Shareholder Proposal in Canada: Questions, Concerns and Opportunities for Improvement

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Abstract

Shareholder proposals are a consistent and prevailing issue that often pose questions and concerns, and room should be provided for improvement. This concept is pertinent as it has been a recurring problem that has inhibited the growth of good corporate governance practice in Canada. This thesis explores the landscape of shareholder proposals in Canada, highlighting key improvements. Shareholder proposals serve as a vital mechanism for investors to influence corporate governance and strategic direction. However, the current legal framework in Canada also presents challenges, including limited access for minority shareholders, inadequate disclosure practices, and the potential to dismiss proposals without sufficient consideration. This thesis aims to identify these issues while examining the regulatory environment and its implications for shareholder engagement. Furthermore, it will propose actionable recommendations to enhance the effectiveness and inclusivity of the proposal process, ultimately fostering a more transparent and accountable corporate governance system in Canada. By addressing these concerns, this thesis seeks to proffer ways to empower shareholders and improve the overall health of the Canadian capital market.

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CHAPTER 1: INTRODUCTION

1.1 OVERVIEW

The corporate governance reform movement in Canada began in the 1970s, with lawmakers imposing greater fiduciary duties on directors and executives.[1] Unlike the United States (U.S.), which has the Securities and Exchange Commission (SEC), Canada's regulatory responsibilities were assumed by the Toronto Stock Exchange (TSX), which eventually led to the creation of the 1994 Dey Report.[2] The Dey Report established 14 guidelines aimed at enhancing board independence, accountability and transparency amongst Canadian public companies.[3] These guidelines did not carry the force of law or regulation; rather, compliance was tied to a company's listing on the TSX.[4] The listed companies were required to publicly disclose the extent of their compliance with the recommended best practices and to explain the procedures they used to achieve corporate governance objectives, particularly where their practices deviated from the guidelines.[5]

In other words, these reforms marked an important shift geared towards greater transparency and accountability in corporate governance, and in doing so, laid the foundation for increased shareholder participation in corporate affairs. One of the key mechanisms through which shareholders now engage with corporate governance practices is the submission of shareholder proposals.

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[1] Jun Yang, "Does Adopting High-Standard Corporate Governance Increase Firm Value? An Empirical Analysis Of Canadian Companies" (2011) 10: 9 International Business and Economics Research Journal, 7-18.
[2] Toronto Stock Exchange Committee on Corporate Governance in Canada, *Where were the Directors? Guidelines for Improved Corporate Governance in Canada, Guidelines* (12)(i), 1994 [Dey Report].
[3] *Ibid.*
[4] *Ibid.*
[5] Jody Grewal, George Serafeim and Aaron Yoon, "Shareholder Activism on Sustainability Issues" (2016), Harvard Business School Working Paper, No. 17-003, July 2016. ?, online: < https://dash.harvard.edu/server/api/core/bitstreams/7312037d-ebfc-6bd4-e053-0100007fdf3b/content>, 1-63.

According to Yang et al., shareholder proposals in Canada differ significantly from those in the United States (U.S.).[6] The authors observe that, in Canada, many shareholder proposals are submitted by individual investors, while relatively few come from institutional investors or coordinated groups.[7] In contrast, large U.S. institutions such as the California Public Employees' Retirement System (CalPERS) and California State Teachers' Retirement System (CalSTRS) frequently engage in submitting shareholder proposals as a form of intervention or activism.[8] By comparison, large Canadian institutions tend to utilize or adopt a more passive approach, rarely using shareholder proposals as a primary means of communicating with corporate management.[9]

According to the contributions of Prof. Evaristus Oshionebo, between 2000 and 2011, a total of 991 shareholder proposals were submitted within the scope of his review in Canada.[10] The number of proposals peaked in 2008, reaching 178 proposals significantly higher than the annual average during the pre-2001 amendment era.[11] This increase, according to Oshionebo, has been a result of a more liberal regime introduced by the amendments to the *Canada Business Corporation Act* (*CBCA*)[12] and the *Bank Act,*[13] following the year 2000 and 2005 respectively.[14]

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[6] Jun Yang, Zengxiang Wang and Yunbi An, "An Empirical Analysis of Canadian Shareholder Proposals" (2009), online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1510248>, 1-41.
[7] *Ibid.*
[8] *Ibid*.
[9] *Ibid.*
[10] Evaristus Oshionebo, "Shareholder Proposals and the Passivity of Shareholders in Canada: Electronic reforms to the rescue" (2012) 37:2 Queens LJ, 624-662.
[11] *Ibid*, at 638.
[12] *Canada Business Corporations Act*, RSC 1985, c C-44 [*CBCA*].
[13] *Bank Act,* SC 1991, c. 46.
[14] Oshionebo, *supra* note 10, at 638.

Furthermore, he references Margolis and Walsh on the concept of proposal patronage, noting that shareholder proposals often receive limited support because many Canadian shareholders (investors) primarily purchase shares with the goal of maximizing profits.[15] As a result, these shareholders may withhold support for proposals related to social or environmental issues, fearing that such initiatives or proposals could compromise corporate competitiveness.[16] Furthermore, these concerns become even more pronounced or significant when companies that are intended to serve as role models have already implemented reforms and adopted high environmental and social standards, thereby reducing the perceived need for further proposals.[17]

Oshionebo emphasizes that shareholder proposals in Canada play a significant role by fostering executive accountability, encouraging shareholder engagement, and enhancing participation in corporate governance.[18] The *CBCA* serves as the primary legal foundation or tenets for the submission of shareholder proposals in Canada.[19] Specifically, section 137 of the *CBCA* grants eligible shareholders the right to submit proposals and have them discussed at a corporation's annual meeting.[20]

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[15] Joshua D. Margolis and James P. Walsh, *People and Profits? The Search for a Link Between a Company's Social and Financial Performance* (Mahwah, NJ: Lawrence Erlbaum Associates, 2001), at 10-14.
[16] Oshionebo, *supra* note 10, at 647.
[17] Margolis and Walsh, *supra* note 15, at 10-14.
[18] Oshionebo, *supra* note 10, at 624.
[19] *CBCA, supra* note 12.
[20] *CBCA, Ibid*, s-s.137(1); *Bank Act, supra* note 13, s-s 143(1); *Business Corporations Act,* RSA 2000, c B-9 [*ABCA*], s-s 136(1); *Business Corporations Act,* SBC 2002, c 57 *[BCBCA]*, s-s 187(1)*; Corporations Act,* CCSM 2010, c C-225 [*MCA*], s-s 131(1); *Business Corporations Act,* SNB 1981, c B-9.1 [*NBBCA*], s-s 89(1); *Corporations Act,* RSNL 1990, c C-36 [*NLCA*], s 224; *Companies Act,* RSNS 1989, c 81 [*NSCA*], Schedule III, para 9(1)(a); *Business Corporations Act*, SNWT 1996, c 19 [*NWTBCA*], s-s 138(2); *Business Corporations Act,* RSO 1990, c B-16 [*OBCA*], s-s 99(1); *Business Corporations Act,* RSS 1978, c B-10 [*SBCA*], s-s 131(1) (see also *Business Corporations Act, 2021*, SS 2021, c 6 [*SBCA, 2021*], s-s 11-6(1)); *Business Corporations Act,* RSY 2002, c 20 [*YBCA*], para 138(1)(a).

Shareholder proposals are a valuable tool for promoting the spirit of good corporate governance, allowing shareholders to engage with companies and influence corporate decision-making.[21] Understanding the eligibility criteria and the process for submitting proposals empowers shareholders to participate actively in corporate governance matters. This is guided by the provisions stipulated in the *CBCA* (and its progeny and statutes), but amidst these provisions, there are still several conditions that limit the ability of certain shareholders to fully exercise their rights, especially those that fall under the minority group.

1.2 KEY THEORETICAL FOUNDATIONS AND LITERATURE INSIGHTS

1.2.1 Overview

The literature relevant to the concept of shareholder proposals in Canada primarily draws its rationale from the broader themes of shareholder activism, corporate governance, and corporate social responsibility.[22] Additional material for this thesis will include academic contributions that examine the role of shareholder activism[23] and shareholder proposals in complementing and enhancing corporate governance structures.[24] These scholarly discussions will provide a critical framework for this thesis to explore key concerns, address central questions, and identify potential areas for improvement in the use and effectiveness of shareholder proposals in the Canadian context.

[21] Oshionebo, *supra* note 10, at 624.
[22] *Ibid*, at 629-640.
[23] Grewal, Serafeim and Yoon, *supra* note 5, at 4.
[24] Yang, Wang and An, *supra* note 6, at 8.

According to Madhani, in addressing corporate governance issues pertaining to board duties, the author identifies four primary roles and responsibilities of the board, and contends that it is widely recognized by researchers.[25] These roles include the control role, the strategic role, the service (or resource provision) role, and the advice (or counsel) role.[26] The control role of the board refers to the board's legal responsibility to monitor and supervise the firm's operations including overseeing and regulating top management.[27] The strategic role involves supporting and guiding management in fulfilling the firm's mission and objectives by advising on, refining, and enhancing strategies and programs through the board's collective expertise.[28] The service (or resource provision) role emphasizes the board's function in facilitating access to external networks and resources, cultivating both formal and informal relationships with the company's stakeholders, and resolving or addressing potential conflicts that may arise among them.[29] Lastly, the advice (or counsel) role is critical in offering the qualitative expertise needed to effectively carry out the service function.[30]

A similar contribution is made by Zald, who argues that the foundation of board power lies in the control of resources and importation of knowledge regarding organizational operations.[31] He further maintains that prudent board actions include appointing and perpetuating effective management of the organizations, ensuring leadership continuity, and overseeing the performance of management.[32] Additionally, Zald asserts that this board

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[25] Pankaj M. Madhani, "Diverse Roles of Corporate Board: A Review of Various Corporate Governance Theories" (2019) 16:2 The IUP Journal of Corporate Governance, at 9.
[26] *Ibid*, at 10.
[27] Madhani, *supra* note 25, at 10.
[28] *Ibid.*
[29] *Ibid.*
[30] *Ibid*.
[31] Mayer N. Zald, "The Power and Functions of Boards of Directors: A Theoretical Synthesis" (1969) 75:1 American Journal of Sociology, at 97-111.
[32] Zald, *supra* note 31, at 99.

function is inward-looking, as the board acts as an agent on behalf of the organization at the behest of its owners—the shareholders.[33]

These theoretical perspectives underscore the importance of effective board oversight and engagement with shareholders. In the Canadian context, shareholder proposals provide a formal avenue for shareholders to influence board actions, promote accountability, and address emerging governance and social issues, thus complementing the board's core responsibilities.[34]

1.2.2 Agency Theory, Corporate Governance and Shareholder Roles

To support the conclusions of this thesis, it is imperative to ground the discussion in theoretical frameworks that best informs the rights of the shareholders to engage in corporate governance through mechanisms such as shareholder proposals. A central theory in this regard is the agency theory, extensively explored by Davis et al.[35] In doing this, they establish some foundation for analyzing the relationship between shareholders (principals) and directors or executives (agents) within modern corporations.[36] The agency theory asserts that while shareholders delegate decision making authority to executives, these agents are often driven by self-interest, creating a potential misalignment with shareholder objectives.[37]

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[33] Zald, *supra* note 31, at 99.
[34] Oshionebo, *supra* note 10, at 624.
[35] James H. Davis, F. David Schoorman and Lex Donaldson, "Towards a Stewardship Theory of Management" (1997) 22:1, The Academy of Management Review, online: < https://www.jstor.org/stable/259223>, 20-47.
[36] *Ibid*.
[37] *Ibid.*

Davis et. al. outline key roles of the board and emphasize the governance challenges that emerge when these roles are not effectively discharged.[38] The agency theory tends to assume how the subordinates (the boards) are individualistic, opportunistic, and self-serving, and as such may compromise the fiduciary responsibilities entrusted to them.[39] In the Canadian context, the tension is particularly significant because under the Canadian corporate law, directors owe their fiduciary duties not to shareholders directly, but to the corporation as a whole.[40] This legal distinction is firmly established in the case of *Peoples Department Stores v. Wise*, at paragraph (para.) 42, per Justices Major and DesChamps, writing joint reasons for the court that clarified that directors' duties are owed to the corporation rather than to individual shareholders.[41][42] This distinction clearly complicates the principal-agent relationship and limits the extent to which shareholders can directly influence corporate decisions.[43]

Further building on this discourse, Davis et. al., argue that the emergence of the modern corporation led to the separation between the ownership and control.[44] They further state that even though shareholders would prefer to manage their own investments directly, this is impractical due to the large capital requirements and complexity of the modern corporate structures.[45] Instead, shareholders contract with executives, thereby becoming principals in an agency relationship to manage their firms for them.[46] As an agent of the principal,

[38] Davis, Schoorman and Donaldson, *supra* note 35, at 20-47.
[39] *Ibid.*
[40] *CBCA, supra* note 10, s.122.
[41] [2004] 3 SCC 68, at para. 42.
[42] Davis, Schoorman and Donaldson, *supra* note 35, at 23-24.
[43] *Ibid.*
[44] *Ibid*, at 22.
[45] *Ibid*, at 23-24.
[46] *Ibid.*

theoretically, executives are morally responsible for aligning corporate governance mechanism which include shareholder proposals with shareholders' interests.[47]

The deductions made from the contributions are that in modern corporations, agents and principals are motivated by opportunities for their own personal gains.[48] Shareholders invest their wealth in companies (through equity) while the executive may design governance systems in ways that serve their own interests under the guise of shareholder value maximization.[49] Adding to this discourse, Berthelot et al. highlight that the contemporary debates on shareholder activism are rooted in the seminal theory proposed by Berle and Means.[50][51] Their analysis suggests that shareholders in publicly traded companies particularly in the American context have lost effective control over their investments, which has shifted to salaried managers.[52] This shift underscores the importance of mechanisms like shareholder proposals in restoring a measure of shareholder influence over corporate direction.[53]

1.2.3 Shareholder Activism and Institutional Engagement in Canada

While agency theory provides a strong theoretical basis for understanding the tensions within the corporate governance, empirical studies demonstrate that shareholder activism in Canada manifests differently from the U.S. For instance, research by Yang et al. titled in

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[47] Davis, Schoorman and Donaldson, *supra* note 35, at 23-24.
[48] *Ibid*.
[49] *Ibid*.
[50] Sylvie Berthelot, Vanessa Serret and Stephanie Donahue, "The Impact of Canadian Shareholder Activism: A Study of Governance Proposals" (2014) online:<https://www.cairn.info/revue-recherches-en-sciences-de-gestion-2014-6-page-61.htm]>, 65.
[51] Adolph A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York: Macmillan, 1932).
[52] Berthelot, Serret and Donahue, *supra* note 50.
[53] *Ibid.*

"An Empirical Analysis of Canadian Shareholder Proposals," contends that shareholder activism undergirds the formation and impact of shareholder proposals.[54] Furthermore, shareholder proposals in Canada are submitted by individuals rather than institutional investors unlike their U.S. counterparts – such as CAlPERS and CalSTRS.[55] Canadian institutional investors typically adopt a more passive stance, preferring private dialogue with management over public intervention.[56]

Berthelot et al., in *"The Impact of Canadian Shareholder Activism: A Study of Governance Proposals,"* characterize activism as a public expression of shareholder dissatisfaction with a firm's governance practice or strategic decisions.[57] Building on Albert Hirschman's framework of "exit and voice,"[58] Berthelot et al., observe that shareholders have two principal options when dissatisfied with a company's performance or governance: they may express discontent by selling their shares — where market conditions and liquidity allows — or voice their concerns or issues by retaining ownership and engaging with the company, typically through voting or submitting proposals.[59] Furthermore, they observe that Canadian shareholders have increasingly opted to hold their shares and submit reform-oriented proposals aimed at improving corporate governance.[60]

Wahal further distinguishes between the types of activism into two primary forms and they include: activism that seeks to resolve underperformance resulting from managerial

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[54] Yang, Wang and An, *supra* note 6, at 2.
[55] *Ibid.*
[56] *Ibid.*
[57] Berthelot, Serret and Donahue, *supra* note 50, at 64.
[58] Albert O. Hirschman, *Exit Voice Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, Cambridge, MA, 1971).
[59] Berthelot, Serret, Donahue, *supra* note 50, at 64.
[60] *Ibid,* at 66-67.

shortcomings and activism that challenges strategic directions of the firm.[61] The latter, is a more adversarial form that involves "dissident shareholders" drafting detailed proposals that outline specific grievances, which are then introduced for a shareholder vote at annual general meetings (AGMs).[62]

While recent trends indicate an increase in shareholder proposals and evolving forms of activism, the effectiveness and support for these proposals as well as the statutory and practical limitations faced by proponents will be examined in subsequent chapters.

