



## Canadian activism in 2020 expected to stay steady, possibly move higher - advisors say

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- Cannabis and natural resource sectors areas of focus, real estate less so
- Mini tenders may be used in more proxy disputes
- ESG and diversity issues to play minor role

Activism is expected to stay at current levels or possibly increase in 2020, three Canadian securities and corporate lawyers told *Activistmonitor*.

2019 was a busy year and that should continue into 2020, said Teresa Tomchak, a securities litigator and partner at Farris.

Much of the past year's activism was not led by traditional activists, but rather existing shareholders, directors or sometimes a CEO, she noted. Generally, these stakeholders are trying to block a transaction versus fighting over the election of directors.

Although the market is "slowing down a little bit", Tomchak said, "I don't see the activism on the transaction front slowing down. I think it's going to continue."

John Anderson, a partner and corporate lawyer at Stikeman Elliott, also called 2019 quite busy, predicting a continuing trend to greater activism and more proxy fights and contested transactions in 2020.

Canada seems to be fertile ground for some US-based activists, Anderson noted. "They're finding the regulatory environment pretty amenable and there's been a fair bit of success compared to in the US."

A somewhat dissenting view was offered by Mike Partridge, partner and corporate lawyer at Goodmans, who represented **Hudbay Minerals** [TSX, NYSE:HBM] in its proxy fight against **Waterton**.

He described 2019 as a "little less busy generally" compared to 2017 and 2018. The past year only seemed busy, he argued, because it featured a large number of high-profile and visible contests, but there was "not as much of the stuff that you don't see beneath the water."

The overall activism level in 2020 will continue to be moderate, Partridge said.

Because the economy is growing and the stock market has been heading higher, he argued, there are fewer obvious places for an activist to come in and do something that will generate value, as most of the low-hanging fruit has been picked.

### **Cannabis sector's high drama**

The three lawyers all predicted a busy year for the cannabis sector.

Expect more contentious-type activity and stakeholders being more aggressive in targeting Canadian cannabis companies, Partridge said. The sector suffered disruption and dislocation in 2019, he argued, because some producers were "wildly overvalued" and have seen their stock prices plummet to a point where there's an opportunity to increase value.

There will be opportunities for operational and governance improvements or strategic transactions, noted Partridge.

The sector has weak governance, he added, which provoked a "bit of a waveback of activism" in 2019. Although there were no large, high-profile activist situations in the cannabis sector in 2019, it may possibly occur this year, Partridge said.

Stikeman's Anderson said activity in the cannabis sector is going to focus on M&A. "There'll be lots of consolidation in the sector" and "people fighting the consolidation," he noted.

As to complaints of poor governance in the cannabis sector and controversies surrounding **Cantrust** [NYSE:CTSC] and **Hexo** [NYSE:HEXO], Anderson argued that these shortfalls are indicative of the immaturity of the industry and as consolidation happens, the presumption is that the governance will improve.

There are "so many problems with the cannabis industry", Farris' Tomchak said. "One of the things that I've seen this year" is cannabis directors who "don't have the skills to run the company" and do things that are improper, such as not holding board meetings.

"Although any new industry has issues that they've got to overcome, it's probably more pronounced with the cannabis industry, where it's coming from a previously illegal industry," she said.

Tomchak added, "You're going to see transaction issues", because shareholders are "becoming far more interested in transactions" and 2020 will feature "more fights for control of the boards" of cannabis companies.

### **Natural resources exit doldrums**

Natural resources are coming off the bottom, making 2020 the perfect time to get a company to reorganize and streamline itself and achieve greater profits, said Anderson.

The gold sector had its "biggest year in history" for mergers in 2019, he noted, and is indicative of a larger trend in the resources sector. Mining, metals, forestry, oil and gas are all coming out of the sector doldrums with investors looking at the "weak sisters" and the next company to be targeted, explained Anderson.

In Western Canada, there is a lot of activism in the mining space, particularly the junior mining space, where you have management that is not overly experienced, Tomchak said. This is a trend that is expected to continue, she added.

Mining and hydrocarbons are two areas where "people are kicking at tires", Partridge said. A lot of those issuers are viewed to be significantly undervalued, because they are so tied to commodity prices and are cyclical. There may be opportunities for investors bullish on the overall market, he argued.

Partridge expects the activism level in Canada's real estate sector to decline from a notable 2019, when **Sandpiper** and other firms targeted real estate investment trusts. He highlighted the **Hudson's Bay** and **Catalyst** dispute, which involved competing views on how to value its real estate holdings.

Partridge does not expect the "surge" in real estate activism to continue into 2020, because the trading prices of many real estate issuers appreciated once it became clear that the interest rate increases that people had been expecting for the past year or two weren't imminent.

Also citing the Hudson's Bay dispute, which involved a successful mini tender, Tomchak said, "I wouldn't be surprised if we start to see an increase in the use of these mini tender offers for the purposes of proxy fights."

None of the lawyers predicted that ESG or diversity issues will play a major role in 2020's activism.

"It's unlikely that poor ESG practices in and of itself would be sufficient for someone to take an interest in a company," said Partridge. Activists may add such complaints to their main complaint as a kind of ammunition to strengthen their position and to make shareholders think that the issuer is not being governed properly, he added.

Activists seeking to remove people from a board could, Partridge suggested, introduce a slate of proposed directors selected to be more diverse than the incumbents.

On diversity, Anderson said, "I don't know that anyone's fighting it, in the sense that nobody's resisting it." He argued that gender diversity has already been largely achieved and that the focus will move on to "disabilities, visible minorities, Native concerns". With those issues, he does not expect any battles or campaigns.

There may be slightly more activity on the ESG front, Anderson added, but activists motivated by such concerns generally cannot afford to fund many proxy battles.

"The statistics tell me" that ESG and diversity should be playing a big role, "but not from what I personally am seeing," Tomchak said. "I don't see those issues being litigated ... People don't seem to be passionate enough to actually take those issues to the securities commissions or the courts."

By Mark Coakley in Toronto.