

Canadian activists aggressive and successful in 2021 – advisor

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- Type of investors initiating new campaigns expands
- Opportunistically struck deals during pandemic helped drive increase in deals opposed
- Expect big rise in say-on-climate proposals

Shareholder activists in Canada have triggered the most proxy fights since 2013, sought bigger boardroom changes than in the prior five years and blocked five times the number of M&A transactions than the year before, said Ian Robertson, President of Kingsdale Advisors.

"The big thing that was notable this year to us was the extent of the activist situation," he said. Because a disproportionate number of proxy battles were at micro and small-cap companies, a lot of these fights went without notice to the broader public, he noted.

There were 47 proxy contests in Canada in 2021, according to a recent Kingsdale [report](#).

The report also noted that activists this year sought to replace all or the majority of a board 86% of the time, while winning 42% of contested M&A transactions.

"What was surprising was that there were no big-name, traditional activist funds for the most part in these activities," Robertson said. "It was all first-time activists, institutional shareholders or other long-term investors who were adopting activist tactics, as opposed to somebody taking a position in a company stock for the sole purpose of effecting change."

COVID-19 had a big impact, he argued. The depressed share prices for most companies led activists to a couple of conclusions. The first: "Now seems to

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be a good time to increase my position in these companies, so if I want to effect change, I have that option at a price below what I could normally get."

The second factor related to the pandemic was the belief of many activists that they could force management to come to the table and settle, because a company is not going to want to take on a four or five-month proxy fight amidst so many other issues.

Activists used the situation in 2020 to build positions that could serve as a foundation for change as soon as this year, Robertson said. "Does that mean that they'll attack this year? Don't know. But we have seen enough folks with activist tendencies increasing their positions in companies that it can't be ignored."

The reason why an unusually large proportion of activists sought to replace the majority of a board this year, Robertson argued, was because so much of the activism happened at companies too small for proxy advisors, such as ISS and Glass Lewis, to have much influence.

He added that some activists called for replacement of the majority of directors as a negotiating gambit. "If I need three people on the board to effect change and I think the company's probably willing to negotiate, then let me go in with an ask of seven so I can work my way down to the three I actually need."

Why were activists so much more successful in blocking M&A transactions compared to last year? "What happened this year was a lot of deals that were struck during the pandemic were seen as opportunistic by shareholders and they wanted to make sure that they were actually getting value," Robertson observed.

He noted the rise of "serial opposers" who have learned that it is relatively cost-free and risk-free to oppose deals, he said. "The worst thing that

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happens is they are stuck with the same deal price. It's only upside for them to oppose." Certain companies have become "regular players in opposing deals," such as **Letko Brosseau, Burgundy** and **Catalyst**, he said.

Some institutional shareholders are increasingly taking on activist tactics as well when unhappy, he added. "Whereas in the past they might just engage with the board to express their views, now they're more inclined to make their views public, possibly conduct a vote-no campaign and adopt more of those tactics that you would see from a traditional activist fund."

Much of 2021's activism was concentrated in the communications, financial, real estate and consumer staples sectors, Robertson said.

¹In 2022, Robertson expects a big rise in the number of activists pushing say-on-climate proposals. More shareholders will demand that climate goals be not only disclosed but significantly addressed, he argued.

"The pressure is going to continue," he said. "Companies are tuning in to how important this issue is not only to investors but to the general public and the world."

by Mark Coakley in Toronto

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