1.2.4 Classification of Shareholder Proposals

Grewal et al.'s in *"Shareholder Activism on Sustainability Issues"* classify shareholder proposals into two broad categories as either "material" or "immaterial," based on their potential impact or influence on firm value.[63] Proposals addressing material issues — those with direct and immediate financial implications — are more likely to enhance firm performance and attract broader shareholder support.[64] Conversely, proposals focused on immaterial issues, such as certain environmental or social concerns, may not affect short-term performance but can still prove to be valuable from a broader stakeholder or ethical governance perspective.[65]

Moreover, the authors note that, from a strictly financial standpoint, a substantial number of shareholder proposals are made towards immaterial issues that do not influence the

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[61] Sunil Wahal, "Pension Fund Activism and Firm Performance" (1996) 31:1 Journal of Financial and Quantitative Analysis, 1-23.
[62] *Ibid.*
[63] Grewal, Serafeim and Yoon, *supra* note 5, at 2.
[64] *Ibid.*
[65] *Ibid.*

financial interests of the firm.[66] The authors refer to the U.S. Chamber of Commerce's critique that companies' resources are often channeled or diverted towards issues that are financially immaterial or that lack clear financial relevance.[67] This critique reflects broader debates on the role of environmental, social, and governance (ESG) issues in corporate strategy—particularly when shareholder interests are narrowly defined in terms of short-term profitability.[68]

Grewal et al. also highlight the limited effectiveness of such proposals, as they may become unsuccessful due to low voting outcomes.[69] They may also be non-binding, because even though shareholders adopt them at annual meetings, the regulatory provisions applicable in the Canadian context do not make it mandatory for the boards to ratify the proposals in the corporate charter or bylaws.[70] Thus, this limits the formal influence of shareholder initiatives.

In Canada, while the *CBCA* and securities regulators outline the process for submitting shareholder proposals, there is no legal requirement for boards to implement adopted proposals unless specifically required by law or the company's own bylaws.[71] However, Grewal et al. observe that despite the general tendency of companies to ignore shareholder proposals, certain types of proposals, such as "poison pill" proposals, are about seven times more likely to result in change.[72]

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[66] Grewal, Serafeim and Yoon, *supra* note 5, at 2.
[67] *Ibid,* at 4.
[68] *Ibid,* at 8.
[69] *Ibid.*
[70] *Ibid*, at 2 and Rob Bauer, Frank Moers and Michael Viehs, "Who Withdraws Shareholder Proposals and Does It Matter? An Analysis of Sponsor Practice and Pay Practices" (2015), online: < https://doi.org/10.1111/corg.12109>.
[71] *CBCA, supra* note 12.
[72] John M. Bizjak and Christopher J. Marquette, "Are Shareholder Proposals All Bark and No Bite? Evidence from Shareholder Resolutions to Rescind Poison Pills" (1998) 33: 4 Journal of Financial and Quantitative Analysis 499-521, at 500.

Building on these insights, this thesis seeks to analyze the limitations Canadian shareholders face in effecting change through proposals. In doing so, it will also examine the extent to which shareholder proposals—particularly those concerning immaterial or ESG-related issues—affirm firm performance and corporate responsiveness. The findings will contribute to the broader discourse on the balance between shareholder rights, regulatory constraints and corporate accountability in Canada.

1.3 OBJECTIVES OF THE RESEARCH

This thesis is structured to demonstrate that the concept of shareholder proposals emerged in response to a set of historical developments and theoretical framework. It aims to furnish the evolution of shareholder proposal, providing both a historical overview and a theoretical justification for their use. In doing so, the thesis contrasts the conceptual promise of shareholder proposals with their practical application within the Canadian context, particularly in light of contemporary trends such as the increasing focus on environmental, social, and governance (ESG) issues.

To assess the current legal framework governing shareholder proposals in Canada, this thesis will: (i) examine the existing rules, regulations, and guidelines that define how shareholder proposals are submitted, reviewed, and enforced; (ii) analyze the key challenges faced by shareholders in both submitting proposals and securing their approval as compared to other jurisdictions and; (iii) evaluate the success rate of shareholder proposals in Canada.[73]

[73] Anthony Van Duzer, *The Law of Partnerships and Corporations*, (4d ed. Toronto: Irwin Law, 2018) ("Until the beginning of this century, there were only a small number of proposals each year in Canada" at 576).

Furthermore, this thesis will explore the limitations embedded in the current regime. Drawing on relevant literature and doctrinal findings, it will demonstrate how these limitations raise significant concerns about shareholder rights and corporate accountability especially as shareholder activism evolves to address ESG and other contemporary governance issues. These concerns in turn, prompt critical questions about the adequacy of the present legal framework and its responsiveness to shareholder engagement.

To address these gaps, the thesis will identify the best practices for shareholder proposals from other jurisdictions, particularly the U.S. for comparison perspective; analyze potential reforms or changes to the Canadian regulatory framework, highlighting how targeted amendments to laws such as the *CBCA* could better facilitate shareholder participation; and propose ways to enhance the effectiveness of the shareholder proposal process, with the goal of making it more accessible, transparent and impactful.

Through this multi-layered approach, the thesis ultimately aims to support the enhancement of shareholders' voice in corporate governance and to recommend a more robust, inclusive mechanism for shareholder engagement in Canada.

1.4 RESEARCH QUESTIONS

Accordingly, this thesis addresses the following research questions:

1. What are the specific barriers that minority or smaller shareholders face in meeting the eligibility criteria and navigating the proposal submission process, and how do these barriers impact their ability to influence submitting shareholder proposals?

2. What mechanisms underlie the relationship between shareholder proposals and firm performance, and how can we assess the effectiveness of these proposals in driving tangible improvements within the company?

3. How can the design and presentation of shareholder proposals especially those concerning ESG issues be improved to enhance approval rates and influence corporate behaviour, and what analytical frameworks best identify and address the barriers to their success?

1.5 POTENTIAL SIGNIFICANCE OF THE RESEARCH

Shareholder proposals have long served as an important mechanism for increasing shareholder participation, enhancing corporate governance, promoting sustainable business practices, and safeguarding shareholders' rights and interests.[74] When effectively implemented, these proposals contribute to the overall accountability and long-term health of corporations, ultimately benefitting not only investors but also the broader economy.

However, for these benefits to be fully realized, the proposal process must be made more accessible, especially for minority shareholders, by reducing procedural barriers and encouraging meaningful engagement. This thesis contends that examining comparative legal frameworks and best practices from other jurisdictions like the U.S. can offer valuable insights into how Canada's shareholder proposal regime might be improved.

[74] Oshionebo, *supra* note 10, at 661.

In doing so, it aims to support the development of a more inclusive, responsive, and effective system of shareholder engagement in Canadian corporate governance. It also addresses a gap in the literature concerning the procedural barriers minority shareholders face and the limited analysis of how proposals influence corporate behaviour.

1.6 RESEARCH METHODOLOGY AND SYNOPSIS OF CHAPTERS

For the purpose of this thesis, the doctrinal legal research with illustrative case studies will be employed. This involves a comprehensive analysis of statutory provisions, judicial decisions, and secondary literature relevant to shareholder proposals in Canada. The approach is qualitative, not empirical. It begins by tracing the development of the concept of shareholder proposals within the Canadian corporate governance framework.

Additionally, the thesis critically examines the existing regulatory and statutory framework, particularly the provisions of the *CBCA* and other relevant corporate legislation. This research also analyses judicial interpretations and key court decisions that have shaped the understanding and application of shareholder proposals in Canada.

Although this thesis is not a comparative study, it uses limited references to other regimes such as the U.S. and the Corporations Act of Manitoba as illustrative contrasts to situate the Canadian framework. This enables a better understanding of structural differences and informs potential reform recommendations. Furthermore, relevant secondary literature – including academic commentary and doctrinal studies will be examined to assess argument that the current legal framework provides limited access to shareholder proposals for minority or smaller shareholders.

The introductory section of this thesis serves as a roadmap, outlining its significance and summarizing the key themes addressed in each chapter. Through concise and succinct chapter previews, the reader will be guided and informed of the research trajectory and encouraged to engage with the broader analysis in subsequent chapters.

This thesis will proceed as follows:

I. Chapter 2: Literature Review

The chapter traces the evolution of shareholder proposals in Canada, from their roots in corporate governance and agency theory to their formal recognition under the *CBCA*. It examines the foundational principles of shareholder rights, the significance of the 2001 *CBC*A amendments, and key judicial decisions that have shaped legal interpretation. The chapter reviews trends in shareholder activism, highlighting the growing role of institutional investors and persistent barriers such as legal ambiguity, high submission thresholds, and managerial resistance.[75] It situates shareholder proposals within broader debates on corporate accountability and ESG engagement.[76]As Friedrich notes, legal mechanisms must be understood in their historical and philosophical contexts not as fully formed tools, but as evolving expressions of deeper governance ideals.[77]

II. Chapter 3: Minority Shareholder Proposals in Canada: Legal Barriers and Emerging Challenges

The chapter explores the legal, structural and practical barriers that minority shareholders face in advancing proposals under the Canadian corporate framework. It analyzes the

[75] Myra Khanna, "Shareholders' Formal Activism - The Canadian Context" *Faculty of Law, University of Toronto* (2007), online: <https://tspace.library.utoronto.ca/bitstream/1807/120991/3/MR40255_OCR.pdf>, at 3.
[76] Alex Moore and Jennifer Crawford, "A general introduction to shareholder rights and activism in Canada" (2023), online: Blake, Cassels and Graydon LLP <https://www.lexology.com/library/detail.aspx?g=9accaf31-47ce-41a5-9744-478659a29f9e>.
[77] Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective* (2d ed. The University of Chicago Press, 1958), at 8.

CBCA requirements, including high ownership thresholds for submission, narrow proposal scope, and ambiguous exclusion grounds. The chapter also address power imbalances, management resistance, and the limited effect of non-binding proposals. It highlights cost restraints and the growing reliance on institutional investors to amplify ESG-focused proposals. Finally, it considers alternative mechanism for shareholder influence and outlines emerging reform opportunities.

III. Chapter 4: Shareholder Proposals, Firm Performance and Approval Rates

The chapter examines how shareholder proposals influence firm performance and the key factors affecting their approval in Canada. It begins by categorizing the types of filers and the issues raised ranging from governance reforms to ESG concerns. It then explores the mechanisms through which proposals impact corporate behaviour such as signaling, enhancing accountability, and fostering dialogue. Factors like shareholder composition, proposal framing, proxy advisory influence, and board responses are analyzed. Two case studies – Suncoor's 2024 climate risk proposal and recent "Say on Pay" votes illustrate these dynamics. The chapter concludes with insights into voting trends, partial acceptances, and ongoing challenges, particularly for ESG-related proposals.

IV. Chapter 5: Recommendations and Conclusion

The chapter synthesizes the thesis's key findings and responds to the central research questions. It highlights the regulatory and structural limitations that hinder meaningful minority shareholder participation in Canada. The chapter proposes targeted reforms to enhance the inclusivity and effectiveness of shareholder proposals as tools of corporate governance. It concludes by identifying areas for future research, particularly around institutional engagement and regulatory reform.

1.7 SCOPE AND LIMITATIONS

This thesis focuses on the shareholder proposal process in Canada, examining the legal framework, and procedural steps, and voting dynamics. It assesses how such proposals influence corporate governance, corporate responses and their capacity to drive substantive change. The analysis centers on the Canadian regulatory landscape and does not offer a detailed comparative analysis of other jurisdictions, although limited references to international practices are included where relevant for context or reform considerations. Additionally, the thesis does not undertake a detailed empirical or financial performance analysis of companies receiving shareholder proposals. Instead, it prioritizes the governance, legal, and procedural aspects over quantitative financial impacts.

CHAPTER 2: LITERATURE REVIEW

2.1 THE ORIGIN AND HISTORICAL DEVELOPMENT OF SHAREHOLDER PROPOSALS IN CANADA

The origin of the concept of shareholder proposal mechanism can be traced to the enactment of the *CBCA* in 1975, which was based on the recommendations of the Dickerson Committee, which had been tasked with modernizing the Canadian corporate law.[78] The Dickerson report emphasized the need for corporate accountability and minority shareholder protection.[79] Due to the increasingly dispersed nature of share ownership and the lack of direct shareholder involvement in corporate decision-making, the Dickerson report introduced the concept of shareholders, particularly non-controlling ones, having a mechanism to express concerns or preferences about corporate governance issues.[80] As such, the *CBCA* implemented this recommendation and it led to the inclusion of the shareholder proposal provision, now codified as section 137 of the *CBCA*, which allows qualifying shareholders to submit proposals to be included in the management proxy's circular.[81]

In reference to the development, shareholder proposals in Canada have been historically used as tools to enhance the accountability of corporate officers and expand shareholders' roles in corporate governance.[82] However, their development was significantly stymied in

[78] Robert W.V. Dickerson, John L. Howard and Leon Getz, *Proposals for a New Business Corporations Law for Canada*, vol.1 (Ottawa: Information Canada, 1971).
[79] *Ibid.*
[80] *Ibid.*
[81] *CBCA, supra* note 12, s. 137.
[82] Janis Sarra, "Shareholders as Winners and Losers under the Amended *Canada Business Corporations Act*" (2003) 39:1 Can Bus LJ 52 at 67.

earlier decades due to the original statutory language that imposed significant limitations on the types of proposals that could be circulated. Amongst the most notable was the provision allowing directors to exclude proposals on ESG concerns.[83] Scholars and commentators have noted that the effective use of proxy and proposal mechanisms was impeded by inadequate disclosure practices and a broader institutional skepticism- on the part of legislators and the judiciary-toward shareholder activism.[84]

During the 1980s, the Canadian courts did not fully endorse proposals as a mechanism to encourage corporate democracy or as good-faith expressions of shareholder preferences.[85] Instead, judicial decisions often reflected a posture of deference to corporate management, treating management's decisions as sacrosanct and presumed that questioning management in this manner amounted to an overreach.[86] Furthermore, Sarra also observes that the interpretative approach was assisted by the rigidity of the previous statutory language.[87] Under earlier versions of the *CBCA* and the *Bank Act*, particularly section 137(5)(b) and section 143(1) respectively, gave corporate officers the rights to refuse to circulate proposals on the ground that it "clearly appears" that the proposals submitted is primarily for the purpose of promoting general economic, political, social, religious, racial or similar causes.[88][89] This provision clearly served as a gatekeeping mechanism that limited

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[83] *CBCA, supra* note 12, s-s 137(5)(b).
[84] Janis Sarra, *Corporate Governance in Global Capital Markets* (Vancouver: UBC Press, 2011), at 195; Raymonde Crete, *The Proxy System in Canadian Corporations, A Critical Analysis* (Montréal: Éditions Wilson Lafleur Martel Itée, 1986), at 351 and David Johnston, Kathleen Doyle Rockwell and Cristie Ford, *Securities Regulation in Canada* (5th ed. Markham: LexisNexis, 2006), at 124.
[85] *Ibid*.
[86] See the case of *Wells v. Bioniche Life Services Inc.* 2013 ONSC 4871. See also Davies Ward Phillips and Vineberg LLP, "Guide to Shareholder Activism and Proxy Contests in Canada" (2024), online: < https://www.dwpv.com/sites/Proxy-Guide/2023/EN/36/index.html>, at page 5.
[87] Sarra, *supra* note 84, at 196.
[88] *CBCA, supra* note 12, s-s 137(5) [Pre-amendment *CBCA*].
[89] Under the previous version of the *Bank Act,* SC 1991, c 46, ss. 93(1) and 143(1).

shareholder engagement on matters deemed non-corporate in nature particularly, the ones that address broader social, political, or environmental concerns.

However, amendments to the *CBCA* in more recent years have introduced a more balanced and interpretive framework. These reforms narrowed the grounds upon which management can refuse to circulate proposals, thereby enhancing shareholder access and reinforcing the legitimacy of their participatory rights in corporate governance.

A key example of the judiciary's narrow interpretation of shareholder provisions can be found in the case law of *Re Varity Corporation v. Jesuit Fathers of Upper Canada*,[90] where the Ontario High Court upheld that the directors' decision to exclude a shareholder proposal on the basis that they were particularly for political cause. The proposal at issue raised concerns about corporate involvement in South Africa during the apartheid era, calling for divestment based on ethical and political considerations.[91] However, the proponents also framed their argument in economic terms, citing the potential reputational and financial risks associated with doing business in a regime under international scrutiny and sanctions.[92]

Despite this effort to connect the proposal to shareholder value and fiduciary considerations, the court endorsed the company's rejection, concluding that the proposal's primary purpose was of political value rather than economic value.[93] This decision exemplified the courts' formalist approach to statutory interpretation at the time, favouring a restrictive reading of shareholder rights and prioritizing managerial discretion. As Sarra

[90] [1997] 59 OR (2d). 459, 38 DLR (4th) 157 (H Ct J), affirmed [1987] 60 OR (2d) 640 (Ont CA).
[91] *Ibid.*
[92] *Ibid.*
[93] *Ibid.*

notes, such decisions reflected a broader judicial reluctance to view shareholder proposals as legitimate mechanisms for advancing corporate accountability, particularly when they touched on environmental, social, or governance (ESG) matters.[94]

The *Re Varity* Corporation[95] decision, alongside similar cases, underscores the historic judicial tendency in Canada to interpret shareholder proposal provisions narrowly, thereby curbing attempts by shareholders to influence corporate conduct beyond traditional financial matters. These rulings highlight the structural challenges shareholders faced when seeking to assert their participatory rights within the framework of the Canadian corporate law.

