



*2020 update*

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# Canadian Proxy Contest Study

FASKEN

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Fasken is a leading international law firm with more than 700 lawyers and ten offices on four continents. Clients rely on us for practical, innovative and cost-effective legal services. We solve the most complex business and litigation challenges, providing exceptional value and putting clients at the centre of all we do.

# 2019

## Year in review

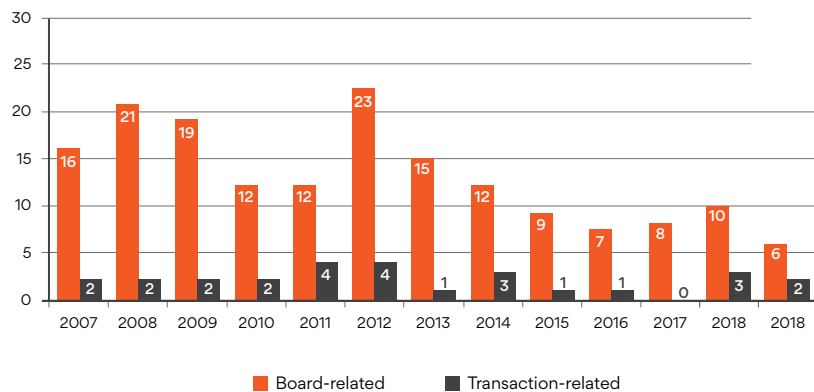
The year 2019 saw a number of interesting developments in Canadian proxy contests. The volume of board-related contests reached a low point. In formal contests, outcomes were split between management and dissidents, but dissidents fared much better in broadcast-only board-related contests. Unlike in 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.

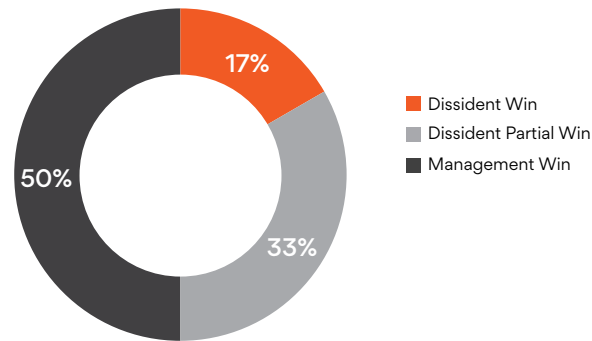
▼ **Proxy Contests per Year**  
2007 - 2019  
(197 Contests)



## 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.)

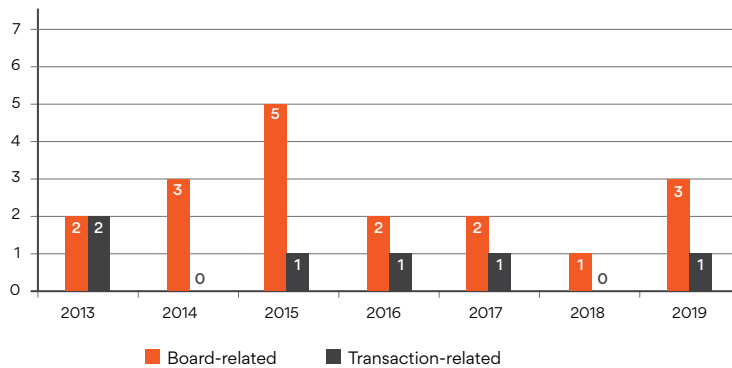
▼ **Win Rate in Board-Related Contests**  
(6 Contests)



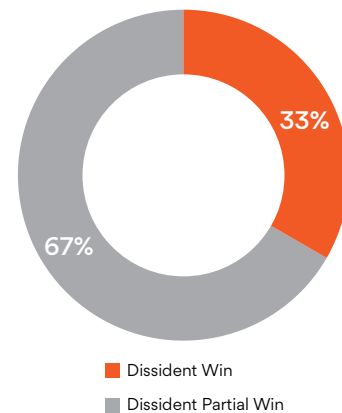
## 3. Dissidents had success with broadcast-only board-related contests

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)

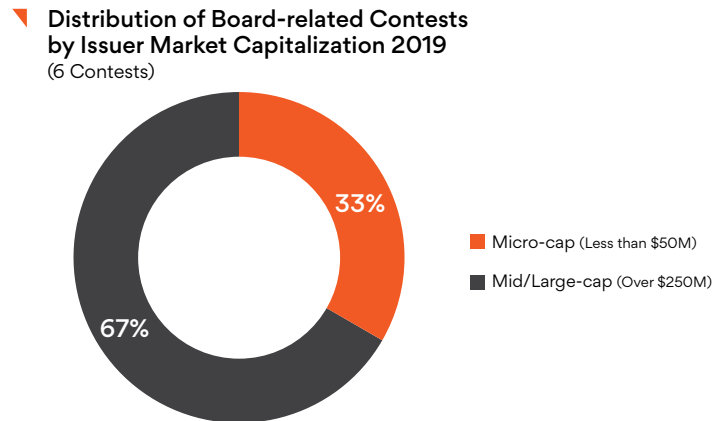


▼ **Win Rate in Broadcast-only Board-related Contests 2019**  
(3 Contests)



