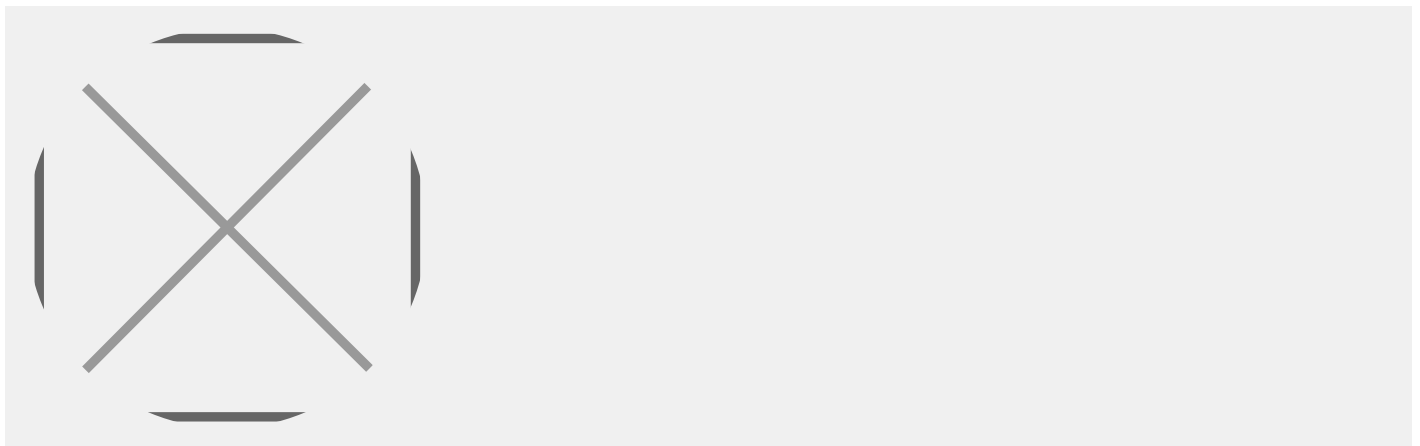


# Interview: Gino Martel, Partner, BCF Business Law, Canada

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*Gino Martel explains the present environment for M&As, divestitures and out-licensing in the Canadian biotech sector, the different ways that biotech companies can commercialize their scientific successes in the current market climate, and strategies for keep scientific talent in Canada.*

## **How do mergers and acquisitions in the pharmaceutical industry in Canada compare to emerging markets?**

When you say the pharmaceutical industry, you have to bear in mind that companies operating in Canada are all subsidiaries of foreign multinationals, except for Valeant. You cannot really refer to Canadian M&As in this sector, because deals usually take place in the foreign jurisdiction where the head office is located. The kind of work that I deal with on a local level is taking care of the affiliate integration work afterwards. While the pharmaceutical sector is fairly inactive, there is still a great deal of activity in the biotechnology sector, where there continues to be vibrant activity in Canada, particularly in the Montreal area, despite the diminished availability of capital. It is not at the same extent as ten years ago, but there is still a decent amount of activity. At the moment I am involved with a couple of significant divestitures and out-licensing opportunities. It goes to show that the whole university and innovation sector in Montreal is still very strong. There is still some support from government, labour-sponsored funds and local VC firms like CTI Life Sciences Fund and

Lumira. Consequently, there is still some activity and a lot of creativity that generates some buzz around town.

**How do you ensure that the needs of both pharmaceutical and biotech companies are addressed, and what are the associated challenges?**

It is a very natural progression for a biotech company to either partner or to sell out to a big pharmaceutical company, which has big distribution channels throughout the world. It is very unlikely that a biotech company could ever have the means to conquer the world and market a product themselves. It is very tough; unless you have a combination of a star lead product with a good platform to do follow-ups, you can perhaps do an IPO and go it alone. This is very challenging, and given those challenges, the smart way to commercialize a potential product is to do a deal of some kind, and there are different kinds depending on where you want to go with it. If you are at the stage of great potential but not quite at the level for commercialization, you can do some kind of partnering deal that will generate some revenue for the company to continue doing R&D and bring it to the stage of commercialization as opposed to doing a financing deal that can be quite dilutive. Or you can do dilutive financing with the hope that the funding will allow the company to attain value-driving milestones. Ultimately, it takes a lot of money to bring a product to market. Given the challenges of big pharmaceutical companies' R&D departments to come up with another lead candidate to bring to market, it is highly unlikely that any biotech company with a good potential product will create a second one. You have to be pragmatic and look at the long-term prospects. In most cases, people have sacrificed years of their lives, not making much money, riding it out with the hope of cashing in on stock options. To the extent that they can enter into a commercial relationship to give them some bloodline is something that should be addressed. A pharmaceutical company looking at a partnering deal as opposed to a buyout makes a smaller investment to take a good look at a company and its potential development. You are not fully committed; if you do not like the prospects for the company, you have to put a cap on the investment and move on quite easily without having to make the full investment of a buyout. If the company pans out, a buy-out will most likely be more expensive (for a safer bet). There is give and take on both sides that works very well.