A similar interpretative stance was evident in the case of *Greenpeace Foundation of Canada v. Inco Ltd.,*[96] the court was asked to determine whether a shareholder proposal concerning environmental sustainability could be validly excluded from the corporation's (Inco) proxy materials under the *CBCA*. As a shareholder, Greenpeace submitted a proposal urging Inco to adopt and disclose environmental policies to reduce its ecological footprint.[97] Inco refused to circulate the proposal, relying on section 137(5)(b.1) of the *CBCA*, which allows corporations to exclude proposals that do not "relate in a significant way to the business and affairs of the corporation."[98]

Thus, the court upheld Inco's refusal, interpreting "business and affairs" narrowly to mean matters that directly impact the company's financial performance or shareholder value.[99] It

[94] Sarra, *supra* note 84, at 196.
[95] *Re Varity Corporation, supra* note 90.
[96] (1984), 25 A.C.W.S. (2d) 149, affirmed [1984] O.J. No. 274 (QL).
[97] *Ibid.*
[98] *CBCA, supra* note 12, s-s 137(5)(b.1).
[99] *Greenpeace Foundation of Canada, supra* note 96.

was found that the Greenpeace proposal dealt primarily with broad environmental policy rather than issues core to corporate governance or financial return, and therefore could be validly excluded.[100] This interpretation reflects a restrictive judicial approach that significantly limits the scope of shareholder proposals, particularly when they pertain to social or environmental matters that fall outside traditional financial indicators.

Canadian courts have historically been quick to side with management in rejecting proposals that a little downside cost to the expression of preferences other than the transactional cost involved in circulating proposals.[101] Such reasoning underscores the judiciary's tendency to prioritize managerial authority and transactional efficiency over broader stakeholder or ethical considerations, thereby limiting and impeding the potential for shareholder activism in areas bordering on ESG reforms.

The two cases discussed above in this chapter were the only reported Canadian decisions addressing shareholder proposals prior to 1989. The next significant judicial engagement with this issue came in *Cappuccitti v. Bank of Montreal*[102] where shareholder proposals were placed under scrutiny and the court validated management's rejection of shareholder proposals under similar statutory exclusions. Amidst these decisions, were dampening effects towards the preference for shareholder proposals mechanisms.

As Sarra observes, judicial interpretations during this period reflected a fundamental skepticism towards the idea that corporate governance activities can simultaneously benefit the corporations and be aimed at issues that might be broadly classified as environmental

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[100] *Greenpeace Foundation of Canada, supra* note 96.

[101] See generally *supra* note 86. The case of *Wells v. Bioniche Life Services Inc.* and also the article of Davies Ward Phillips and Vineberg LLP.

[102] [1989] OJ No 2153; 46 3LR 255 (Ont SC).

or social.[103] The judicial conservatism stood in sharp contrast to developments in the U.S., where the courts and regulatory frameworks progressively supporting the inclusion of shareholder proposals relating to a wide array of corporate activities, including the one related to ESG concerns.[104]

In Canada, however, non-controlling shareholders who sought to align corporate decision-making who sought to align corporate decision-making with broader ethical or sustainability considerations faced significant judicial and statutory resistance. As Sarra further notes, this resistance is particularly problematic given that shareholder proposals are not binding on directors or officers.[105] The costs of circulating such proposals are relatively minimal, aside from basic transactional and procedural requirements.[106] Yet courts remained quick to uphold managerial rejections, effectively stifling attempts by shareholders to shape corporate conduct through democratic participation mechanisms.

2.2 THE 2001 *CBCA* AMENDMENTS AND THEIR SIGNIFICANCE

The early use of shareholder proposals as seen in the cases of *Greenpeace Foundation of Canada v. Inco Ltd.,*[107] and *Re Varity Corporation v. Jesuit Fathers of Upper Canada*,[108] was significantly constrained by judicial interpretations and statutory language. A key

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[103] Sarra, *supra* note 84, at 196.
[104] See generally Jill E. Fisch and Adriana Robertson, "Shareholder Proposals and the Debate over Sustainability Disclosure" (2003), online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4477680> and Cynthia A. Williams and John M. Conley, "An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct" (2005) 28 Cornell Intl LJ 493.
[105] Sarra, *supra* note 84, at 197.
[106] *Ibid.*
[107] *Greenpeace Foundation of Canada, supra* note 96.
[108] *Re Varity Corporation, supra* note 90.

limitation was the court's refusal to recognize the standing of beneficial owners to submit proposals.[109]

In *Verdun v. Toronto-Dominion Bank*[110], a shareholder had sought the circulation of ten proposals relating to the structure, composition and operation of the board and procedures carried out at the annual general meeting. The management refused to circulate the proposals and accompanying statements in the proxy circular.[111] Verdun's application to the court was ultimately dismissed.[112] The Supreme Court of Canada found that Verdun's shares were held in the name of an investment dealer, he was not a registered shareholder but a beneficiary (beneficial) shareholder and thus lacked the standing under the relevant provisions of the *Bank Act*.[113]

Accordingly, the Court, having answered the threshold question that a beneficial shareholder could not submit a proposal, declined to determine the other grounds on which the corporation had refused to circulate the proposal, such as whether it was being used as an opportunity for abuse by securing the use of the publicity, as per section 143 of the *Bank Act*.[114] This restrictive reading was reinforced in the case of *Trumpeter Yukon Gold Inc. v. Omni Resources Inc.*,[115] affirming the principle that beneficial shareholders were precluded from engaging through statutory proposal mechanisms.

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[109] *Re Varity Corporation, supra* note 90.
[110] [1996] 3 SCR 550,1996 CanLII 172 (SCC) at paras. 10-12.
[111] *Ibid*.
[112] *Ibid*.
[113] *Verdun, supra* note 110.
[114] *Bank Act*, *supra* note 13.
[115] [1999] B.C.J. No 3089 (SC).

Sarra critiques this approach, noting that the court judgment in the case of *Greenpeace Foundation of Canada v. Inco Ltd.,*[116] narrowly construed the statutory language "shareholder access" (an issue that was afterwards remedied by the *CBCA* Amendment 2001).[117] Although the *Greenpeace*[118] decision asserts limited shareholder participation, the court however expressed some support for shareholders participation by stating that shareholder proposals can be an essential tool for corporate accountability and governance but must align with corporate interests as encapsulated by the law. This shift underscores a budding judicial recognition of the value of shareholder engagement in governance, even if constrained by statutory interpretation.

By 1996, there were signs of a judicial shift towards broader access to the shareholder proposal mechanism. This was more clearly reflected in the case of *Michaud v National Bank of Canada*[119] decision in 1997. In that case, Michaud sought the circulation of several shareholders proposals, a request that was refused by corporate officers. As in the *Verdun* case,[120] the proposal provisions at issue were those of the *Bank Act* however, the language mirrored the *CBCA* at the time.[121]

The proposal sought to separate the roles of a chief executive officer (CEO) from that of a board chair and to place limits on executive compensations including also, restrictions on insiders or service persons serving as directors.[122] The Quebec Superior Court rejected the National Bank's argument that the amount of shareholding was so small that Michaud could

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[116] *Greenpeace Foundation of Canada, supra* note 96.
[117] Janis Sarra, "The Corporation as Symphony: Are Shareholders First Violin or Second Fiddle" (2003) 36:3 UBC Law Review 403.
[118] *Greenpeace Foundation of Canada, supra* note 96.
[119] 2010 QCCLP 111, [1997] RJQ no 517 (Que SC).
[120] *Verdun, supra* note 110.
[121] *Michaud, supra* note 119.
[122] *Ibid*, at para. 7-16.

not be sufficiently be aggrieved by not having his proposals circulated to warrant a remedy.[123] The court held that the refusal to circulate Michaud's proposals denied him the only realistic means through which a small shareholder can communicate directly with, and seek the support of, other shareholders in their interest regarding the affairs of the bank.[124]

The court expressly rejected the argument that Michaud could have raised the matters on the floor of the meeting as an effective substitute.[125] Accordingly, the court held that there was not a single case placed before the court that evidences that proposals had been raised for the first time at a shareholders' meeting and voted on at that meeting.[126] The issues where important to Michaud as a shareholder who wanted to promote effective governance through greater director independence, increase transparency of corporate actions, and control costs of executive compensation.[127]

The court also rejected the allegations that the proposals should be excluded on the grounds that Michaud was trying to remedy a personal grievance.[128] (The Court acknowledged that Michaud's initial interest stemmed from a dispute that he had with the National Bank four years earlier, but held that there was not sufficient evidence to establish that this was the primary purpose of the proposals).[129] Accordingly, it held that the proposal merited a "calm" and "civilized" discussions that will be beneficial to the interest of both the corporation and its shareholders. More importantly, that shareholder proposals should be construed in such a manner that fosters participation at annual general meetings.[130]

[123] *Michaud, supra* note 119.
[124] *Ibid*, at 18-20.
[125] *Ibid*.
[126] *Ibid.*
[127] *Ibid*, at para. 36-39.
[128] *Ibid*, at para. 18.
[129] *Ibid.*
[130] *Ibid*.

Concerns about shareholders exploiting the proposal mechanism for publicity were further addressed in the case of *McVety v. Sintra*.[131] In this case, the Quebec Superior Court held that while publicity may result from a proposal, its presence did not amount to abuse within the statutory meaning unless there was clear evidence of bad faith.[132] In other words, the idea of convening shareholder support was held to be a legitimate aim consistent with the statutory purpose.

Despite these judicial developments, structural and behavioral barriers continued to impede the frequent use of shareholder proposals. Among these issues were apathy issues and free-rider problems, especially within institutional investor circles.[133] The monitoring of corporate management incurs agency costs, and thus, intervention is often limited to cases misbehavior threatens overall portfolio value.[134]

Nevertheless, the 2001 amendments to the *CBCA* marked a pivotal reform in Canadian corporate governance law. Most notably, they extended the right to submit shareholder proposals to beneficial shareholders, a class previously excluded under restrictive judicial interpretations such as in the case of *Verdun v. Toronto-Dominion Bank.*[135] This change was codified through the changes made to section 137(1.1), which permits "a registered holder or beneficial owner" of shares to submit proposals.[136]

[131] [1999] J.Q. No 5810 (QL) (C.S.Q.).
[132] *Ibid.*
[133] Oshionebo, *supra* note 10 at 649. The term 'free-rider' occurs when individual shareholders (including institutional investors) choose not to bear the costs of monitoring or engaging with management because they can still benefit from the efforts of others. Ultimately, this undermines effective shareholder engagement.
[134] Sarra, *supra* note 117, at 320.
[135] *Verdun, supra* note 110.
[136] *CBCA, supra* note 12, s-s 137(1.1).

The amendments also reflected an increase on the permissible word count for proposals from 200 to 500, which aims to facilitate fuller expression of shareholder concerns.[137] Additionally, proponents of a proposal were required to fully disclose their interest in a proposal thereby promoting transparency for other shareholders to fully be aware of their intent and potential impact of a proposal.[138]

Moreover, a refinement was made to section 137(5), which is limiting the scope of grounds upon which management could reject a proposal, thereby narrowing previously broad discretion that courts had deferred to.[139] These reforms were spearheaded by policy rationale to promote shareholder participation and align Canadian practices with international developments, particularly those emerging from the U.S. (S.E.C.) regime.[140]

In summary, the amendments of the *CBCA* helped institutionalise shareholder engagement as a key feature of Canadian corporate governance. These changes marked a transition from a rigid pre-amendment regime to a more accessible and democratic framework for shareholder engagement.[141] This evolution sets the stage for examining how shareholder proposals have grown within Canadian corporations over time, particularly in light of shifting governance norms and increased institutional influence.

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[137] *Canada Business Corporations Regulations, 2001, SOR/2001-512 [CBCR],* s-s 46(2)(c). This regulation came into effect alongside the amended CBCA in 2001.
[138] *Ibid,* s-s 46(2)(d).
[139] *CBCA, supra* note 12, s-s 137(5).
[140] See Canada, Parliament, House of Commons, *Bill S-11: An Act to Amend the Canada Business Corporation Act,* 1st Session, 37th Parliament, 2001 (assented to 14 June 2001).
[141] Sarra, *supra* note 117, at 403.

2.3 SHAREHOLDER ACTIVISM, TRENDS AND THE USE OF SHAREHOLDER PROPOSALS

2.3.1 The Judicial Development Fostering Shareholder Activism: *The Michaud Case*

The decision of the landmark case of *Michaud v. National Bank of Canada*[142] in 1997 significantly lowered procedural barriers for shareholder proposals in Canada. By affirming individual shareholders' rights to include proposals in proxy circulars of banks prior to their annual general meetings, this very victory largely eased the process of shareholder activism, especially in cases involving shareholder proposals.[143]

Following *Michaud's*[144] case, shareholder activism via proposals gained momentum, initially among banks and later across sectors, exemplified by early filings at companies like Bell Canada Enterprises and Dofasco.[145] Importantly, Michaud's proposals such as separating the roles of chairman and CEO and advocating for more transparent executive compensation highlighted the role of proposals in driving governance reforms and fostering board independence.[146]

This judicial milestone marked a shift towards more visible and assertive shareholder activism in Canada, helping to reshape governance practices by empowering minority shareholders. However, while *Michaud*[147] was a turning point, it is crucial to recognize that

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[142] *Michaud, supra* note 119.
[143] *Ibid.*
[144] *Ibid.*
[145] Eric Wang, Shamsud D. Chowdhury and Jacob Musila, "How Shareholder Activists pick their targets" (2005), Ivey Business Journal, online: <https://iveybusinessjournal.com/publication/how-shareholder-activists-pick-their-targets/>.
[146] *Michaud, supra* note 119, para. 7-16.
[147] *Ibid.*

the full impact of shareholder activism required further legal reforms and sustained engagement.

Structural and behavioural barriers such as management resistance, low proposal success rates, and shareholder apathy continued to limit the effectiveness of proposals until subsequent legislative changes, like the 2001 CBCA amendments, further expanded shareholder rights.

2.3.2 The Practicality of Collaborative Shareholder Activism in Canada

In Canada, shareholder activism has historically been characterized by "quiet intervention," where institutional investors adopt a collaborative approach rather than pursuing public confrontations unlike situations where shareholders raise issues directly with corporate officers or boards.[148] This practice has fostered what Sarra describe as a "corporate voice," where institutional shareholders raise governance concerns privately with boards and executive management to drive incremental reforms.[149] This aligns with the traditional consensus-driven and relationship-based Canadian governance culture.[150]

However, as domestic investment options become more limited, expectations for governance improvements rise, and collaborative activism increasingly proves insufficient.[151] As a result, institutional investors are shifting towards more assertive activism, including the strategic use of shareholder proposals as formal mechanism to challenge management and advocate for change.[152]

[148] Sarra, *supra* note 117, at 403.
[149] *Ibid*.
[150] Carol Liao, "A Canadian Model of Corporate Governance" (2014) 37:2 Dal LJ 549-600.
[151] *Ibid.*
[152] *Ibid,* at 430-431.

The Canadian Coalition for Good Governance (CCGG) exemplifies this evolution, pooling the voting power of pension funds, mutual funds and asset managers to effectively enhance and influence corporate governance practices.[153][154]

2.3.3 Institutional Ownership and their Impact on Shareholder Activism

Institutional investors play a dual role in Canadian shareholder activism. While some proponents, such as Sarra, suggest that shareholder proposals are actively employed to advance governance reform, empirical findings suggest a more complex and less uniform reality.[155] The presence of dominant institutional blockholders and insiders often reduces both the number and impact of shareholder proposals, as concentrated ownership allows management to minimize opposition from minority shareholders.[156] This dynamic indicates that Canadian shareholder activism through proposals is often limited by ownership structures that favour management continuity and control.[157] Activist strategies must therefore navigate this environment, focusing efforts where proposals can gain traction-typically on governance reforms related to the separation of the Chairman and CEO positions and expensing stock options.[158]

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[153] Canadian Coalition for Good Governance, “About Us” (2024) online:< https://ccgg.ca>.
[154] Sarra, *supra* note 117, at 416.
[155] *Ibid.*
[156] Wang, Chowdhury and Musila, *supra* note 145.
[157] *Ibid.*
[158]Sarra, *supra* note 117, at 416.

2.3.4 Barriers to Shareholder Activism and Proposal Effectiveness

The use of shareholder proposals was not very active before the mid-1990s, illustrating the structural challenges facing activism during this period.[159] From 1982 to 1995, only 18 shareholders proposals were filed in Canadian corporations, compared to hundreds in the U.S. where, in 1994 alone, the Investor Responsibility Research Center tracked 701 shareholder proposals.[160] This disparity highlights Canadian shareholders' limited capacity for collective action.[161] Montgomery further attributes the scarcity of shareholder proposals to factors such as scarce resources, legal constraints on coordination, conflicts of interest, reputational concerns, and management resistance.[162] These impediments have constrained the growth of shareholder activism and helped shape a uniquely cautious Canadian landscape, where formal shareholder proposals were a relatively rare tool.

2.4 CONCLUSION

In conclusion, the development of shareholder proposals in Canada—significantly shaped by the 2001 *CBCA* amendment—reflects a gradual shift from discreet, relationship-based engagement to more formal and public method of activism.

While boards of a corporation retain discretion to exclude proposals on specific grounds such as immateriality or personal grievances, legal and regulatory oversight ensures that shareholders retain meaningful channels of influence. Additionally, the landmark judicial

[159] Moira Hutchinson, "The Promotion of Active Shareholdership for Corporate Social Responsibility in Canada" online: SHARE < online: SHARE <www.share.ca/files/Active_Shareholdership _for_CSR_in_Canada.pdf>.
[160] Wang, Chowdhury and Musila, *supra* note 145.
[161] *Ibid.*
[162] Paul Montgomery, "Shareholder Activism in Canada: An Overview" (1996) 12 Canadian Journal of Comparative Law 89 at 90.

developments—most notably *Michaud*[163]—have further legitimised the use of shareholder proposals to address ESG concerns, signaling a shift in both the legal and cultural climate surrounding shareholder activism. Institutional investors, once traditionally passive, now play a growing role in promoting corporate accountability through shareholder proposals. Trends in proposal filings and voting outcomes reveal increased activism, with a broad range of filers raising diverse issue ranging from governance and compensation to environmental policy. This shift marks a growing recognition of shareholder proposals as a vital tool for engagement and corporate oversight within Canadian corporate governance.

