

**Stikeman Elliott LLP is recognized as one of the top law firms serving a thriving mining sector in Canada and abroad. In the following article, Jay Kellerman, head of the firm's Global Mining Group, and others discuss why Canadian lawyers are best positioned to serve the international mining industry.**

### **Global Mining a Bonanza for Canadian Lawyers**

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**By Terrence Belford**

Canadian lawyers seem to have developed a Midas touch when it comes to global mining ventures. From Kazakhstan to Capetown, they have become, by their own account, the legal counsel of choice when it comes to structuring deals and projects, brokering partnerships and arranging equity and debt financing.

After five years of drought -- starting in 1997, when Freeport-McMoRan Copper & Gold Inc. announced there was no gold in Busang, and the Bre-X Minerals Ltd. bubble burst -- Canada's close-knit fraternity of mining lawyers are now enjoying their own version of a gold rush.

The five firms that dominate the mining sector -- Fasken Martineau DuMoulin LLP, **Stikeman Elliott LLP**, McMillan Binch LLP, Fraser Milner Casgrain LLP and Cassels Brock & Blackwell LLP -- have all at least doubled staff in their mining and resources groups.

Firms with a large and growing base of junior mining companies are doing very well indeed. During the first eight months of this year, the Toronto Stock Exchange and the TSX Venture Exchange raised a staggering \$3.5-billion in equity financing for the mining sector. Scratch a financing and up pops a team of lawyers.

"The September figures are not out yet, but I suspect they will be the best of the year to date," says Steve Vaughan, chair of the natural resources practice at McMillan

Binch and the acknowledged dean of Canada's legal mining fraternity. His group has grown to five lawyers from two in the past two years.

Even those who focus on the top tier of mining companies report a satisfying upturn in their fortunes.

"We have always worked with the senior companies, and there has always been a steady deal flow. The past few years, however, have seen a real surge in activity," says Glen Ireland, managing partner at the 20-lawyer, London office of McCarthy Tétrault. "Right now, for example, we are just about to close a \$1-billion (U.S.) deal between two European base-metals mining companies."

Adds Jay Kellerman, head of the global mining group at **Stikeman Elliott LLP**: "It's a great time to be a mining lawyer again."

The same could not be said early in 1997. "I was a partner at Smith Lyons and moved over here April Fool's Day, 1997, the same week Bre-X exploded," Mr. Kellerman recalls. "At that time, we had four people. Things were pretty tight for the next four years; gold was down to \$260 an ounce. It was tough times."

Today, **Stikeman Elliott LLP** has about 10 lawyers working full-time on mining transactions across Canada and perhaps double that number called in regularly to advise and help out.

Mr. Vaughan's story represents the flip side of the coin. "I came over here from Aird & Berlis in the spring of 2002; the week I started, gold rose from \$260 an ounce to \$315. Within days, the phone started ringing and it hasn't stopped since," he says.

The reasons the phones started ringing again in Canadian law offices across the country are simple, he says. Mining business belongs to Canada. For more than a century, the country has played an international role as a source and producer of all kinds of metals, especially gold. "As a result, Canada represents a mature economic model," Mr. Vaughan says.

"You have four or five very large companies at the top, rather more in mid-tier, and about 2,000 juniors at the bottom. In all the world, only Canada and Australia have a healthy junior mining sector; they are the ones that take all the risk."

More than a century of representing mining companies has given Canadian lawyers the distinct advantage of experience.

"It is one area we don't have to make any excuses; we are deemed to know the business," Mr. Ireland says. "Clients don't have to educate us like they would a British firm."

Then there is the natural advantage of having such a large pool of junior mining companies. "Juniors drive the projects," says John Turner, head of global mining at Fasken Martineau DuMoulin. His group has hired five new lawyers from other firms in the past two years to meet the boom in business.

"During the hard times of the late 1990s and early years of this decade, even with their stock trading at less than 25 cents, as long as they had \$5 in their pockets, they kept exploring," he says. "Those who stuck to their knitting and kept the lights on are in good shape today.

They have made discoveries and the mid-tier and majors need those discoveries because they have survived by focusing on production. They don't explore any more."

That is where Mr. Vaughan comes in. As well as a law degree, he has a master's degree in mining. His specialty is poring over mining reports and identifying ore bodies, which can become major assets. "I look until I find a body where I can say this is one hell of an asset. Eventually ore bodies talk," he says.

"What I do then is broker deals all over the world. After all these years, people with deposits know I have people with financing and people with financing know I have people with deposits."

That pairing often starts the ball rolling. A client is signed up and a savvy firm then provides that client with every legal service needed all the way through the process - raising equity, raising debt to finance projects, creating partnerships and, perhaps, an eventual sale to a major producer.

Toronto is the recognized centre globally for raising equity financing for mining firms, just as London is for debt. Mr. Ireland emphasizes the importance of a London office.

"You can raise start-up equity for juniors in Toronto, but when it comes to long-term financing for projects, you have to go to London," he says. "The experience in non-recourse financing is here. Banks like Barclays have been doing it for 200 years."

With an eye on the next big thing, Fasken Martineau opened an office in Johannesburg at the start of November. The South African government has said that 26 per cent of mining assets in that country must move to black control. That means finding \$8-billion in financing within the first five years and another \$6-billion after that.

"When we first proposed the idea, my partners said: 'What planet are you from?' Then I showed them the numbers," Mr. Turner says. "Besides, Canadian lawyers have an advantage. We are more accepted than the British or the Americans abroad -- and we do know our stuff."