



#### Education

University of Ottawa (2012) JD  
 Western University (2009) MSc  
 (Molecular Biology/Genetics)  
 Western University (2007) HBS  
 (Genetics Specialization)

#### Bar Admissions

Ontario (2013)

#### Practice Areas

Intellectual Property

#### Contact

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# Martin Brandsma

#### MARTIN BRANDSMA

is counsel at Lenczner Slaght.

Martin's practice focuses on all aspects of intellectual property litigation including patents, copyright, trademarks, trade secrets and industrial designs. He has extensive experience representing a broad range of clients including those in biotechnology, life sciences, consumer goods, telecommunications, sound recording and collective rights management. He also regularly acts in pharmaceutical patent cases under Canada's *Patented Medicines (Notice of Compliance) Regulations*, representing some of the world's leading pharmaceutical and biotechnology companies, in both the Federal Court of Canada and the Federal Court of Appeal.

Prior to joining Lenczner Slaght, Martin practiced in the intellectual property litigation groups of leading Canadian law firms.

Prior to attending law school, Martin obtained a M.Sc. in Molecular Biology/Genetics from Western University. His research focused on the design, production and optimization of novel recombinant therapeutic biologics.

#### RECOGNITION

- ▶ Best Lawyers in Canada (2022-2023)  
Ones to Watch – Intellectual Property
- ▶ The Legal 500 Canada (2024)  
Intellectual Property (Recommended Lawyer)

#### SELECT CASES

- ▶ **Gilead Sciences, Inc et al v Pharmascience Inc** – Counsel to Gilead Sciences, Inc. and Gilead Sciences Canada, Inc. in a NOC action in the Federal Court in respect of Canadian Patent Nos. 2,845,553 and 2,990,210.
- ▶ **Gilead Sciences, Inc et al v JAMP Pharma Corporation** – Counsel to Gilead Sciences, Inc. and Gilead Sciences Canada, Inc. in a NOC action in the Federal Court in respect of Canadian Patent No. 2,990,210.
- ▶ **Gilead Sciences, Inc et al v Natco Pharma (Canada) Inc** – Counsel to Gilead Sciences, Inc. and Gilead Sciences Canada, Inc. in a NOC action in the Federal Court in respect of Canadian Patent No. 2,845,553.
- ▶ **Gilead Sciences Inc, et al v JAMP Pharma Corporation** – Counsel to Gilead Sciences, Inc. and Gilead Sciences Canada, Inc. in a NOC action in the Federal Court in respect of Canadian Patent No. 2,845,553.

- **Gilead Sciences, Inc et al v Natco Pharma (Canada) Inc** – Counsel to Gilead Sciences, Inc. and Gilead Sciences Canada, Inc. in a NOC action in the Federal Court in respect of Canadian Patent Nos. 2,845,553 and 2,990,210.
- **Gilead Sciences, Inc et al v Apotex Inc** – Counsel to Gilead Sciences, Inc. and Gilead Sciences Canada, Inc. in a NOC action in the Federal Court in respect of Canadian Patent No. 2,845,553.
- **UPL NA Inc v Agracity Crop & Nutrition Ltd** – Counsel to UPL NA Inc. in a patent infringement action in the Federal Court of Canada in respect of Canadian Patent No. 2,346,021.
- **Deeproot Green Infrastructure, LLC v Greenblue Urban North America Inc** – Counsel to Greenblue Urban North America Inc. in a proceeding for contempt following a patent infringement action in the Federal Court of Canada.
- **Bristol-Myers Squibb Canada Co v Teva Canada Limited** – Counsel for Bristol-Myers Squibb Canada Co in a NOC action in the Federal Court of Canada in respect of Canadian Patent Nos. 2,250,840 and 2,317,736.
- **Gentec v Nuheara IP Pty Ltd** – Counsel to Gentec in a summary trial for trademark infringement and passing off in the Federal Court of Canada.
- **Evertz Technologies Limited v Lawo AG** – Counsel to Lawo AG in an action for breach of confidence relating to confidential information and trade secrets in the Ontario Superior Court of Justice.
- **Re: Sound v Canadian Association of Broadcasters** – Counsel to Re: Sound on a judicial review from a decision of the Copyright Board of Canada relating to royalties for the use of published sound recordings.

## SELECT PUBLICATIONS AND PRESENTATIONS

- **Year-in-Review in IP Law 2024** – Martin Brandsma was invited to present at the Intellectual Property Institute of Canada's (IPIC) *Year-in-Review in IP Law 2024*. Martin led this year's panel on copyright law, which included discussion on the most significant IP decisions over the last year.

## BLOG POSTS

- **Policing Scope Creep: Relevance in Canadian Pharma Disputes for Section 8 Damages** – In Canada, a generic pharmaceutical company can commence an action for damages under section 8 of the *Patented Medicines (Notice of Compliance) Regulations* (the “*Regulations*”), if it successfully defends a patentee’s claims in an earlier section 6 prohibition proceeding. Section 8 actions are often complex, requiring a determination of the alleged loss suffered by assessing a “but-for world” where the generic would have received regulatory approval and commenced sales at an earlier date, but for having been blocked by the operation of the *Regulations*. Depending on the drug(s) and patent(s) at issue, there may be several independent section 8 actions against a patentee, each started by a different generic plaintiff (see our previous post). When distinct section 8 actions are commenced pertaining to the same drug(s), patent(s), and patentee(s), issues as to relevance and scope of each action may arise.
- **Inventor Examination Cannot Be Compelled by Proxy, and Other Practical Lessons** – In the recently released decision *Boehringer Ingelheim Ltd v Jamp Pharma Corporation*

, Jamp brought a motion seeking an order that would require Boehringer to make their employee inventors attend to be examined for discovery, failing which the order could be enforced against Boehringer themselves. Boehringer argued that the *Rules* do not contemplate such an order. Associate Judge Duchesne agreed.

- **Clarity on the Test for Inducing Infringement in Canadian Patent Law** – Indirect infringement or “inducement” often arises in pharmaceutical patent infringement cases where a defendant generic manufacturer may not ultimately “use” the drug in question (*i.e.*, directly infringe). Since 2011, the Federal Court of Appeal’s (“FCA”) *Corlac Inc v Weatherford Canada Inc* decision has frequently been cited as the leading authority for the tripartate test for inducement. In 2020, the Federal Court suggested that *Corlac* had changed the law of inducement—particularly at the second step determining influence—thereby requiring “a higher threshold for establishing inducement than was applied in the earlier cases”. In the recent decision of *Teva Canada Limited v Janssen Inc (“Paliperidone”)*, the FCA has rejected that interpretation of *Corlac*. The FCA held that *Corlac* incorporates the same principles of inducing infringement as had been established in cases dating back to 1906. In doing so, it overturned the lower Court’s inducement determination based on a supposed higher standard and found that the defendant was liable for inducement when the *Corlac* test was properly applied.

#### SELECT NEWS ARTICLES

- **Lenczner Slaght Stands Out as a Top-Tier Litigation Firm in Legal 500 Canada** – Canada’s leading litigation firm is once again recognized as a “litigation powerhouse” according to *Legal 500 Canada*.
- **Lenczner Slaght Welcomes Martin Brandsma** – Canada’s leading litigation firm is pleased to announce that Martin Brandsma has joined its Intellectual Property Group as Counsel.

#### PROFESSIONAL ACTIVITIES

- Intellectual Property Institute of Canada  
CPD Committee
- Ontario Bar Association
- The Advocates’ Society