[163] *Michaud, supra* note 119.

CHAPTER 3: MINORITY SHAREHOLDER PROPOSALS IN CANADA: LEGAL BARRIERS AND EMERGING CHALLENGES

3.1 INTRODUCTION

This chapter critically examines the legal and regulatory framework governing shareholder proposals, with particular emphasis on the experiences of minority shareholders. It explores the extent to which these shareholders can participate effectively in corporate governance, examining the barriers they encounter and potential solutions to enhance their engagement and influence corporate decision-making. In doing so, the chapter engages with broader debates surrounding shareholder activism, corporate accountability, and the evolving role of corporate law in accommodating diverse stakeholder interests. As discussed earlier, shareholder proposals play an important role in facilitating corporate accountability and encouraging transparency.[164] However, for shareholders with smaller or minority holdings, the use of this mechanism is often fraught with legal and procedural difficulties.[165]

In Canada, the statutory right to submit shareholder proposals is primarily governed by section 137 of the *CBCA*, with similar provisions found in the *Bank Act* and certain provincial statutes.[166] These provisions theoretically empower shareholders to influence corporate agendas. In practice, however, minority shareholders often face significant

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[164] International Organization of Securities Commission, Technical Committee, *Protection of Minority Shareholders in Listed Issuers: Final Report* (Madrid: OICU-IOSCO, 2009), at 4.

[165] *Ibid.*

[166] *CBCA, supra* note 12, s-s 137(1) *Bank Act*, *supra* note 13, s-s 143(1) and 144; *ABCA*; *supra* note **Error! Bookmark not defined.**, s-s 136(1); *BCBCA, supra* note **Error! Bookmark not defined.**, s-s 187(1)*; MCA, supra* note **Error! Bookmark not defined.**, s-s 131(1); *NBBCA*, *supra* note **Error! Bookmark not defined.**, s-s 89(1); *NLCA supra* note **Error! Bookmark not defined.**, s 224; *NSCA supra* note **Error! Bookmark not defined.**, Schedule III, para, 9(1)(a); *NWTBCA, supra* note **Error! Bookmark not defined.**, s-s 138(2); *OBCA, supra* note **Error! Bookmark not defined.**, s-s 99(1); *SBCA supra* note **Error! Bookmark not defined.**, s-s 131(1); *YBCA, supra* note **Error! Bookmark not defined.**, para 138(1)(a).

challenges to meet the statutory thresholds and procedural requirements necessary to bring forward a proposal.[167] The challenges include both substantive and procedural challenges that frustrate the effective exercise of shareholder rights.[168] As a result, fundamental questions arise concerning the extent to which the current framework supports or undermines shareholder democracy in the Canadian corporate context.[169]

3.2 GENERAL LIMITATIONS AND STRUCTURAL BARRIERS

The effectiveness of shareholder proposals in promoting minority shareholder interest is significantly constrained by statutory and regulatory framework that governs them. As such, this stems from the provisions of the *Canada Business Corporations Act* (*CBCA*),[170] *Bank Act*[171] and the similar provisions found in other provincial corporate statutes.[172]

Section 137(1.1) of the *CBCA* permits a registered shareholder to submit a proposal for inclusion in the management proxy circular, provided the shareholder has continuously held at least 1% of the voting shares or shares worth at least $2,000 CDN in market value for a continuous period of six months.[173] While the *CBCA* permits shareholders to aggregate their holdings to meet the eligibility threshold, this heightened qualification requirement remains a barrier for many minority shareholders. The threshold, introduced

[167] Janis Sarra, *Corporate Law: Cases, Materials and Notes,* 5th ed (Toronto: Emond Montgomery, 2018) at 433-435.
[168] *Ibid.*
[169] Oshionebo, *supra* note 10, at 634.
[170] *CBCA*, *supra* note 12, s-s 137(1).
[171] *Bank Act*, *supra* note 13, s-s 143(1) and 144.
[172]*ABCA*; *supra* note **Error! Bookmark not defined.**, s-s 136(1); *BCBCA, supra* note **Error! Bookmark not defined.**, s-s 187(1)*; MCA, supra* note **Error! Bookmark not defined.**, s-s 131(1); *NBBCA*, *supra* note **Error! Bookmark not defined.**, s-s 89(1); *NLCA supra* note **Error! Bookmark not defined.**, s 224; *NSCA supra* note **Error! Bookmark not defined.**, Schedule III, para, 9(1)(a); *NWTBCA, supra* note **Error! Bookmark not defined.**, s-s 138(2); *OBCA, supra* note **Error! Bookmark not defined.**, s-s 99(1); *SBCA supra* note **Error! Bookmark not defined.**, s-s 131(1); *YBCA, supra* note **Error! Bookmark not defined.**, para 138(1)(a).
[173] *CBCA*, *supra* note 12, s-s 137(1.1). See also *CBCR*, *supra* note 137, s 46.
[173] Oshionebo, *supra* note 10, at 642.

in the amendments to the *CBCA* in 2001, was intended to reduce frivolous proposals, however, it has been criticized disproportionately excluding minority shareholders from participating in governance issues.[174][175]

Puri argues that such barriers entrench managerial control by limiting access to the formal channel through which shareholders can express dissent or propose reforms.[176] Moreover, proposals must relate to the corporation's "business and affairs" and cannot include personal grievances or matters outside the corporation's jurisdiction.[177] Corporations maintain considerable discretion to exclude proposals that they claim are motivated by personal concerns or improper purposes and as such courts have largely upheld this discretion.

In the case of *Verdun v Toronto-Dominion Bank,*[178] the court affirmed the corporation's decision to exclude a shareholder proposal and also emphasizing the essence of filtering proposals that do not relate to the corporate affairs.[179] Similarly, in the case of *Michaud v. National Bank of Canada,*[180] the court supported the exclusion of a proposal on the grounds that it failed to fall within the permissible scope outlined by the *CBCA*.[181]

As a result, many proposals advanced by minority shareholders do not get to see the limelight during shareholder Annual General Meeting (AGM), as shareholders frequently fail to meet the eligibility criteria or navigate the technical process as prescribed under the

[174] *Bill S-11: An Act to Amend the Canada Business Corporation Act,* 1st Session, *supra* note 140.
[175] Oshionebo, *supra* note 10, at 648.
[176] Poonam Puri, "The Capital Markets Perspective on a National Securities Regulator" (2001) 51:2 Supreme Court Law Review 603-623.
[177] *CBCA*, *supra* note 12, s-s 137(5).
[178] *Verdun, supra* note 110.
[179] *Ibid.*
[180] *Michaud, supra* note 119.
[181] *Ibid.*

CBCA.[182] As Sarra notes, the complexity of these requirements, coupled with judicial deference to managerial discretion, effectively silences minority voices in corporate governance.[183]

Beyond the legislative framework, securities regulators play a key role in overseeing the shareholder proposal process. The Canadian Securities Administrators (CSA),[184] along with provincial securities commissions, enforce disclosure obligations and governance standards that intersect with shareholder engagement.[185] These regulatory bodies serve to uphold principles of transparency and procedural fairness, which is pertinent to principles of shareholder democracy.[186] Through various legal instruments, including National Instruments (NIs), Multilateral Instruments (MIs), and accompanying policies, regulators attempt to bridge gaps left by corporate law and ensure a minimum level of protection for shareholder rights.[187] One such instrument is the Multilateral Instrument 61-101: Protection of Minority Security Holders in Special Transactions.[188] Section 5.2 of this instrument aims to safeguard minority shareholders in contexts such as related-party transactions and corporate reorganizations, but it also reflects a broader regulatory concern for the equitable treatment of less powerful shareholders.[189]

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182 *CBCA*, *supra* note 12.
183 Sarra, *supra* note 167, at 430-434.
184 Stan Magidson, *CSA Business Plan* (2022-2025) online:< https://www.securities-administrators.ca/wp-content/uploads/2022/10/2022_2025CSA_BusinessPlan.pdf> at 4.
185 Robert Yalden, "Yalden explores democratic legitimacy of rulemaking in Canadian securities law" (4 February, 2022) online: <https://law.queensu.ca/news/Yalden-explores-democratic-legitimacy-of-rulemaking-in-Canadian-securities-law>.
186 *Ibid.*
187 *Ibid.*
188 Canadian Securities Administrators, *Multilateral Instrument 61-101*, *Protection of Minority Security Holders in Special Transactions* (2008).
189 *Ibid,* s 5.2.

However, As Anand emphasizes, while these instruments provide some protection, they remain largely reactive and fail to empower shareholder proactively.[190] Although regulatory oversight offers an important layer of accountability, it does not fully address the procedural and substantive barriers that minority shareholders face.

To promote genuine shareholder democracy, reforms must aim not only at increasing access to proposal mechanisms but also at limiting the discretion of corporate management to exclude proposals based on vague and discretionary criteria.

3.3 THE *CBCA* RESTRICTIONS AND THEIR IMPLICATIONS FOR MINORITY SHAREHOLDERS

Canadian courts have interpreted the shareholder proposal provisions under the *CBCA* in a manner that seeks to balance the protection of minority shareholders with the need to prevent abuse of the proposal process. However, this balance has often tilted against minority shareholders, particularly in the context of access, influence, and the procedural barriers imposed by section 137 of the *CBCA*.[191]

A landmark case illustrating the judicial stance on stakeholder considerations in Canadian corporate law is *BCE Inc. v. 1976 Debentureholders*[192]. In this case, BCE (Bell Canada Enterprises) was the target of a bidding war. The proposed plan was a leverage buyout of BCE Inc. which at the time was Canada's largest telecommunications company.[193] Under the proposed plan of arrangements, BCE would be restructured through a series of

[190] Anita Anand, *Shareholder-Driven Corporate Governance* (Oxford University Press, 2019), pp. 24-48.
[191] *CBCA*, *supra* note 12.
[192] 2008 SCC 69 (CanLII), [2008] 3 SCR 560.
[193] *Ibid.*

amalgamations with new entities created by the buyer group.[194] The shareholders of BCE would receive $42.75 per share in cash, representing a premium over the market price, making the deal highly attractive to them.[195] However, the transaction would be largely debt-financed, which meant that, after the deal, BCE would carry a significantly higher level of debt.[196] While shareholders overwhelmingly approved the plan, a group of debentureholders (creditors) – specifically those holding BCE-issued debentures from 1976 argued that the proposed plan of arrangement was oppressive and unfairly prejudicial to their interests.[197]

The court ultimately upheld the transaction, emphasizing that directors have a fiduciary duty to act in the best interests of the corporation, which includes considering the interests of various stakeholders-but not necessarily prioritizing one group over another.[198] As the court stated,

"the fiduciary duty of the directors is owed to the corporation, it is a contextual duty, informed by the expectations of stakeholders and the realities of the corporate enterprise.''[199]

This principle highlights a significant limitation for minority shareholders although their interests must be considered, they are not guaranteed primacy in corporate decision making. In fact, the BCE ruling underscores the discretion directors possess in weighing competing stakeholder interests, often to the detriment of the minority shareholders.

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194 *Ibid.*
195 *BCE Inc., supra* note 192.
196 *Ibid.*
197 *Ibid.*
198 *Ibid,* at paras. 37-40.
199 *Ibid,* at para. 66.

In the context of shareholder proposals, this discretion becomes even more pronounced. The eligibility requirements under section 137 of the *CBCA*- specifically the ownership threshold of 1% of voting shares or shares worth at least $2,000 CDN held for a continuous six-month period already restrict access for many minority shareholders.[200] Even when access is technically granted, corporations may exclude proposals on grounds such as improper purpose or personal grievance, as judicially affirmed in the cases of *Verdun v. Toronto-Dominion Bank*[201]and *Michaud v. National Bank of Canada.*[202]

Thus, the principle from the BCE case[203], which says no stakeholder group should be favoured over others, strengthens the power of managers and reduces the influence of minority shareholders. As Sarra points out, the *CBCA* seems democratic but often maintains existing power structures in corporations.[204] This happens because of procedural rules that exclude minority shareholders because courts tend to support the decisions made by company management.[205]

In practice, minority shareholder proposals are often disregarded unless they originate from shareholders who met the *CBCA's* technical thresholds. This presents a systemic challenge to shareholder democracy in Canada although minority shareholders are formally acknowledged in law, the combination of legislative barriers and judicial interpretation frequently sidelines their proposals in the governance process.

3.4 THE LIMITATIONS OF MINORITY SHAREHOLDER PROPOSALS

[200] *CBCA*, *supra* note 12, s-s 137(1.1) and *CBCR*, *supra* note 137, s 46.
[201] *Ibid,* s-s 137(5). See also *Verdun, supra* note 110.
[202] *Michaud, supra* note 119.
[203] *BCE Inc., supra* note 192.
[204] Sarra, *supra* note 167, at 440-442.
[205] *Ibid.*

The term ‘minority shareholder’ in most legal jurisdictions, does not have a universal definition of what it encapsulates. Nevertheless, even in the absence of a specific definition, the notion of “minority shareholder” is often interpreted or understood within particular contexts. Typically, a “minority shareholder” is recognized as a shareholder who does not possess a significant level of control or influence over the activities of the issuer.[206] They are individuals or groups that hold a small proportion or the company’s equity and voting rights, rendering them structurally disadvantaged within corporate governance frameworks.[207] In Turkey, the definition of “minority shareholder” refers to an individual or a group of shareholders owning less than 10% of the capital of a publicly traded joint stock company.[208]

In Canada, the *CBCA* does not define “minority shareholder” however, section 137(1.1) creates a defacto threshold: only shareholders who hold at least 1% of voting shares or $2,000 CDN in market value for a continuous six-month period may submit proposals for inclusion in a company’s proxy materials.[209] Hence, those who fall below this threshold are effectively excluded from the formal shareholder proposal process, regardless of the merit or public interest dimensions of their proposals.

Despite their limited influence, minority shareholders play a critical role in promoting corporate accountability and diversity of perspective.[210] As the Supreme Court of Canada emphasized in *BCE Inc. v. 1976 Debentureholders*,[211] directors must act in the best interest

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[206] Technical Committee, *Protection of Minority Shareholders in Listed Issuers: Final Report, supra* note 164 at 6.
[207] OECD, *Corporate Governance and the Rights of Minority Shareholders* (Paris: OECD Publishing, 2005) at 12.
[208] *Turkish Commercial Code, Law No. 6102 (2011), art 411(1).*
[209] *CBCA, supra* note 12, s-s 137(1.1) and *CBCR, supra* note 137, s 46.
[210] Khanna, *supra* note 75 at 3.
[211] *BCE Inc., supra* note 192 at para. 36-40.

of the company, considering what all stakeholders legitimately expect, not just what benefits the majority shareholders.[212] In other words, while directors are not required to prioritize minority shareholders, they are obligated to consider their interests within the broader governance context.

Moreover, section 5.2 of the Multilateral Instrument 61-101- Protection of Minority Security Holders in Special Transaction reinforces the importance of fair treatment of minority shareholders, particularly in transactions that may disproportionately affect their rights.[213] This instrument reflects a regulatory acknowledgment of the structural disadvantages faced by minority shareholders and provides mechanisms for their protection, especially in extraordinary transactions such as related-party deals or corporate reorganizations.[214]

Notwithstanding these legal and regulatory safeguards, minority shareholders in Canada face considerable limitations when attempting to submit and promote proposals. These obstacles arise from structural, procedural, institutional and financial barriers that restrict their capacity to impact corporate governance.[215] Hence, some of the barriers faced include:

3.4.1 Statutory Framework and High Thresholds for Submission

One of the most significant barriers facing minority shareholders in Canada is the statutory eligibility threshold required to submit a shareholder proposal under section 137(1.1) of the

[212] *Ibid.*
[213] *Multilateral Instrument 61-101,* supra note 189.
[214] *Ibid.*
[215] Dov Solomon, "The Voice: The Minority Shareholder's Perspective" (2017) Nevada Law Journal 739, online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2868725>.

CBCA.[216] To be eligible, a shareholder must hold at least 1% of the corporation's voting shares or shares worth a minimum of $2,000 CDN for a continuous period of six months.[217] While this threshold may appear modest, in practice it is prohibitive for many minority shareholders-particularly in large corporations where even $2,000 CDN investment may constitute an insignificant fraction of total shareholdings, especially when share prices exceed over $100 per unit.

