



Darryl Levitt, dealmaker
extraordinaire, had to
leave South Africa in
order to come and help
build our sunrise industry.

Darryl Levitt
**Wits boykie making good
in far-away Canada**

Luca Viorol

It is always good to meet a fellow South African so far away from home, but I am sure you know the first questions have got to be – who, why and when?

I am a qualified South African lawyer. I earned a BCom from the University of the Witwatersrand in 1992 and completed my LLB through Unisa in '95. I completed my articles at Rosebank Law Chambers in 1997 and was admitted as an Attorney of the High Court of South Africa in 1997. I became a professional assistant at the firm until 1998. Then worked as legal director of Premier Alliance, a niche investment banking operation. I moved to Canada in February 2002. For me it was the pull factor of Toronto. You see, I was looking for an opportunity to get exposure to international financial markets – big markets, and Canada or more specifically, Toronto, was the natural choice. I started with a small law firm on Bay Street. This firm had no exposure to South Africa or to mining and so I guess I was looking for the next bigger stone to jump to where I could find these attributes.

And that bigger stone you jumped too was who?

Well I went from a tiny firm to one of the biggest – Fasken Martineau DuMoulin LLP. Faskens is one of the leading national business and litigation law firms in Canada. With more than 650 lawyers in offices in Vancouver, Calgary, Toronto, Montreal, Quebec City, New York, London and Johannesburg. In fact, I was intimately involved with the birth of the Johannesburg office. My first day at work at Faskens was on a plane back to South Africa to prepare for the opening of the Johannesburg office. I spent a great deal of time over the next year working on helping bed-down the new office and, since then, I consult there often. Faskens is now the only Canadian law firm on the African continent.

What was the reasoning behind opening an office in Johannesburg?

With the advent of the Mineral and Petroleum Resources Development Act, Faskens saw the need and the opportunity for the transfer of skills as well as capital to a rapidly blooming industry in South Africa. Previously, a handful of mining houses controlled the minerals industry and they mostly self-funded, with the result that the local financial sector never had the kind of exposure to the industry that developed in Canada, the UK or Australia over the past two decades or so. We also see black economic empowerment (BEE) leading to an increased expansion in the junior mining sector. It is anticipated that the advent of a black empowerment era in the African mining sector will require upwards of US\$14-billion of new capital over a 10-year period. And Faskens, by virtue of its "on the ground" presence and the firm's recognised depth in the areas of mining and mining finance, is well positioned to assist a range of mining clients.

What are your views on future outside activity in the local industry?

It is picking up in terms of larger financings and, as BEE policy is becoming clearer as to how companies are able to comply (the BEE Codes), one is more able to structure deals with certainty. Both Canadian and UK companies need to have certainty to be confident investors as opposed to vague policies. With the BEE Codes one now has clarity about the specific requirements of the various legs of the Charter and how to implement it.

And your personal views on BEE?

BEE should be seen in the light of ordinary corporate social responsibility. Conducting business in South Africa should have local communities participating in the process, not unlike the process with the First Nations in Canada. Involving local communities makes a lot of good business sense – without this involvement in future it is just not going to work.

BEE is not perfect, it has shortcomings but it is evolving and there are some very energetic people addressing issues, from the minister through to folks like Ms Ntombela in Pretoria. The Mining Scorecard sets out a number of pillars for compliance with BEE. In my view, some of the more important aspects of achieving participation in the mainstream industry include skills transfer, beneficiation and involvement in decision-making at a corporate level as opposed to focusing only on ownership. Ownership is just one aspect, but I do see positive changes involving the encouragement of

participation of BEE groups in the beneficiation process. Without the BEE policy, there would not be an active junior mining industry. However, this policy should not detract from the merits of stand-alone black-owned companies that already have acquired skilled people and good projects and have not relied on the policy of BEE to get to where they are.

You mention Minister Buyelwa Sonjica – your views on her if you dare?

The minister is someone that the international community can identify with. She is personable and well-liked and she not only grasps the industry well, but she actually seems to take a real interest in minerals and energy. I believe if the president lets her get on with her job she is going to be very successful. I believe she has the capability to get the correct message across as to the need for transformation and the attraction of investment into the South African domestic markets.

What is hampering investment into SA?

Uncertainty and lack of understanding of how the Reserve Bank regulations work have forced many companies to avoid investing directly into South African companies and rather investing into jurisdictions where dividends and capital profits can be easily repatriated to source. Where a BEE group acquires an asset or a project and seeks to sell shares and raise capital from a funder from outside South Africa in a jurisdiction like London or Toronto, technically this amounts to an export of a capital asset and reserve bank approval will be required. If a foreign company intends to invest in a junior mining company in South Africa, the use of interposing companies, such as those incorporated in the BVI or Mauritius acquire an interest in the South African company and those BVI and Mauritian companies are then funded. Obviously, there are also other tax benefits to this. What this does is that it allows more control by a foreign investor over its investment and dividends. By virtue of the fact that exchange controls are not readily understood in sophisticated markets like Toronto and London, approvals from the Reserve Bank are usually forthcoming, but the timing of these approvals are not predictable. What we have seen recently is that Reserve Bank approvals are generally given to South African companies to have a primary listing on a foreign bourse if the company undertakes a secondary listing on a South African stock exchange within a certain period of time. Reserve Bank policies are also at variance with BEE in the sense that foreign companies will need to understand that in many cases, the foreign investor will need to shoulder the financing commitments of its local BEE partner and with the added complications of Reserve Bank approvals, perceived restrictive Reserve Bank policies do not foster the pace of transformation as foreign investors shy away from the technicalities.

It appears you still have strong links with South Africa?

I have been fortunate to be advising on some high profile deals resulting in large investments into South Africa. First Uranium, Pelawan and the acquisition of certain coal properties in the last year have resulted in some C\$350-million inward investment and I see this growing further this year.

Are you a good corporate citizen?

I try my best – I am on the board of the Nelson Mandela Children's Fund Canada. I am also on the board of the Canada-South Africa Chamber of Business as I believe it is important to foster better understanding of the business conditions in both countries in order to ensure optimal investment in both directions. I feel that there should be more business movement between South Africa and Canada. I am a member of the Canadian Institute of Mining, Metallurgy and Petroleum and the Prospectors and Developers Association of Canada (PDAC). I am also a director of the Malawi Chamber of Mines and the corporate secretary of Homeland Energy.

What does the future hold for you?

A few exciting things will keep me busy this year! I will in June be called to the bar in Ontario, Canada and I am getting married in July. Look, I am passionate about South Africa and I hope to return one day. I support government's efforts to include all the people of South Africa into the mainstream economy and will continue to do my bit to get that message across. ☺