



## Canadian Proxy Contest Study

Posted by Brad Freelan and Dana Gregoire, Fasken Martineau DuMoulin LLP, on Sunday, March 15, 2020

**Editor's note:** Brad Freelan is a partner and Dana Gregoire is an associate at Fasken Martineau DuMoulin LLP. This post is based on their Fasken memorandum. Related research from the Program on Corporate Governance includes [The Myth of the Shareholder Franchise](#) by Lucian Bebchuk (discussed on the Forum [here](#)); [Private Ordering and the Proxy Access Debate](#) by Lucian Bebchuk and Scott Hirst (discussed on the Forum [here](#)); [Universal Proxies](#) by Scott Hirst (discussed on the Forum [here](#)); and [Does Shareholder Proxy Access Improve Firm Value? Evidence from the Business Roundtable Challenge](#) by Bo Becker, Daniel Bergstresser, and Guhan Subramanian (discussed on the Forum [here](#)).

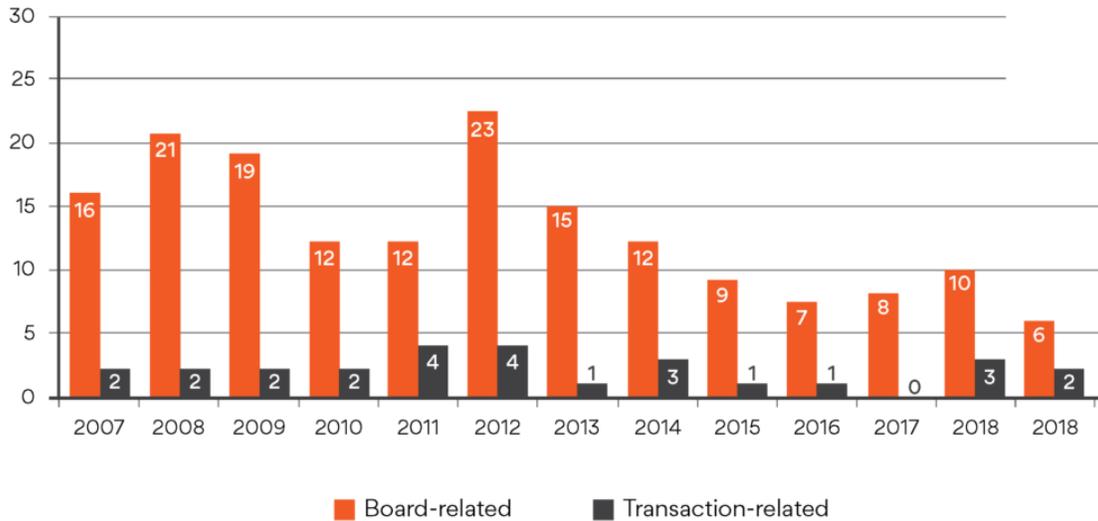
The year 2019 saw a number of interesting developments in Canadian proxy contests. The volume of board-related contests reached a low point. In formal contests, outcomes were split between management and dissidents, but dissidents fared much better in broadcast-only board-related contests. Unlike in previous years, most of the action occurred among mid/large cap companies, rather than primarily micro caps. The use of universal proxy cards also became more frequent, although they were used mostly by dissidents.

### 1. The volume of board-related contests reached a low point

After seeing a bump in the number of contests last year, 2019 saw just six board-related contests (the lowest number since we began tracking in 2007) and two transaction-related contests. The downward trend in the number of contests continues from the period of heightened public activity in 2007–2014.

A board-related contest involves an attempt by a dissident to have some of its own nominees elected to the target board, while a transaction-related contest involves a dissident that solicits shareholders to vote against a transaction proposed by the issuer.

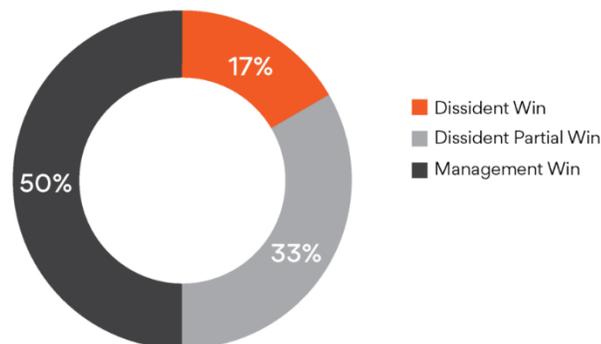
▼ **Proxy Contests per Year**  
2007 - 2019  
(197 Contests)



**2. Contest outcomes were split evenly between management and dissidents**

In half of the 2019 contests, management won outright, while in the other half dissidents achieved either full or partial wins. (In our methodology, a partial win occurs when the dissident achieves some, but not all, of their publicly disclosed substantive objectives in initiating and conducting the proxy contest.)