Consequently, the criteria for eligibility tend to favour large institutional investors and affluent individuals who possess a significant amount of the corporate shares, thereby consolidating governance influence in the hands of a few and marginalizing smaller investors. Minority shareholders, who often include newer or activist investors seeking to respond to recent corporate actions, may be disqualified purely on temporal grounds if they have not held shares long enough. The holding period requirement, meant to encourage long-term commitment unintentionally prevents shareholders with valid, urgent issues from being heard.[218]

Moreover, minority shareholders are often dispersed and uncoordinated, which further limits their capacity to meet the statutory threshold through aggregation despite the *CBCA* technically allowing for such collaboration.[219] Yang et al., suggest that to fix this imbalance, shareholders should form coalitions or alliances with institutions.[220] This could give them the necessary economic power and organizational strength to meet the

[216] *CBCA, supra* note 12, s-s 137(1.1).
[217] *CBCR, supra* note 137, s 46.
[218] Poonam Puri, "The Future of Stakeholder Interests in Corporate Governance" (2010) 48:3 Canadian Business Law Journal 427-445.
[219] *CBCA, supra* note 12, s-s 137(1).
[220] Yang, Wang and An, *supra* note 6.

requirements for submitting proposals and make their voices heard more effectively.[221] This is especially relevant given that shareholder proposals are often impactful when they reflect the backing of coordinated groups with shared objectives, such as ESG-related advocacy or corporate accountability.[222]

Compounding these substantive barriers are the procedural requirements that minority shareholders face to get their proposals considered. These include strict deadlines for filing, proof of continuous ownership, a declaration of intent to attend the annual meeting, and a precise 500-word limit.[223] While these requirements are supposedly meant to ensure order and clarity, they often lead to exclusion based on technicalities rather than the actual value of the proposal. This focus on procedure over substance disproportionately affects shareholders with fewer resources who may not have access to legal or professional guidance.

These exclusions bring up bigger questions about fairness and access to corporate governance. By setting up shareholder engagement in a way that favours wealth and legal expertise, the current system could strengthen managerial control and weaken stakeholder participation. As Puri noted, sticking too rigidly to procedures can lead to dismissing shareholder voices with real concerns, especially those about corporate social responsibility or governance changes that do not match typical financial interest.[224]

3.4.2 Legal Ambiguity, Judicial Interpretation and Limited Scope of Proposals

[221] *Ibid.*
[222] Yang, Wang and An, *supra* note 6.
[223] *CBCR, supra* note 137, s 48.
[224] Puri, *supra* note 218 at 427-445.

While the *CBCA* and the *Bank Act* permit shareholder proposals, the statutory language lacks clarity and it is open to several ambiguities.[225] The language of these statutes are vague, particularly concerning the permissible scope of proposals, thereby leaving substantial discretion to corporations and the courts.[226] Based on section 137(5) of the *CBCA*, corporations are allowed to omit proposals for reasons like personal grievances, management functions, or if they are "substantially similar to previous proposals.[227] This lack of clarity in the rules creates a situation where regulatory discretion can be used to silence shareholders who disagree.[228]

More significantly, the *CBCA* gives corporations the power to restrict proposals to matters within the corporation's business and affairs, excluding (ESG) concerns unless they directly impact the corporation's financial performance.[229] This understanding weakens the increasing importance of ESG factors in corporate governance and highlights the law's preference for established managerial control and sticking to the old idea of just focusing on shareholder value.

Judicial treatment of shareholder proposals has weakened these statutory shortcomings as such in the case of *Re Varity Corporation v. Jesuit Fathers of Upper Canada*,[230] the Ontario High Court held that it would not compel the corporation to distribute a proposal primarily aimed at abolishing apartheid in South Africa, because it does not follow the objective goals of the organization.[231] The court's refusal not to see ethically based proposals as valid

[225] *CBCA, supra* note 12, and the *Bank Act*, *supra* note 13.
[226] *CBCA, supra* note 12, s-s 137(5) and the *Bank Act*, *supra* note 13*,* s-s 143(5).
[227] *Ibid,* s-s 137(5).
[228] *Ibid.*
[229] *CBCA, supra* note 12, s-s 137(5)(b) and (c); see also the *Bank Act*, *supra* note 13, s-s 143(5).
[230] *Re Varity Corporation, supra* note 90.
[231] *Ibid.*

shows their non-willingness to consider the wider concerns of shareholders, including important international human rights matters.

This restrictive approach can also be seen in the cases of *Verdun v. Toronto-Dominion Bank*[232] and *Michaud v. National Bank of Canada*[233], where the court have interpreted shareholder rights narrowly, particularly where proposals touch on governance or social issues. These decisions underscore how judicial discretion can undermine the democratic potential of shareholder proposals.

Furthermore, the rulings in the above cases illustrate judicial reluctance to expand the scope of shareholder proposals into domains traditionally reserved for managerial discretion, even where such matters have broad ESG relevance. This judicial posture reflects a tension between shareholder democracy and managerial authority. Although shareholders technically have the right to make proposals, the unclear wording of the law and the cautious approach of courts greatly reduce the potential for this process to bring about change. Courts have generally supported the authority of boards over strategic and operational decisions, even when these decisions involve widespread ESG issues. This judicial respect reinforces a governance system that favours managerial power and minimizes the involvement of minority shareholders, especially when they focus on ethical or long-term sustainability goals.

3.4.3 Management Resistance and Power Imbalance

[232] *Verdun, supra* note 110.
[233] *Michaud, supra* note 119.

Corporate management often resists minority proposals, viewing them as unsettling or contrary to the company's strategic interests because they are mostly pitched towards ESGs.[234] These kinds of proposals are often seen as a problem and not in line with the company's immediate plans, leading management to use their advantages in the process and information to weak the impact of the proposal.[235]

This opposition is not just a matter of attitude; it is built into the corporate governance system, where management has control over the steps that shareholder proposals must go through.[236] One important mechanism in this process is the proxy circular (or proxy statements)- a document sent to shareholders by a company in advance of its annual or special meetings, which outlines the issues up for a vote and solicits proxies.[237][238] While proxy circulars are meant to help shareholders participate in an informed way, they are written and distributed under the board's control.[239] The board can use its power to present proposals in a biased way, make them seem less important, or completely remove them under statutory exemptions.[240] This situation creates a strategic imbalance- proposals that support the board's goal of maximizing profits are more likely to be included, highlighted, and approved, while those that promote ESG or ethical issues are often minimized or left out.[241]

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[234] Oshionebo, *supra* note 10, at 632.
[235] Oshionebo, *supra* note 10, at 632.
[236] *Ibid.*
[237] *CBCA, supra* note 12, s 150.
[238] Kezia Farnham, "What is a proxy statement? Definition, rules, & examples" (24 July 2023), online:< https://www.diligent.com/resources/blog/what-is-a-proxy-statement>.
[239] *Ibid.*
[240] *CBCA, supra* note 12, s-s 137(5); management may exclude proposals deemed irrelevant, not relating the corporation's business and affairs or repetitive.
[241] Paul Davies and Sarah Worthington, *Gower: Principles of Modern Company Law,* (10th ed., London: Sweet & Maxwell, 2016), at 672-675.

Additionally, minority or smaller shareholder-especially individual investors or small institutional holders-face a significant disadvantage in this setup.[242] Lacking of access to internal company information, legal expertise, or organized support networks, these shareholders often find it difficult to draft proposals that meet the legal requirements for relevance, specificity, and connection to the business.[243]

Even when proposals technically comply with the rules, they may be placed in less noticeable spots in the proxy materials or weakened by management's comments, thereby reducing their visibility and impact.[244] This power of imbalance shows a larger structural issue: the shareholder proposal process, while seemingly democratic, works within a legal system that favours board control and consistently pushes aside dissenting or reform-minded voices, especially those that question traditional economic goals.

Without stronger regulatory protections or ways for proposals to be shared independently, shareholder involvement remains controlled by management's authority to decide what gets through.

3.4.4 Cost and Resource Constraints

The procedural and financial burdens associated with shareholder proposals present significant barriers to minority shareholder, particularly when proposals address ESG concerns that often face resistance from management. These obstacles reflect structural inequalities in corporate governance, systematically disadvantage those without institutional power to legal expertise.

[242] Anand, *supra* note 190, pp. 24-48.
[243] Anand, *supra* note 190, pp. 24-48.
[244] *Ibid.*

Minority shareholders frequently lack the financial resources to draft, submit, and advocate for their proposals effectively. The process is highly technical, requiring strict compliance with submission timelines, word limits, and formal documentation standards set out in the *CBCA*.[245] Any procedural misstep-such as missing a deadline or failing to meet formatting requirements can result in a proposal being excluded from the proxy circular, thereby rendering it invisible to the broader shareholder base.[246][247]

Typically, a shareholder must submit a cover letter, a draft resolution, a supporting document (limited to 500 words under the *CBCA*), and, where applicable, a custodian letter.[248] These materials must be delivered in writing to the corporate secretary, with proof of delivery strongly recommended.[249]

Given these requirements, a minority shareholder seeking enhanced climate disclosure from a major Canadian energy company may need to engage legal counsel or governance expert to ensure compliance with statutory and regulatory norms.[250] This significantly raises the cost of participation, often to prohibitive levels for retail investors or small institutions.[251] Even with expert assistance, there is no guarantee a proposal will pass management may block it, or shareholders may reject it if it does not align with the company's goals.[252] Beyond procedural hurdles, substantive knowledge gaps further

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[245] *CBCA, supra* note 12, s-s 137(1)-(5).
[246] *Ibid*, s-s 137(5).
[247] *CBCR, supra* note 137, s 48. See also Principle For Responsible Investment (PRI), *A Guide To Filing Impactful Shareholder Proposals* (2023) United Nations Global Compact online:<https://www.unpri.org/download?ac=17985> at 8.
[248] *Ibid.*
[249] *Ibid.*
[250] *Ibid.*
[251] *Ibid.*
[252] *Ibid.*

disadvantage minority shareholders.[253] Proposals on issues such as cyber security, climate risk, or corporate governance require familiarity with technical domains, industry-specific risks and corporate strategy.[254]

Crafting a compelling, compliant proposal that resonates with both management and fellow shareholders requires expertise most individual shareholders do not possess.[255] These constraints help explain the historically low success rates of shareholder proposals in Canada.

As Oshionebo notes, of the 991 proposals submitted between 2000 and 2011, only 35 received majority support.[256] Most successful proposals focused on governance issues such as stock options, board accountability, or disclosure of liabilities.[257] Proposals dealing with ESG concerns rarely gained support, which shows that company leaders often have their own biases and that people pushing for these changes have limited resources.[258]

In this context, the shareholder proposal mechanism functions less as a tool for corporate accountability and more as a systemic barrier i.e., available in theory but not in practice. The combination of legal complexity, high cost and resistance to change discourage minority shareholders from participating, which allows large shareholders and management to maintain control over company decisions.

3.4.5 Practical Constraints Due to Non-Binding Nature

[253] *Ibid.*
[254] *Ibid.*
[255] PRI, *supra* note 247.
[256] Oshionebo, *supra* note 10, at 636-639.
[257] *Ibid.*
[258] *Ibid.*

Shareholder proposals under section 137 of the *CBCA* are non-binding in nature, which means that even when passed by majority of shareholders, boards of a corporations are under no obligation to implement them.[259] The advisory status severely limits the practicality as a tool of shareholder democracy.[260]

Unlike by-law amendments or shareholder agreements, shareholder proposals under the *CBCA* serve as ways shareholders voice their worries or opinions, not actual orders that the company must act on.[261] As Henderson notes, the non-binding nature of shareholder proposals has made them less effective for engaging in democratic processes.[262]

This setup clearly shows a problem in how Canadian companies are run. Shareholders are officially allowed to make suggestions, but because there is no way to make companies act on them, the whole thing is mostly just for show. This is especially true when it comes to ESG issues or concerns. Empirical data reinforces this point as shareholder proposals in Canada have low success rate, relatively few that receive majority support and even fewer that lead to actual changes in corporate behaviour.[263] This problem is often associated for ESG or governance-focused proposals, which often lack financial implications and are therefore easier for boards to dismiss as peripheral to the corporation's business affairs under section 137(5) of the *CBCA*.[264]

Even if proposals get some support or included in a company's proxy materials, company boards might just do the bare minimum, like adding ESG words to their policies without

[259] *CBCA, supra* note 12, s. 137.
[260] *Ibid.*
[261] *Ibid.*
[262] Gali Elizabeth Henderson, "A Duty To Minimize The Corporation's Environmental Impacts: Corporate Governance and Sustainable Development" *Faculty of Law, University of Toronto* (2014) online: < https://utoronto.scholaris.ca/server/api/core/bitstreams/c9c7d255-dd5e-4143-9172-c40fa5b47b52/content>.
[263] Yang, Wang and An, *supra* note 6.
[264] *CBCA, supra* note 12, s-s 137(5).

making real changes. This practice allows firms to avoid pressure from activists without altering existing governance structures or what they focus on. As a result, minority shareholders do not have much say, and where democratic engagement is encouraged in theory but limited in practice.

3.4.6 Evolving Use for ESG Advocacy

Shareholders are increasingly using proposals to raise climate, diversity, and governance concerns. This trend has been fueled by a growing ESG concerns among institutional investors, advocacy groups and NGOs that seek to embed broader stakeholder interests into corporate governance discourse. However, regulators and courts are still developing coherent frameworks to address these modern concerns fairly. In the absence of a clear judicial or legislative framework, legal uncertainty continues to dissuade proponents from pursuing ESG-focused shareholder proposals.

Under section 137(5)(b) of the *CBCA*, corporations may refuse to include shareholder proposals that does not in any way reflect to the business or affairs of the corporations.[265] This exclusion clause has often been used to reject ESG-related proposals because they are seen as not related to the company's "business and affairs," especially if they do not seem to directly improve the company's financial performance in the short term.

A prominent example is the earlier mentioned case of *Greenpeace*[266] which asserted how the court validly excluded Greenpeace's proposals that were focused on climate issues.[267]

[265] *CBCA, supra* note 12, s-s 137(5).
[266] *Greenpeace Foundation of Canada v. Inco Ltd., supra* note 96.
[267] *Ibid.*

The court showed a lot of respect for the decisions made by company directors, basically protecting those decisions from being closely examined by the court.

Such decisions underscore the regulatory uncertainty surrounding shareholder proposals that touch on emerging issues. While Canadian securities regulators have taken incremental steps towards mandatory climate disclosures, the *CBCA's* shareholder proposal regime remains ill-equipped to facilitate substantive influence on ESG concerns.

As Richardson notes, the lack of a principle or purpose approach to interpreting the exclusion grounds risks rendering the shareholder proposal regime obsolete or performative, particularly where corporations are unwilling to engage with non-financial concerns.[268]

3.4.7 Lack of Harmonized Law

The *CBCA* provides a federal framework on shareholder proposals as this is seen under section 137 which sets out eligibility criteria and procedural requirements for submitting proposals to be included in a corporation's proxy circular.[269] However, many Canadian corporations are incorporated under provincial statutes such as Ontario's Business Corporations Act (*OBCA*), Alberta's Business Corporations Act (*ABCA*) or British Columbia's Business Corporations Act (*BCBCA)* which do not always fully mirror the *CBCA's* shareholder proposal provisions or may omit them entirely.[270]

[268] Benjamin J. Richardson, "Protecting Indigenous Peoples through Socially Responsible Investment" (2007) 6:1 Indigenous Law Journal at 205-234.
[269] *CBCA, supra* note 12, s. 137.
[270] *ABCA*, *supra* note 20; *BCBCA*, supra note 20 and *OBCA*, *supra* note 20.

This legal fragmentation creates inconsistency in shareholder rights and corporate governance standards across jurisdictions. The lack of a consistent legal rules makes it harder for shareholders to understand and participate in overseeing companies through proposals. For instance, the OBCA does not contain a provision that fully captures section 137 of the *CBCA*.[271] This makes it more difficult to put forward proposals, especially for shareholders who have investments in different regions with different rules or no way to make proposals at all.

Additionally, the Corporations Act of Manitoba (*MCA*) exemplifies these challenges. Unlike the *CBCA*, which permits both registered and beneficial shareholders to submit proposals provided if they hold at least 1% or $2,000 CDN in shares for six (6) months, the *MCA* restricts this right to registered shareholders only.[272] This excludes beneficial shareholders – those who hold their shares through intermediaries such as brokerages unless their names appear on the corporate registry.[273] Given that many retail and institutional investors fall into this category, the *MCA*'s restriction significantly limits shareholder participation in Manitoba-incorporated companies.[274]

Further differences concern share aggregation. The *CBCA* allows shareholders to combine their holdings to meet the eligibility threshold, enabling collective action among smaller investors.[275] The *MCA* does not permit such aggregation, which places additional barriers on minority shareholders seeking to submit proposals.[276] Procedurally, the *MCA* also imposes stricter filing requirements: proposals to be submitted at least 90 days before the

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[271] See the *CBCA, supra* note 12, s. 137 and *OBCA*, *supra* note 20, s. 99.
[272] *CBCA*, *supra* note 12, s-s 137(1.1) and *MCA*, *supra* note 20, s-s 143(1).
[273] *MCA*, *supra* note 20, s-s 143(1).
[274] *Ibid.*
[275] *CBCA*, *supra* note 12, s-s 137(1.4)
[276] *MCA*, *supra* note 20.

meeting, compared to the *CBCA*'s more flexible 60-day deadline, which starts 150 days prior to the anniversary of the previous annual meeting.[277]

In terms of substantive limitation, the *MCA* gives corporations broader discretion to exclude proposals.[278] It allows exclusion if the proposal concern matters of publicity, has been previously defeated, or relates to broader social or environmental concerns.[279]

This stands in stark contrast to the *CBCA*, which explicitly permits proposals addressing environmental, social, and governance (ESG) issues recognizing their growing importance in contemporary corporate oversight.[280] Manitoba's narrower scope effectively silences proposals aimed at responsible corporate conduct and sustainability.

In contrast, the U.S. offers a more robust and uniform activism under the SEC rules, particularly Rule 14a-8.[281] This rule mandates that public companies to include qualifying shareholder proposals in their proxy materials unless they fall under specific enumerated exceptions.[282]The U.S. system offers clear, unified rules, boosting predictability and engagement in shareholder activism. Canada's more fragmented approach, with wide variation between federal and provincial regimes, reveals a more cautious and arguably outdates attitude toward shareholder involvement in governance.