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

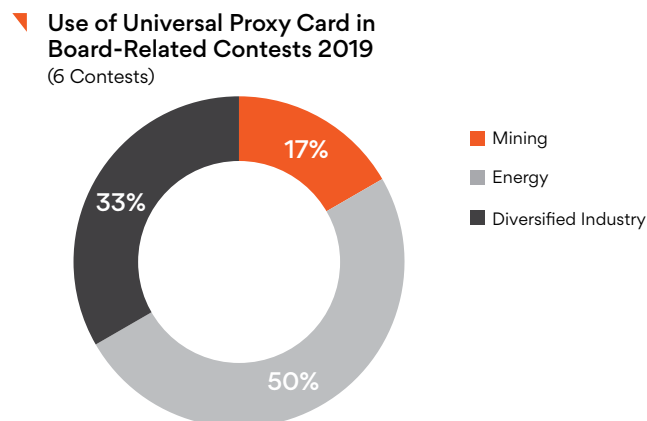
Board-related contests in 2019 were disproportionately fought over mid/large cap issuers. This marks a distinct shift from the past several years, when micro-cap issuers were most commonly involved (and, of course, micro-cap issuers are the overwhelming majority of issuers in Canada). There were no contests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



## 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.



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Brad's practice is focused on mergers and acquisitions, shareholder activism and corporate finance. Brad has significant experience assisting clients with contested situations, including hostile take-over bids, topping bids and proxy contests, as well as friendly transactions. Brad also regularly acts for issuers and investment dealers in connection with public and private offerings and going public transactions. Brad is recognized by both Lexpert and IFLR as a "Rising Star", and has received recognition from various publications for his expertise in mergers and acquisitions and corporate finance. Brad received his JD/MBA from the University of Toronto and has also completed Level III of the Chartered Financial Analyst Program.



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Dana Gregoire maintains a broad corporate/commercial practice. Dana provides legal and strategic advice to help clients solve their most complex business problems. He also advises clients on how to manage risk related to government decision-making. Dana received his JD and BA from the University of Manitoba and his MBA from Wilfrid Laurier University.

We wish to acknowledge the efforts of Andrea Krayne, Tina Mahadeo, Jake Woloshyn, Ryan Kleinman, George Soules, Andrew Gunpat, and Sarah Chouinard who devoted their time to make this update possible.

## See Our Other Studies

The Canadian Proxy Contest Study: 2020 Update is the eighth installment of our series of studies on Canadian proxy contests. Our earlier studies, as well as our publications on hostile bid activity in Canada and our directors' handbook on shareholder activism, are all available online at: [fasken.com/proxy](https://fasken.com/proxy)

## Appendix

### 2019 Formal Board-related Contests

Target Name	Target Industry	Target Market Cap	Outcome of Contest
Aurinia Pharmaceuticals Inc.	Life Sciences	Mid/Large Cap	Management Win
GrowMax Resources Corp.	Diversified Industries	Micro Cap	Dissident Win
Hudbay Minerals Inc.	Mining	Mid/Large Cap	Dissident Partial Win
Knight Therapeutics Inc.	Life Sciences	Mid/Large Cap	Management Win
Methanex Corporation	Diversified Industries	Mid/Large Cap	Dissident Partial Win
Select Sands Corp.	Mining	Micro Cap	Management Win

### 2019 Formal Transaction-related Contests


Target Name	Target Industry	Target Market Cap	Outcome of Contest
Core Gold Inc.	Mining	Micro Cap	Management Win
Transat A.T. Inc.	Diversified Industries	Mid/Large Cap	Management Win

### 2019 Broadcast-only Board-related Contests

Target Name	Target Industry	Target Market Cap	Outcome of Contest
Aimia Inc.	Diversified Industries	Mid/Large Cap	Dissident Partial Win
Guyana Goldfields Inc.	Mining	Mid/Large Cap	Dissident Partial Win
Mistango River Resources Inc.	Mining	Micro Cap	Dissident Win

### 2019 Broadcast-only Transaction-related Contests

Target Name	Target Industry	Target Market Cap	Outcome of Contest
eCobalt Solutions Inc.	Mining	Micro Cap	Management Win



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