▼ **Win Rate in Board-Related Contests**  
(6 Contests)

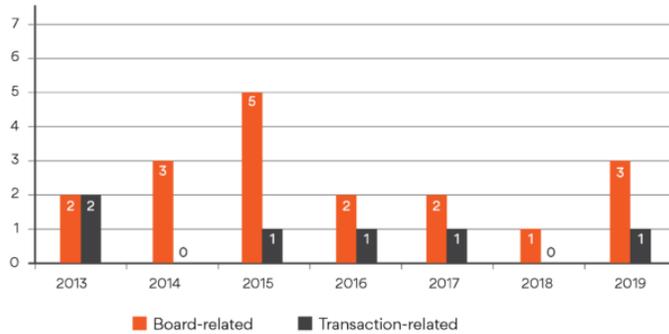


**3. Dissidents had success with broadcast-only board-related contests**

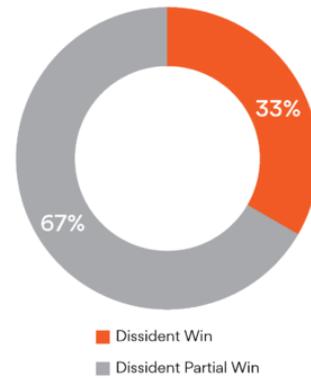
The number of contests where dissidents pushed out their message via public broadcast only (without filing an information circular) reached a four-year high and, once again, dissidents had

success in broadcast-only board-related contests, winning all three such contests. The public broadcast exemption has only been available for use since 2013.

▼ **Broadcast-only Contests per Year**  
2013 - 2019  
(24 Contests)



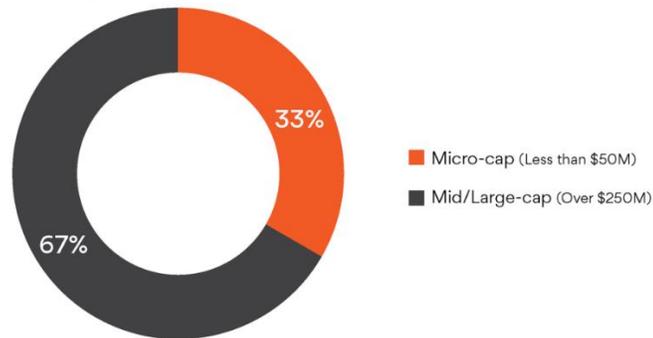
▼ **Win Rate in Broadcast-only Board-related Contests 2019**  
(3 Contests)



#### 4. Mid/large cap issuers became the focus of attention

Board-related contests in 2019 were disproportionately fought over mid/large cap issuers. This marks a distinct shift from the past several years, when micro-cap issuers were most commonly involved (and, of course, micro-cap issuers are the overwhelming majority of issuers in Canada). There were no contests at all in 2019 involving issuers in the small cap range.

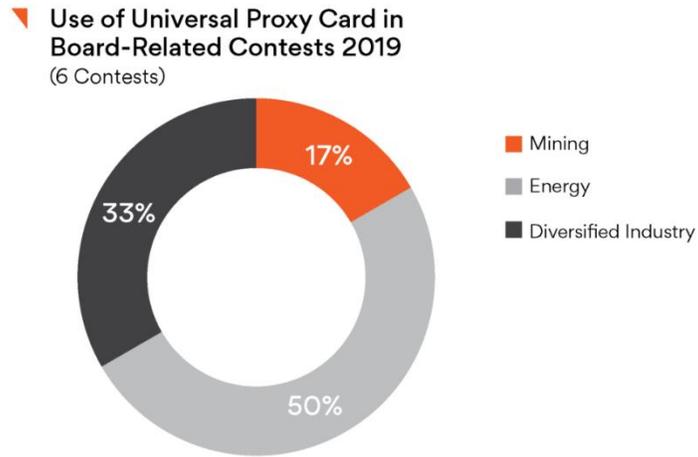
▼ **Distribution of Board-related Contests by Issuer Market Capitalization 2019**  
(6 Contests)



#### 5. The universal proxy card became a more common tool

A universal proxy card was used in four of the six board-related contests in 2019, a significant increase from previous years. In each of the four contests where a universal proxy card was used, management began by publishing its own non-universal proxy, following which the dissident published a universal proxy; in only one of those four contests did the issuer then revise its proxy card to make it universal.

In a board-related contest, a universal proxy card is one where all nominees are set out—that is to say, nominees of both management and dissident—such that a shareholder may choose from among all nominees when directing their proxy on how to vote.



The complete publication, including appendix, is available [here](#).