The absence of a harmonized governance structure across Canadian corporate statutes raises serious concerns about equitable access to shareholder participation. Disparities

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[277] *Ibid,* s-s 143(2) and *CBCA*, *supra* note 12, s-s 137(5). See also *CBCR*, *supra* note 137, s 49.
[278] *MCA*, *supra* note 20, ss 143(5), 143(6).
[279] *Ibid.*
[280] See *CBCA*, *supra* note 12, s-s 137(5).
[281] Securities and Exchange Commission, Rule 14a-8.
[282] *Ibid.*

between the *CBCA* and the *MCA,* in particular, highlight how jurisdictional differences can restrict minority shareholders' rights based solely on where a corporation is incorporated.[283]

This undermines the objectives of shareholder democracy and weakens the potential for meaningful engagement on critical issues such as ESG accountability and corporate transparency.

3.5 THEORETICAL LIMITATIONS: THE NON-BINDING NATURE OF SHAREHOLDER PROPOSALS

The effectiveness of minority shareholder proposals has been the subject of significant issue, particularly in the context of corporate governance and shareholder activism. While proposals offer a formal channel for shareholders to express concerns and influence corporate direction, their impact is significantly limited by their non-binding nature under the Canadian corporate law.[284]

This section looks at the systemic and procedural problems that smaller shareholders face when trying to make changes through proposals. These include legal requirements, exclusion rules, and board decisions that reduce the real impact of proposals, no matter how much support they get from shareholders.[285]

In theory, corporate governance usually favours the board and management's decisions, seeing shareholder proposals as suggestions rather than requirements.[286] This creates a

[283] See *CBCA*, *supra* note 12 and *MCA*, *supra* note 20.
[284] *CBCA, supra* note 12, s. 137(7).
[285] Aaron A. Dhir, "Politics of Knowledge Dissemination: Corporate Reporting, Shareholder Voice, and Human Rights (2009) 47:1 Osgoode Hall LJ at 65.
[286] Stephen M. Bainbridge, "Director Primacy and Shareholder Disempowerment" (2006) 119:6 Harvard Law Review 1735 at 1746-1748.

conflict between shareholder democracy and managerial power, where proposals are more about showing accountability than making real changes.[287]

Additionally, the current system limits the inclusion of minority or smaller shareholders' opinions in actual decision making and implementation, even when these opinions reflect valid and widespread concerns, especially about ESG concerns.[288] To truly empower minority or smaller shareholders, there is a need to change not just the rules but also the underlying beliefs about corporate governance.[289] Also, the need for the recognition of shareholders as active participants in shaping the company's goals, not just as passive investors.[290]

By understanding these limitations, this analysis argues for reforms that go beyond simply including shareholders and move towards giving them real influence. This ensures that shareholder proposals become a genuine tool for corporate accountability and participatory governance.[291]

3.5.1 Shareholder Proposals: A Corporate Governance Tool

Shareholder proposals are a way for shareholders to influence how a company is run by promoting transparency, accountability and stakeholder engagement.[292] Even if proposals

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[287] Bernard S. Black, "Shareholder Activism and Corporate Governance in the United States" in Peter Newman, ed, *The New Palgrave Dictionary of Economics and the Law,* vol 3 (London: Macmillan, 1998) 459 at 462.

[288] Carol Liao, "Corporate Governance Reform for the 21st Century: A Critical Reassessment of the Shareholder Primacy Model" (2012) 43:2 Ottawa Law Review at 181.

[289] Lynn A. Stout, *The Shareholder Value Myth: How Putting Shareholders first Harms Investors, Corporations, and the Public* (Berrett-Koehler Publishers, 2012), at 5.

[290] Luc Renneboog and Peter G. Szilagyi, "The role of shareholder proposals in corporate governance" (2011) 17:1 Journal of Corporate Finance, 167-188.

[291] *Ibid.*

[292] Oshionebo, *supra* note 10, at 624.

are not fully adopted, they still play a role by pushing boards and management to address important issues they might ignore otherwise.

Accordingly, even if shareholder proposals are not put into action, they can still push companies to deal with the issues raised. This can lead to internal changes or policy adjustments that improve how the company is run. The act of submitting and sharing these proposals increases transparency because companies have to include them in their proxy materials or explain why they were excluded.[293] When proposals deal with controversial or sensitive issues, especially those related to ESG matters, if management refuses to accommodate them, it can attract media attention or even legal examination.

As seen in the cases of *Greenpeace Foundation of Canada v. Inco Ltd.,*[294] and *Michaud v. National Bank of Canada,*[295] courts usually support management's right to exclude proposals that are outside the scope of proper shareholder business or seen as promoting personal agendas. However, the publicity from these disputes can harm the corporation's public image and investor relations, no matter the legal result.

Moreover, when minority shareholder proposals do succeed either through shareholder support or voluntary adoption by the board they can lead to substantive improvements in governance.[296] These may include changes to executive compensation policies, enhanced board diversity, or stronger commitments to environmental and social responsibility. In this way, minority shareholder activism serves not only as a tool for oversight but also as a catalyst for corporate governance reform in line with evolving stakeholder expectations.

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[293] *CBCA, supra* note 12, s-s 137(7).
[294] *Greenpeace, supra* note 96.
[295] *Michaud, supra* note 119.
[296] Renneboog and Szilagyi, *supra* note 290.

3.5.2 Shareholder Proposals: Role of Institutional Investors

In Canada, shareholder proposals are recognized under laws like the *CBCA* and the *Bank Act* but are usually non-binding, even if most shareholders approve them.[297] This is based on the idea that directors, not shareholders, should manage the company because they have a duty to act in the company's best interest and have better access to information.[298]

However, the influence of institutional investors is changing this. These investors, like pension funds and mutual funds, hold a lot of voting power and often represent long-term interest.[299] Their support can give credibility and momentum to shareholder proposals, even if they are not legally binding.[300] Research shows that when large institutional shareholders support proposals, boards may feel pressured to adopt the recommendations due to potential damage their reputation, finances, or market position.[301] Institutional investors also negotiate privately with boards, using the possibility of proposals or public votes as leverage.[302] This shows a shift in corporate power from legal rules to market-based and reputational accountability.[303] Institutional investors play a crucial role in bridging the gap between the formal limitations of shareholder proposals and their real impact on corporate governance standards in Canada.

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[297] *CBCA, supra* note 12 and *Bank Act*, *supra note* 13.
[298] *CBCA, supra* note 12, s-s 137(5). See also Peoples Department Stores v. Wise, *supra* note 41. (this case affirms directors' fiduciary duties to the corporation, not to individual shareholders).
[299] Anita Anand, *Systemic Risk, Institutional Investors, and Securities Regulation* (Oxford: Oxford University Press, 2017), at 138-140.
[300] *Ibid.*
[301] *Ibid*, at 142-144.
[302] *Ibid*.
[303] *Ibid.*

3.6 ALTERNATIVE MECHANISMS TO INFLUENCE MANAGEMENT: AMENDMENTS AND REFORM OPPORTUNITIES

Beyond shareholder proposals, which remain non-binding under the *CBCA*, shareholders particularly institutional investors have developed other ways to influence management. These include withholding votes in director elections, which is reinforced by the recent *CBCA* amendments requiring majority voting for individual directors.[304] They also use "say-on pay" advisory votes, which although not required but are becoming more common as it allows shareholders to express approval or disapproval of executive compensation.[305]

Shareholders also rely on legal mechanism such as the oppression remedy and derivate actions to challenge managerial conduct.[306] Institutional investors further exert influence through private engagement public campaigns, and advice from proxy advisors to influence companies.[307] Notably, the amendments of the *CBCA* included enhanced board diversity and executive compensation, which shows a move towards transparency.[308] To give shareholders more power, there are suggestions for binding votes on important issues, easier proxy access, lower requirements for making proposals, and adopting a stewardship code.[309] These changes indicate a move towards a corporate governance model where shareholders have more say.

3.7 CONCLUSION

[304] *CBCA, supra* note 12, s-s 106(3.4).
[305] Canadian Coalition for Good Governance, "Model 'Say on Pay' Policy for Issuers" (2010), online: < https://ccgg.ca>.
[306] *CBCA, supra* note 12, s. 241(see on oppression remedy) and s. 239 (see on derivative actions) – these are the various methods shareholders can use to challenge managerial conduct.
[307] Anand, *supra* note 299, at 138-145.
[308] *CBCA, supra* note 12, s 172.1 (see on board diversity) and s 172.3 (see on executive compensation).
[309] Ramandeep K. Grewal, "Board Diversity in Canada: Progress and Plateaus" (2024), online: < https://stikeman.com/en-ca/kh/canadian-securities-law/board-diversity-in-canada-progress-and-plateaus>.

To fix the issues with proposals from minority shareholders, the *CBCA*[310] should make specific changes to give these shareholders more rights and create a fairer corporate governance system. This involves making it easier for smaller investors to participate by reducing the requirements, being more open about how shareholder proposals are assessed, and encouraging institutional investors to engage with a broad range of perspectives. Furthermore, corporations should recognize proposals from minority shareholders as helpful ideas that can lead to innovation and long-term sustainability, not as hostile actions.

By removing the obstacles that prevent minority shareholders from participating, the *CBCA* can make the most of their potential. This will ensure that different viewpoints are taken into account and that companies are responsible to all their stakeholders. In the end, these changes will improve corporate governance and help create a more balanced and sustainable economy where all shareholders, no matter how small, have a real chance to influence the future of Canadian companies.

[310] *CBCA, supra* note 12.

CHAPTER FOUR: SHAREHOLDER PROPOSALS, FIRM PERFORMANCE AND APPROVAL RATES

4.1 INTRODUCTION

Shareholder proposals have become an increasingly important tool for shareholders in Canada to influence corporate policy and governance, playing a vital role in enhancing firm performance.[311] However, the practical impact of shareholder proposals on firm outcomes and their likelihood of approval remain subjects of debate.[312] Specifically, questions persist as to whether these proposals meaningful effect firm behaviour or merely operate as symbolic gestures with limited influence.[313]

Recent data from the 2024 TSX Proxy Season Insights report underscores this uncertainty.[314] Proposals addressing governance issues, such as hybrid AGM's, achieved a notable passage rate of 50% passage.[315] In contrast, proposals focused on environmental issues and executive compensation faced significant opposition, garnering approval rates

[311] Anita Anand, "Implications of Shareholder Activism" (2016), online: FAIR CANADA < https://faircanada.ca/wp-content/uploads/2016/12/Anand-Implications-of-Shareholder-Activism.pdf>.
[312] Peer Zumbansen, "Sustainable Transformation of Business and Finance" (2023), online: McGill SGI Academy Impact Paper, <https://www.mcgill.ca/business-law/files/business-law/2023tblsaimpactpaper_final_0.pdf>.
[313] *Ibid.*
[314] Miles Fazzalari and Shawn Rogers, "2024 TSX Proxy Season Insights: Shareholder Proposals" (2024), online: Hugessen Consulting < https://www.hugessen.com/sites/default/files/news/Shareholder%20Proposal%20October%202024.pdf>.
[315] *Ibid.*

of just 13% and 1% respectively.[316] These disparities raise fundamental questions about the mechanisms through which shareholder proposals influence firm performance, as well as the characteristics that contribute to their approval or rejection.

Accordingly, this chapter examines two core issues: first, whether shareholder proposals in the Canadian context has led to measurable improvements in corporate governance and performance; and second, how the design, framing, and strategic presentation of proposals may increase their likelihood of success. Through a careful analysis of doctrinal evidence and theoretical frameworks, this chapter seeks to address the relationship between shareholder activism and firm outcomes. The goal is not only to access the effectiveness of current practices but also to identify opportunities for improving the shareholder process in Canada.

4.2 CATEGORIZATION OF FILERS, ISSUES AND VOTING OUTCOMES IN CANADA

4.2.1 Type of Filers

Accordingly, the filers of shareholder proposals are generally categorized into six main groups and they include: individual shareholders, institutional investors, non-profit shareholder associations, public interest groups, trade unions and religious organizations.[317]

[316] *Ibid.*
[317] Oshionebo, *supra* note 10. See also Fasken, "Shareholder Activism in Canada: The Legal Framework" (2023), online: < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.fasken.com/-/media/f99e7a843d3e4866b3329009bc9fa7b0.pdf&ved=2ahUKEwjbzLbY4smNAxXyOTQIHZBHJEAQFnoECCoQAQ&usg=AOvVaw14ie2cSQQmejrs8j7fQXDf>.

Individual shareholders from time to time submit proposals that pertain to corporate governance or ethical issues, such as management accountability or executive compensation.[318] These proposals often times mirror individual issues rather than coordinated campaigns.[319]

The institutional investors who are considered to be large institutional interventionists such as the Canada Pension Plan Investment Board (CPPIB) and Ontario Teachers' Pension Plan Board (OTPPB) like its U.S. counterparts CalPERS and CalSTRS.[320] Their proposals tend to be more detailed and accompanied by research and data which focuses on bringing long-term value, risk oversight and ESG inclusion.[321]

For non-profit shareholder association, they focus on sustainable and coordinate investment e.g., Shareholder Association for Research and Education (SHARE).[322] They often collaborate with institutional investors to promote shareholder engagement on ESG matters.[323]

The public interest group which often overlap with non-governmental organizations (NGOs) may use shareholder proposals as an advocacy tool to raise awareness on specific issues that may not have direct financial stake.[324] For instance, in the *Greenpeace*[325] case

[318] Oshionebo, *supra* note 10. See also Fasken, *supra* note 317.
[319] *Ibid*.
[320] Paul Rose, "Public Wealth Maximization: A New Framework for Public Fund Fiduciary Duties" (2016), online:< https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2805427>.
[321] *Ibid.*
[322] Shareholder Association for Research and Education (SHARE), "Annual Impact Report 2021" (2021), online: SHARE <https:share.ca>.
[323] *Ibid.*
[324]*Ibid.*
[325] *Greenpeace Foundation of Canada, supra* note 96.

where Greenpeace wanted to use his capacity as a shareholder to raise climate-related financial issues.

Trade union focuses on pension and labour rights which involves using their capacity as shareholders on issues like executive compensation, income inequality and so on.[326]

Lastly, the religious organizations tend to focus on theological and morality principles that affect human rights, environmental or corporate social responsibility.[327]

4.2.2 Types of Issues and Associated Voting Outcomes

Typically, shareholder proposal mechanism in Canada focuses on three broad issues and they include: corporate governance, environmental and social issues (ESG) issues, and cross-over issues that addresses both corporate governance and ESG concerns.[328]

Corporate governance proposals typically include matters related to board structure, executive compensation, and the separation of the roles of chief executive officer and board chair.[329] ESG issues encompass topics such as climate change, indigenous rights, human rights, and labour standards.[330]

Cross-over proposals often seek to integrate ESG values into corporate governance practices, such as proposals on board diversity or linking executive pay to sustainability

[326] Daniel J. Morrissey, "Executive Compensation and Income Inequality" (2013) 4:1 William and Mary Business Law Review at 3.
[327] Benjamin J. Richardson, *Socially Responsible Investment Law: Regulating the Unseen Polluters* (Oxford: Oxford University Press, 2008), at 165.
[328] Oshionebo, *supra* note 10, at 640.
[329] *Ibid.*
[330] *Ibid.*

metrics.[331] According to Oshionebo's review of proposals filed between 2000 to 2011, 78.3% of shareholder proposals during this period focused on corporate governance issues, with a majority of these relating specifically to executive compensation.[332] Thus, with majority of the corporate governance issues filed bordered on executive compensation.