**What advice might you give to companies that are built to sell?**

It is not a one-size fits all. You have to look at what the biotech company offers. If it is just a one-trick pony with a single product, the best advice would be to ensure that it has the funding to be sold at its maximum value with a full-out sale. Companies with more than one potential product have the logical potential for follow-ups. There are different recommendations depending on the

long-term drivers of a company. BCF is simply there to offer advice and options. When companies need a lot of money, lawyers are not the only ones providing advice. A good VC will not only invest in a company but actually contribute very quantitatively and qualitatively to the board, processes and governance. They can drive value for all stakeholders who are also there for a good success story and to demonstrate how to maximize value. There are VCs who think about the long-term return, and have a role to play as to whether you will be a quick flip or something with much more potential.

**What is your assessment of the post-2008 world for VCs in life sciences in Canada?**

I am not sure if you can point to 2008 as a demarcation point but rather I see it is as an evolution. It has become more difficult, costly and timely to bring a product to market. I think both the FDA and EMEA have challenges in front of them in order to ease market access without compromising on safety and efficacy. That plays a big role, because it simply costs too much money. That process takes so long that by the time the product comes to market you have so few years left on your patent that it puts into question the returns you get on an investment.

**BCF is focused on a number of industries; how important is life sciences to the firm?**

BCF is a business law firm. In Montreal, as long as the pharmaceutical and life sciences industries continue to be an important part of the local economy, BCF will be present in that market just as it is in the other important market segments of Montreal's economy that are prevalent such as aeronautics.

**You started at BCF in April. As part of the transition, what would you really like to achieve here?**

Essentially, my focus here is on the mid-market sector, representing privately held companies and doing specialty work for big pharmaceutical clients. For twenty years, I have been intensely representing many of the multinational pharmaceutical companies based in Montreal for their Canadian commercial and corporate activities. In the last few years I have also worked actively for venture capital companies investing in biotechnology companies in Canada, as well as biotech companies operating in the Montreal area. In that sense, I cover the trifecta of this sector. My plan at BCF is to continue what I have always been doing but with a greater focus on business aspects.

**Given your involvement with a number of key deals in the Canadian pharmaceutical market, what did you have to offer?**

All I can say is that I have been practicing for 28 years overall and over 20 years in this industry, and it is known that I have quite an acute knowledge of the industry from every perspective, having worked closely with big pharma, VCs and biotech companies. I know how big pharma and VCs think, and I understand the desperation and needs of biotech companies, and what is needed to bring a small company to the major leagues. That experience has been very helpful for me to attract other business.

**In terms of those deals, what were the biggest challenges associated with those acquisitions?**

Acquisitions themselves are usually fairly easy. The challenges are associated with financing for biotech companies. Difficult decisions have to be made when determining when a biotech company will survive or not. In that sense, a great deal of negotiation, especially on pricing, may be involved. Buying and selling companies usually does not involve a life or death situation for a business.

Valeant has clear growth strategies, but big pharma companies with \$25-30 billion in annual sales are not in the same frame of mind. They are not looking necessarily at acquiring companies; they are looking at acquiring add-on products or opportunities. It is a completely different situation. Biotech companies are very different from any of those. They are looking for financing, not acquisitions. Sometimes biotech looks for complementary technology add-ons in order to have more than one product in development to showcase. However, a big pharmaceutical company looking at a biotech company may not have any interest in the other products. The rest may just be an inconvenience.

**What advice do you find yourself giving to clients?**

Canada, and especially Quebec, has a tremendous tax credit system that is a great motivating factor for R&D in the area. However, the country is missing some kind of patent box legislation, which would allow for the commercial development and exploitation of intellectual property developed over here, to be taxed at a lower rate when exploited outside Canada. I find it unfortunate that certain things are developed in Canada, but then for tax reasons, the moment it looks like it could be really significant, tax lawyers work to get it out of Canada, especially when acquired. The idea here is that Canada is giving away all these credits for this science to be developed here, but once it is developed we are not maximizing the return by having the brains stay here to commercialize and exploit it. Big pharma is run out of New Jersey, Basel, Switzerland, London, etc. You are never going to change that; when big pharma buys a Canadian product it will do so through an offshore affiliate and move it for tax and business reasons because the company

is going to ensure that future revenues are taxed in a more favourable tax jurisdiction and it is not going to move their brain trust over here. I think that a patent box legislation would help to maintain some of those high-level jobs over here and have people developing science in Canada more, as opposed to a complicated tax structure elsewhere.

**If we were to return to Canada in five years, what is your vision for your positioning in BCF?**

I think that the resiliency of Montreal's creative minds will ensure long-term success in the industry here. There is an incredible desire to continue to succeed; there are four universities in the Montreal area, the cluster of pharmaceutical companies still exists, and despite the tough environment, it is worse elsewhere. I still feel confident that this will be a successful place for breeding a good environment for continued R&D and hopefully for even better commercial development.

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