I invited written submissions on costs, with the Plaintiff going first since he had achieved his primary quest to certify the action.

[2] That result, however, did not denote complete success for the Plaintiff and class. Indeed, since my ruling significantly narrowed the class definition, there may be many disappointed persons who thought they were in the certified class who now consider the case to have been no victory at all for the Plaintiff. Furthermore, since I also narrowed the types of claims that can be pursued by the class, there may be many disappointed class members who, while they are still a part of the class, have substantially reduced claims.

[3] In other words, success in the certification motion was divided. In *Mihaylov v. 1165996 Ontario Inc.*, 2017 ONCA 218, at para. 8, the Court of Appeal held that, “The quantum of costs *must* reflect the fact that there was divided success in those proceedings” [emphasis added].

Dividing the costs on the basis of a divided success does not represent an improper “distributive costs” award which allocates costs to the successful party in accordance with the number of issues that part won.

[4] Under the circumstances, a reduction in a cost award to the otherwise successful Plaintiff would reflect the fact that success in the proceeding itself was divided and seeks to compensate the successful party for only those costs that were part of its success. As Justice Perell said in *Mancinelli v. Royal Bank of Canada*, 2020 ONSC 3743, at para. 38, a reduction in the successful party’s cost recovery will “reflect the potential class size and potential recovery in the proposed class proceeding compared with the actual class size and the potential recovery claimed in the certified class proceeding.”

[5] On the basis of this principle, counsel for the Defendants submits that the fees sought by the Plaintiff be reduced by 50% – from \$381,077.02 (including HST) to \$190,538.51 (including HST). I agree with that application of the divided success principle.

[6] The Plaintiff also incurred disbursements which he tallies up to a total of \$96,823.47. However, the Defendants submit that this figure reflects some duplicated entries for its expert’s and its affiant’s travel expenses: \$1,917.99 for Dr. Anandhan Dhanasingh’s airfare, \$635.56 for Dr. Anandhan Dhanasingh’s hotel, and \$1,309.50 for Patric Boon and Denise Boon’s airfare. In addition, the Defendants submit that one-half of Patric Boon’s airfare, \$739.87, was for his partner, Denise, and that while it is understandable that the Plaintiff’s affiant may want to travel with his spouse, that is not an expense that should be borne by the Defendants. The total disbursements, therefore, should come to \$92,220.55.

[7] The Defendants shall pay the Plaintiff costs of this motion in the all-inclusive amount of \$282,759.06.

Morgan J.

Date: July 16, 2026