Furthermore, the social issues which include environmental sustainability, human rights and labour standards garnered over 13.62% proposals filed while the cross-over proposals filed made up of 7.87%.[333] Most of the cross-over proposals were majorly on gender parity on the board of directors while the rest were an increase in pension contributions.[334]

Although shareholder proposals under the *CBCA* are non-binding, boards of directors may choose to implement them voluntarily.[335] Proposals that receive high levels of shareholder support especially those endorsed by influential proxy advisory firms such as Institutional Shareholder Services (ISS) and Glass Lewis can exert reputational and strategic pressure on boards to act.[336]

The level of shareholder support typically depends on the type of issues raised.[337] Corporate governance proposals generally receive higher approval rates, reflecting investor consensus on matters such as board independence and executive accountability.[338] ESG-related

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[331] *Ibid.*
[332] Oshionebo, *supra* note 10, at 641-642.
[333] *Ibid.*
[334] *Ibid*, at 641.
[335] *CBCA, supra* note 12, s. 137.
[336] Institutional Shareholder Services, "Canada Proxy Voting Guidelines for TSX-listed Companies" (2018), online: ISS < https://www.issgovernance.com/file/policy/2019/americas/Canada-TSX-Voting-Guidelines.pdf>.
[337] Victor Guo, "ESG Shareholder Proposals: The Current Canadian Landscape" (2023), online: < https://www.lexology.com/library/document?tk=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzUxMiJ9.eyJleHAiOjE3NDg1NjY3OTAsImRhdGEiOnsiRG9jdW1lbnRHdWlkIjoiOTU4MDJhNGUtMTc1ZS00M2FkLWFkN2YtMmY3MDg3ODEwYjA3IiwiQ29udGFjdEd1aWQiOiIwMDAwMDAwMC0wMDAwLTAwMDAtMDAwMC0wMDAwMDAwMDAwMDAiLCJCeXBhc3NMb2dpbiI6dHJ1ZX19.odGzbWol7MC3GP_LI7UwKw2HNG22Rk9JHCYKFMITy-AtnGtmJDww5bAkEnzQXG4ElQi0hFNYMOUEuGo7R3WVmA> .
[338] *Ibid.*

proposals, particularly those that align with the mandates of institutional investors, are also increasingly gaining traction.[339]

For example, in 2021, TMX Group shareholders filed a proposal calling for the company to improve its approach to indigenous reconciliation.[340] The proposal received overwhelming support, passing with 98% shareholder approval, such examples illustrates growing investor engagement with sustainability-related concerns.[341]

4.2.3 Trends in Proposal Submission

The relatively low number of shareholder proposals filed by Canadian investors contrasts with more active U.S. practices.[342] Large Canadian institutions tend to adopt a more cautious, passive stance, using proposals sparingly as compared to U.S. counterparts where large institutional investors—such as CalPERS and CalSTRS—routinely employ and submit shareholder proposals as part of their activism strategies.[343] Canadian shareholder activism often prioritizes collaborative engagement and socially responsible investment themes.[344]

Historically, proposals focused heavily on executive compensation issues, but in recent years, the majority of Canadian shareholder proposals have addressed environmental,

[339] *Ibid.*
[340] Shareholder Association for Research and Education, "CCSN Vote Results: Majority of Canadian Investors Back Shareholder Resolutions on Racial Equity, Human Rights, and Indigenous Reconciliation" (2 June 2021), online: < https://share.ca/blog/ccsn-vote-results/>.
[341] *Ibid.*
[342] Yang, Wang and An, *supra* note 6.
[343] *Ibid.*
[344] Fazzalari and Rogers, *supra* note 314.

social and broader governance issues.[345] This shift reflects evolving investor priorities and regulatory trends.[346]

In Canada, the removal of poison pills (shareholder rights plan) has never been a common issue for shareholder proposals.[347] Instead, Canadian shareholder activism has a strong tradition of focusing on social, environmental, or ethical concerns.[348] For example, poison pills are more likely to be challenged in regulatory hearings than through shareholder proposals.[349] This evolving focus reflects Canada's regulatory environment and governance culture, where social, environmental, and ethical concerns now play a pronounced role in shareholder activism, alongside a tradition of collaborative engagement.[350]

In contrast, U.S. shareholder activism is more active and confrontational, addressing a broad range of governance topics.[351] Shareholder proposals there influence outcomes not only through formal votes outcomes.[352] They also have impact because of high-profile institutional investor involvement, a powerful proxy advisory industry, and a public, often adversarial mode of engagement with management.[353]

The widespread media attention given to shareholder proposals generates reputational pressure on corporations, encouraging management responsiveness even when proposals do not achieve majority support. This dynamic means that while few proposals pass

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[345] *Ibid.* See also BMO Global Asset Management, "How We Voted: A Recap of the 2024 Proxy Season" (2024), online: < https://bmogam.com/ca-en/insights/a-recap-of-the-2024-proxy-season/>.
[346] Capital Markets Tribunal, "Emerging Issues in Shareholder Activism and Related Control" (2024), online: < https://www.capitalmarketstribunal.ca/sites/default/files/2024-11/20241125_Policy-Forum-Shareholder-Activism.pdf>.
[347] Capital Markets Tribunal, *supra* note 346.
[348] Fazzalari and Rogers, *supra* note 314.
[349] Capital Markets Tribunal, *supra* note 346.
[350] Fazzalari and Rogers, *supra* note 314. See also BMO Global Asset Management, *supra* note 345.
[351] ISS Governance Insights, "In Focus: 2024 Canada Proxy Season Recap" (2024), online: < https://insights.issgovernance.com/posts/in-focus-2024-canada-proxy-season-recap/>.
[352] *Ibid.*
[353] *Ibid.*

outright, many create policy momentum and encourage companies to adopt governance changes.[354] Proxy advisory firms such as ISS and Glass Lewis considerably influence voting outcomes in the U.S. guiding institutional shareholders.[355]

Canada can learn from the U.S. model by fostering a culture of more visible institutional engagement and by leveraging proxy advisory recommendations more actively. Encouraging transparency and follow-up action on proposals, rather than relying predominantly on private collaborative dialogue, could strengthen the practical impact of shareholder activism in Canada. However, such adaptations should be sensitive to Canada's traditional emphasis on consensus and cooperative governance.[356]

A key structural difference lies in the legal frameworks governing shareholder proposals. The U.S. system, shaped by SEC regulations and Delaware corporate law, provides a relatively harmonized and consistent set of rules across jurisdictions.[357] This uniformity facilitates streamlined proposal filing, resubmission, and voting processes.[358]

In contrast, Canada's corporate and securities regulations are fragmented, split among federal laws like the *CBCA*, the provincial securities commissions, and stock exchanges.[359]

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[354] Lamar Johnson, "2024 proxy outlook: What's driving the ESG proposal approval dip?" (2024), online: < https://www.esgdive.com/news/2024-proxy-outlook-whats-driving-the-esg-proposal-approval-dip/705646/#:~:text=Deep%20Dive-,2024%20proxy%20outlook%3A%20What's%20driving%20the%20ESG%20proposal%20approval%20dip,expected%20after%20a%20record%202023.&text=This%20audio%20is%20auto%2Dgenerated.>.

[355] Peter Roff, "Do shareholder proxy firms have too much power?" (2025), online: < https://www.djournal.com/opinion/columnists/do-shareholder-proxy-firms-have-too-much-power/article_03d70f11-286a-45d9-bf96-5556320a27c3.html>.

[356] Miles Fazzalari and Shawn, *supra* note 314.

[357] Securities and Exchange Commission, Rule 14a-8, 17 CFR § 240.14a-8(i)(12). On Delaware law, see Delaware General Corporation Law, 8 Del. C. § 101 et seq.

[358] *Ibid.*

[359] Miles Fazzalari and Shawn, *supra* note 314.

This patchwork creates procedural complexity and uncertainty for shareholders wishing to submit proposals.

Although harmonizing these rules could enhance clarity and encourage greater shareholder participation, such efforts face constitutional and political challenges. The division of powers between federal and provincial governments complicates the possibility of a unified national regulatory regime. Past attempts to create a national securities regulators have met resistance, reflecting entrenched provincial jurisdiction over securities law.[360] Therefore, meaningful harmonization would likely require sustained intergovernmental cooperation and any reforms will need to navigate the constitutional nuances of Canadian federalism.

Quantitative comparisons highlight significant differences in shareholder proposal activity between the two countries. In 2025, U.S. companies in the Russell 3000 index faced approximately 830 shareholder proposals annually, a volume that dwarfs the roughly 80 proposals filed each year in Canada.[361] The thematic content of proposals also varies. The proposals in the U.S. encompasses a broad range of governance topics, including executive compensation and environmental, social, and governance (ESG) issues, with an increasing number of both pro- and anti-ESG filings in recent years.[362] Approval rates for governance-focused proposals in the U.S. typically range between 35 and 40 percent, indicating moderately strong support.[363] However, support for environmental and social proposals is lower, around 12 to 13 percent and declining in recent years due to growing anti-ESG activism.[364]

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[360] Johnston, Rockwell and Ford, *supra* note 84.
[361] Johnson, *supra* note 354.
[362] Kilian Moote, Amanda Buthe and Georgeson LLC, "Harvard Law Forum, Early Season Review: 2024 US AGM" (2024), online: < https://corpgov.law.harvard.edu/2024/06/16/early-season-review-2024-us-agm/>.
[363] *Ibid.*
[364] *Ibid.*

In Canada, shareholder proposals have historically concentrated more narrowly on executive compensation and ESG matters, with some attention to procedural concerns such as meeting formats.[365] Approval rates in Canada for proposals reaching a formal vote tend to be somewhat higher than in the U.S., regularly achieving between 20 and 30 percent support, with a few cases exceeding 40 percent.[366]

Nevertheless, the overall number of proposals is smaller, and many issues are resolved through private negotiation before reaching a vote.[367] Both countries have witnessed a shift over time: from shareholder proposals primarily focused on profit maximization and executive remuneration, to a more pronounced emphasis on ESG issues.[368] Yet, while ESG remains a dominant theme, recent U.S. trends reveal a decline in support reflecting political and investor pushback, a phenomenon less evident in Canadian markets.[369]

In summary, the more frequent and publicly visible use of shareholder proposals in the U.S. results from a combination of structural, cultural, and legal factors: a relatively harmonized regulatory environment, influential proxy advisory firms, and a tradition of adversarial public engagement. Canadian practice, by contrast, is shaped by regulatory diversity and a preference for confidential negotiation, resulting in fewer proposals but somewhat higher success rates for those that proceed to a vote. Canada could potentially strengthen shareholder activism by adopting elements of the U.S. model such as clearer procedural standards, greater transparency, and increased engagement by proxy advisors while adapting to its unique governance culture. However, constitutional constraints and

[365] Moote, Buthe and Georgeson LLC, *supra* note 362.
[366] *Ibid.*
[367] *Ibid.*
[368] *Ibid.*
[369] *Ibid.*

the federal structure of Canadian securities regulation constitute significant barriers to full harmonization. Any movement toward greater standardization will require collaborative federal-provincial efforts and a nuanced approach sensitive to Canada's legal and political realities.[370]

4.3 SHAREHOLDER PROPOSALS: A MECHANISM OF IMPACT ON FIRM PERFORMANCE

Understanding the mechanism through which shareholder proposals influence firm performance is essential to evaluating their practical utility. Firm performance encompasses the extent to which a corporation meets its financial, strategic and operational objectives.[371] While traditionally measured through metrics such as return on assets (ROA), return on equity (ROE), and stock market performance.[372] However, contemporary approaches increasingly account for non-financial dimensions that include ESG factors, as well as well as stakeholder engagement.[373]

Even if they do not lead to direct changes in corporate policy, shareholder proposals can influence firm performance through various theoretical and practical ways.[374] They include signaling, enhancing accountability, promoting sustainable practices and encouraging

[370] Max Dulberger and Joe Cerullo, "Corporate Governance Developments in Canada" (2024), online: < https://www.segalco.ca/consulting-insights/corporate-governance-developments-in-canada>.
[371] Christopher S. Armstrong, Wayne R. Guay and Joseph P. Weber, "The Role of Information and Financial Report in Corporate Governance and Debt Contracting" (2010), online: < https://repository.upenn.edu/server/api/core/bitstreams/0e87586e-589e-4434-b82c-ab250af33a63/content>.
[372] *Ibid.*
[373] *Ibid.*
[374] Kobi Kastiel and Yaron Nili, "The Corporate Governance Gap" (2022) 131:8 The Yale Law Journal 782-1061.

dialogue and collaboration.[375] These mechanisms outlined below help explain how shareholder proposals can shape corporate conduct and affect long-term outcomes, regardless of whether they are adopted.[376]

4.3.1 A Signaling Function

One of the most significant functions of shareholder proposals is their ability to act as signals to both corporate management and investors.[377] Within this signaling function, the proposal acts less as a direct tool for immediate policy changes but more as a strategic way to communicate investor sentiments and highlight new concerns related to governance, strategy or risk management.[378]

Even if a proposal is rejected, a strong shareholder support may indicate an underlying dissatisfaction or emerging risks.[379] For instance, a governance proposal with relatively close to being a majority support despite opposition clearly conveys investors' priorities.[380] To further buttress this point, in 2023 there was a shareholder proposal at Enbridge Inc. urging for a full climate risk disclosure.[381] Despite not receiving a majority support, it

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[375] See generally Renneboog and Szilagyi, *supra* note 290, Paul Rose, "Shareholder Proposals in the Market for Corporate Influence" (2013), online: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2324150> and Erwin Eding and Bert Scholtens, "Corporate Social Responsibility and Shareholder Proposals" (2017), online: < https://research-repository.st-andrews.ac.uk/bitstream/handle/10023/17885/CSREM_1434_accepted_version_CSR_and_shareholder_proposals.pdf;jsessionid=3AB80A125CB2D07B31F6CB7260540659?sequence=1>.

[376] Lucian A. Bebchuk, "The Myth of the Shareholder Franchise" (2007) 93:3 Virginia Law Review 675.

[377] Renneboog and Szilagyi, *supra* note 290.

[378] Jennifer G. Hill, "Visions and Revisions of the Shareholder" (2000) 48:1 The American Journal of Comparative Law 39 at 72-74.

[379] Renneboog and Szilagyi, *supra* note 290.

[380] *Ibid.*

[381] Enbridge Inc, "Management Information Circular" (2 March 2023) at 52, online: < https://www.enbridge.com/investment-center/reports-and-sec-filings/-/media/Enb/Documents/Investor-Relations/2023/2023_ENB_Management_Information_Circular.pdf>.

subsequently prompted the company to expand its sustainability reporting.[382] Furthermore, even when shareholder proposals fail, high levels of support can create pressure on company directors.[383] Securities regulators may recommend stricter scrutiny of board practices in the future, thereby encouraging directors to respond proactively.[384] Firms may choose to respond by adopting modified versions of the proposal or engage in dialogue with shareholders to avoid future conflicts.[385] Thus, this signaling role can impact a firm's valuation from a financial perspective.[386] Studies suggest that institutional investors often adjust their holdings based on a firm's responsiveness to shareholder demands, especially in areas like board independence or climate risk disclosure.[387] This, in turn, can affect market perceptions and firm performance.[388]

In summary, shareholder proposals signal the need for market discipline and governance reviews. The support levels guide board decisions, market perception, and firm performance by influencing management's priorities and resource allocation.

4.3.2 Enhancing Accountability

Shareholder proposals enhance corporate accountability, which is another important mechanism for impacting firm performance.[389] By questioning governance practices, strategic decisions, or ethical conduct, these proposals highlight potential management

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[382] *Ibid.*
[383] Renneboog and Szilagyi, *supra* note 290.
[384] Renneboog and Szilagyi, *supra* note 290.
[385] *Ibid.*
[386] Sanjai Bhagat, "The Non-Correlation between Board Independence and Long-Term Firm Performance" (1998), online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=133808>.
[387] *Ibid.*
[388] *Ibid.*
[389] Oshionebo, *supra* note 10, at 642.

oversight deficiencies.[390] This sparks a dialogue between shareholder and corporate leadership, signaling that certain policies or behaviours need closer examination.[391]

Ultimately, this can lead to increased transparency, improved reporting, and a stronger alignment between managerial actions and shareholder interests.[392] In Canada, shareholder proposals, though non-binding, are powerful tools for fostering scrutiny and engagement.[393]

By including issues such as executive compensation, board diversity, or climate policy in the proxy circular and annual meeting agenda, shareholders compel the board and management to address them publicly.[394] This public accountability mechanism can gradually realign corporate decision making with the long-term goals of the company and its stakeholders.[395]

Empirical studies support the idea that shareholder proposals can lead to improved governance.[396] For instance, Aguilera notes that firms facing shareholder scrutiny are more likely to adopt governance reforms in the aftermath of proposal, particularly when proposals receive significant support even if they do not pass.[397] This form of post-proposal adaptation can help the board implement changes to internal controls and risk oversight procedures, which in turn strengthens the firm's strategic and operational efficiency.[398]

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390 Renneboog and Szilagyi, *supra* note 290.
391 *Ibid.*
392 Renneboog and Szilagyi, *supra* note 290.
393 *Ibid.*
394 *Ibid.*
395 Berthelot, Serret and Donahue, *supra* note 50.
396 Ruth Aguilera, "The ripple effect of shareholder activism – the deceptive power of submitted proposals" (24 May 2024), online: Northeastern University ECGI, <http://ecgi.global/publications/blog/the-ripple-effect-of-shareholder-activism-the-deceptive-power-of-submitted>.
397 Aguilera, *supra* note 396.
398 *Ibid.*

Executive compensation is a critical area where shareholder proposals often enhance accountability.[399] Shareholders can influence both the size and structure of CEO pay packages by challenging excessive or poorly designed remuneration plans.[400] When proposals advocate for greater pay-for-performance alignment, they can reduce agency cost-the inefficiencies that arise when managers pursue self-interest at the expense of shareholders.[401]

The adoption of performance-linked compensation not only improves firm governance but can also lead to better financial outcomes, such as higher return on equity and more stable earnings growth.[402]

In essence, shareholder proposals serve as a means of corporate governance leverage, empowering investors, particularly institutional shareholders, with mechanisms to oversee and impact managerial conduct. This external pressure encourages companies to align their strategic decisions with shareholder expectations, leading to stronger governance structures and improved firm performance over time.

4.3.3 Promoting Sustainability: Reputational and Strategic Pressure

Another mechanism through which shareholder proposals affect firm performance is by promoting sustainable and socially responsible business practices, especially on ESG

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[399] Kenneth J. Martin and Randall S. Thomas, "The Effect of Shareholder Proposals on Executive Compensation" (1999), online: < https://dx.doi.org/10.2139/ssrn.160188>. See also Fabrizio Ferri and David A. Maber, "Say on Pay Votes and CEO Compensation: Evidence from the UK" (2010), online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1420394>.
[400] *Ibid.*
[401] *Ibid.*
[402] *Ibid.*

issues.[403] In recent years, there has been a significant rise in proposals calling for companies to address carbon emissions, board diversity, supply chain ethics, and other sustainability concerns.[404]

These proposals exert reputational pressure by drawing public and media attention to corporate conduct, prompting firms to act pre-emptively to preserve brand equity and investor confidence.[405]

Canadian institutional investors, such as the Canada Pension Plan Investment Board (CPPIB), have been particularly influential in encouraging ESG-based shareholder activism. As the CPPIB notes,

> "We believe the value of companies integrating sustainability effectively into their strategy, operations and financial disclosure is increasing. So is our ambition to integrate sustainability into the life cycle of our investment process to drive value creation."[406]

This institutional stance validates ESG proposals and encourages broader investor engagement, proving that sustainability concerns are not at odds with profitability.[407]

Furthermore, research supports the financial rationale behind such proposals.[408] For instance, a report by the McKinsey Global Institute reports a consistent positive correlation between strong ESG performance and long-term financial returns.[409] Companies that adopt rigorous ESG standards benefit from enhanced reputation, reduced regulatory risk,

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[403] Renneboog and Szilagyi, *supra* note 290.
[404] Renneboog and Szilagyi, *supra* note 290.
[405] *Ibid.*
[406] Canada Pension Plan Investment Board, "2023 Report on Sustainable Investing" (2023), online: < https://www.cppinvestments.com/wp-content/uploads/2023/12/SI-Report-2023-EN.pdf> at 5.
[407] *Ibid.*
[408] Rebecca Doherty, Lucy Pérez, Kate Siegel and Jill Zucker, "How do ESG goals impact a company's growth performance?" (28 September 2023), online: <https://www.mckinsey.com/capabilities/growth-marketing-and-sales/our-insights/next-in-growth/how-do-esg-goals-impact-a-companys-growth-performance>.
[409] *Ibid.*

operational efficiencies (e.g., through renewable energy use), and greater appeal to ESG-focused investors.[410]

Thus, shareholder proposals pushing for sustainable practices are not ideological; they are strategic actions that shape resource allocation and risk management, thereby aligning governance practices with broader societal and investor expectations.

4.3.4 Encouraging Dialogue and Collaboration

One of the most constructive effects of shareholder proposals is their capacity to foster dialogue and collaborate between shareholder and corporate management.[411] Even when a proposal does not pass, the issues it raises often prompt management to engage in discussion with shareholders, thereby creating opportunities for compromise, policy refinement, or strategic recalibration.[412]

This mechanism motivates a company to stay attuned to changing investor demands and promotes a more inclusive approach to governance.[413] Such engagement fosters what scholars and governance experts describe as corporate responsiveness and adaptive change.[414] Thus, the ability of an organization to adjust its internal policies, strategies, or governance structures in response to shareholder concerns.[415] Such adaptability is

[410] Rebecca Doherty, Lucy Pérez, Kate Siegel and Jill Zucker, *supra* note 408.
[411] See generally Renneboog and Szilagyi, *supra* note 290. See also Maria Goranova and Lori Verstegen Ryan, "Shareholder Activism: A Multidisciplinary Review" (2013) 40:5 Journal of Management 1230-1268.
[412] *Ibid.*
[413] *Ibid.*
[414] Lucian A. Bebchuk and Kobi Kastiel, "The Perils of Small-Minority Controllers" (2019) 107:6 Georgetown Law Journal at 1453-1514.
[415] *Ibid.*

imperative as investors are placing greater emphasis on ESG matters in addition to conventional financial concerns.[416]

A notable example is Suncor Energy Inc., which has faced sustained shareholder pressure regarding its climate policies and broader sustainability commitments.[417] In response, the company has initiated more frequent dialogues with its institutional investors and integrated ESG considerations more explicitly into its long-term strategy.[418] Thus, such discussions can promote more informed risk management practices for the company and increased transparency in its sustainability reporting. This shows how proposals can drive strategic change, even without formal voting procedures.[419]

Furthermore, empirical evidence supports the long-term value of such engagement.[420] Hence, according to the Canadian Coalition for Good Governance (CCGG), companies that engage with their shareholders tend to perform better in terms of both stock price performance and overall governance ratings over time.[421]

Engagement fosters mutual understanding, allowing boards to align more closely with shareholder values while enhancing the transparency of decision-making processes.

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[416] Elroy Dimson, Oğuzhan Karakaş and Xi Li, "Active Ownership" (2015) 28:12 The Review of Financial Studies, at 3225-3268.
[417] Chris Varcoe, "Scrap net-zero target, or disclose more transition risks – Suncor faces duelling climate proposals at AGM" (2024), online: < https://calgaryherald.com/opinion/columnists/varcoe-suncor-investors-opposing-climate-proposals-annual-meeting>.
[418] *Ibid.*
[419] *Ibid.*
[420] Canadian Coalition for Good Governance (CCGG), "2022 Best Practices for Proxy Circular Disclosure" (2022), online: < https://ccgg.ca/research-insights/best-practices/>.
[421] *Ibid.*

Institutional investors play a vital role in this dynamic. For instance, the CPPIB emphasizes the importance of direct engagement as a mechanism for stimulating beneficial change. As CPPIB states:

> "Shareholder can, of course, influence companies in other ways, such as direct engagement with boards and management. In addition, shareholder can work on governance matters in collaboration with other investors, as we do through the Canadian Coalition for Good Governance.[422]

Such collaborative approaches tend to yield better results than confrontational activism.[423] They provide management with the opportunity to take shareholder feedback into account without compromising the board's authority, and they allow shareholders to influence strategy without needing to pass binding resolutions.[424]

In this way, shareholder proposals serve as a catalyst for ongoing, adaptive governance practices that demonstrates a company's readiness to adapt in line with stakeholder interests.

4.4 FACTORS INFLUENCING APPROVAL RATES

In Canada, shareholder proposals play a critical role in fostering accountability, sustainability, and long-term corporate governance improvements.[425] However, approval rates of shareholder proposals relatively remain modest.[426] This raises critical questions about their effectiveness and the barriers to their success.[427]

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[422] Canada Pension Plan Investment Board (CPPIB), "Proxy Voting Principles and Guidelines" (2023), online: <https://www.cppinvestments.com/wp-content/uploads/2023/03/PVPGs-2023-Final-Englishv1.pdf> at 6.
[423] Stuart L. Gillan and Laura T. Starks, "The Evolution of Shareholder Activism in the United States" (2007) 19:1 Journal of Applied Corporate Finance 55.
[424] *Ibid.*
[425] Oshionebo, *supra* note 10, at 642.
[426] *Ibid.*
[427] *Ibid.*

Understanding these dynamics is pertinent for assessing how shareholder proposals can be designed more strategically to gain wider support and enhance their impact. This section aims to identify and examine the factors that influence approval outcomes, including: the composition of shareholders, the design and framing of proposals, the impact of proxy advisory firms and the board's approach and organizational strategy.[428]

4.4.1 Composition of Shareholders

The composition of a company's shareholders significantly influences the approval of proposals.[429] The degree of influence each shareholder has, is shaped by factors such as the quantity and class of shares owned, the voting rights attached to those shares, and the presence of major institutional or controlling shareholders.[430] For instance, dual-class share structures can concentrate voting power in the hands of a few, sometimes enabling a minority to dictate outcomes and diminishing the influence of other investors.

Institutional investors like pension funds and mutual funds often hold a significant portion of voting shares.[431] They wield considerable power, especially when following proxy advisory firms' recommendations, and are more likely to support governance-oriented or ESG-related proposals that align with long-term investment strategies.[432] For instance, The CPPIB and Ontario Teachers' Pension Plan consistently back shareholder proposals related

[428] Oshionebo, *supra* note 10, at 648.
[429] See generally Diane Schooley, Celia Renner and Mary Allen, "Shareholder Proposals, Board Composition, and Leadership Structure" (2010) 22:2 Journal of Managerial Issues, 152-165.
[430] Oshionebo, *supra* note 10, at 648-653.
[431] Davies Ward Phillips and Vineberg LLP, "Governance Insights 2019: Shareholder Proposals in the United States and Canada" (2019) online: < file:///Users/mac/Downloads/Davies-Governance-Insights-2019.pdf>.
[432] *Ibid.*

to executive compensation, climate risk, and board diversity, guided by their comprehensive stewardship frameworks.[433]

On the other hand, retail investors typically own smaller, dispersed holdings and often lack the motivation or organization to participate in voting, which limits their impact on proposal decisions.[434] Thus, research indicates that proposals have a higher chance of approval in companies with strong institutional ownership and shareholder engagement.[435]

Nonetheless, the overall preferences and level of engagement among shareholders whether individuals, institutions, or activists play a direct role in determining which proposals are approved.[436] Together, the structure and distribution of share ownership and the allocation of voting rights are critical factors that shape the outcome of shareholder votes and influence the direction of corporate governance.[437]

4.4.2 The Proposal Design and Framing

The way a shareholder proposal is designed, structured and presented can have a major impact on its likelihood of approval.[438] Proposals that are clearly and well-structured, concise, narrowly focused, address broadly supported topics, and are accompanied by compelling justifications that align with shareholder interests generally attract greater support.[439] For example, equity plan proposals that transparently highlight shareholder-

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[433] CPPIB, *supra* note 422. See also Ontario Teachers' Pension Plan, "Proxy Voting Guidelines" (2025) online: < https://www.otpp.com/content/dam/otpp/documents/OTPP-Proxy-Voting-Guidelines-2025-EN.pdf>.
[434] Davies Ward Phillips and Vineberg LLP, *supra* note 431.
[435] Fazzalari and Rogers, *supra* note 314.
[436] *Ibid.*
[437] Oshionebo, *supra* note 10, at 648-653.
[438] John Galloway, "How We Evaluate Shareholder Proposals" (2021), online: < https://corpgov.law.harvard.edu/2021/02/15/how-we-evaluate-shareholder-proposals/>.
[439] *Ibid.*

friendly features and address the concerns of major investors and proxy advisors are more likely to be approved, as clarity and adherence to best practices foster trust among voters.[440]

On the other hand, proposals that are overly detailed, vague, complicated, unrealistic in terms of implementation or not tailored to the company's specific situation may encounter resistance or be excluded through no-action requests, as evidenced by increased exclusion rate for more rigid proposals in recent proxy seasons.[441] Additionally, proposals that align with current governance trends such as those focused on ESG matters or simple majority voting often receive stronger backing, especially when they are straightforward and actionable.[442]

Shareholder proposals are most likely to succeed if they are in line with the company's strategy or address risks such as cybersecurity, climate transition, or board independence, as they are seen as constructive.[443] Overall, proposals that are well crafted, pragmatic, relevant to shareholder concerns and interests, and free from unnecessary complexity or rigidity are more likely to secure approval.[444]

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[440] Glass Lewis, "2024 Benchmark Policy Guidelines" (2024), online: < https://resources.glasslewis.com/hubfs/2024%20Guidelines/2024%20Shareholder%20Proposals%20ESG%20Benchmark%20Policy%20Guidelines.pdf> at 23.
[441] Davies Ward Phillips and Vineberg LLP, *supra* note 431.
[442] See generally, Institutional Shareholder Service, "ISS Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations" (2025), online: < https://www.issgovernance.com/file/policy/active/americas/Canada-TSX-Voting-Guidelines.pdf?v=2025.1> at 52.
[443] Galloway, *supra* note 438.
[444] *Ibid.*

4.4.3 Impact of Proxy Advisory Firms

Proxy advisory firms like ISS and Glass Lewis exert significant influence over the approval rates of shareholder proposals.[445] Their recommendations, often released in advance of annual meetings are highly influential among institutional investors, many of whom routinely follow proxy advisory guidance.[446] They sometimes even engage in "robo voting," where votes are cast automatically in line with these recommendations.[447]

Research has shown that a negative recommendation from a proxy advisory firm can sharply reduce support for a proposal.[448] For instance, one study reported a 36%-point gap in approval rates depending on whether proxy advisors recommended for or against a proposal (42.4% with a positive recommendation compared to just 6.6% with a negative one).[449]

This impact of proxy advisory firms goes beyond just voting outcomes.[450] Companies frequently modify their governance practices to meet the expectations set by these proxy advisory firms, aiming to avoid unfavourable recommendations that could influence critical matters like board elections, executive compensations votes, and other major decisions.[451]

This influence is especially pronounced for proposals related to executive pay, board structure, and ESG matter, where the recommendations of proxy advisors can heavily shape

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[445] David F. Larcker, "The Big Thumb on the Scale: An Overview of the Proxy Advisory Industry" (2018), online: < https://corpgov.law.harvard.edu/2018/06/14/the-big-thumb-on-the-scale-an-overview-of-the-proxy-advisory-industry/>.
[446] *Ibid.*
[447] Paul Washington, "Testimony in House Hearing: Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets" (2025), online: < https://corpgov.law.harvard.edu/2025/05/05/testimony-in-house-hearing-exposing-the-proxy-advisory-cartel-how-iss-glass-lewis-influence-markets-2/>.
[448] *Ibid.*
[449] *Ibid.*
[450] *Ibid.*
[451] *Ibid.*

institutional investors' voting decisions-particularly in cases where investors may not have specialized expertise in these areas.[452]

In Canada, ISS has supported shareholder proposals focused on governance and ESG issues which has contributed to growing shareholder support even when there is opposition from company boards.[453] Nonetheless, some critics argue that heavy dependence on proxy advisors may create uniform voting patterns that may not account for unique circumstances of individual firms or oversimplify complex corporate issues.[454]

However, in essence, proxy advisory firms play a pivotal role in determining the approval rates of shareholder proposals by shaping institutional investor voting behaviour and encouraging companies to align with their governance standards.

4.4.4 The Board's Approach and Organizational Strategy

The board's stance and the company's overall strategy, typically communicated in the proxy circular play a crucial role in shaping the voting outcome, approval and adoption of a shareholder proposal.[455] When boards are attentive to shareholder concerns, particularly those proposals that garner significant backing, they demonstrate strong governance and foster positive relationships with investors.[456] Thus, this then leads to greater trust and engagement.[457] The boards of a corporation that thoughtfully evaluate and clearly

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[452] Washington, *supra* note 447.
[453] *Ibid.* See also Teddy Lombardo, Linda Pappas and Tara Tays, "Equity Plan Proposals: Strong Shareholder Support Continued in 2024" (2025), online: < https://www.paygovernance.com/viewpoints/equity-plan-proposals-strong-shareholder-support-continued-in-2024>.
[454] Larcker, *supra* note 445.
[455] Renneboog and Szilagyi, *supra* note 290.
[456] *Ibid.*
[457] *Ibid.*

communicate the pros and cons of each proposal, while ensuring their responses align with the company's strategic goals, are more likely to address shareholder interests effectively and see higher approval rates for proposals that support the organization's directions.[458]

On the other hand, if boards are viewed as resistant to change or unresponsive, it tends to reduce support unless institutional investors mobilize independently.[459] As a result, shareholders are more inclined to endorse proposals aimed at enhancing governance or addressing entrenched management practices.[460]

Studies indicate that proposals directed at companies with weak governance or poor performance tend to receive more support, and the quality of board oversight is a key factor in voting outcomes.[461]

Moreover, the boards of a corporation can shape results by engaging directly with shareholders, refining proposals to make them more practical, or proactively implementing changes before a vote takes place.[462] Such actions demonstrate a commitment to corporate responsiveness and adaptiveness thus, they can sometimes eliminate the need for formal proposals, as investors feel their concerns are being addressed.[463]

This clearly asserts that shareholder proposals can serve as a catalyst on a company's decision making. In essence, a board's openness to dialogue and collaboration, adaptability, and strategic alignment with shareholder proposals increases the likelihood of approval,

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[458] Habiba Al-Shaer, Cemil Kuzey, Ali Uyar and Abdullah S. Karaman, "Corporate strategy, board composition and firm value" (2023) 29:3 International Journal of Finance and Economics at 2559-3825.
[459] Davies Ward Phillips and Vineberg LLP, *supra* note 431.
[460] *Ibid.*
[461] *Ibid.*
[462] *Ibid.*
[463] *Ibid.*

while a lack of engagement or ineffective governance often leads to greater support for proposals advocating change.

4.4.5 Trends in Voting Outcomes and Partial Acceptance

In Canada, shareholder proposal approval rates remain modest, but recent years have revealed important developments highlighting their growing strategic and symbolic impact. While only a small number of proposals achieve majority approval, many receive significant minority support, and some influence corporate behaviour without ever reaching a formal vote.

As outlined, section 137 of the *CBCA* sets out the eligibility requirements for submitting shareholder proposals.[464] Unlike the U.S., the *CBCA* does not impose specific vote thresholds for resubmitting proposals that have previously failed.[465] However, a corporation may refuse to include a proposal in its management proxy circular if substantially the same proposal was submitted to shareholders in a previous meeting and did not receive sufficient support, as outlined in the Act.[466]

Historically, shareholder proposals in Canada have attracted low support, often in the single digits.[467] However, recent trends show an upward direction.[468] By 2024, average support levels have risen to approximately 20%, reflecting increased institutional engagement and alignment with broader societal concerns.[469] For example, between 2000 and 2011, only 35

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[464] *CBCA, supra* note 12, s-s 137(5)(d).
[465] Securities and Exchange Commission, Rule 14a-8, 17 CFR § 240.14a-8(i)(12).
[466] *CBCA, supra* note 12, s-s 137(5).
[467] Oshionebo, supra note 10, at 642.
[468] Fazzalari and Rogers, *supra* note 314.
[469] *Ibid.*

out of 991 proposals surpassed the 50% approval threshold.[470] Nonetheless, proposals that garner between 20% and 40% support are now more likely to initiate discussions at the board level and result in gradual shifts in policy.

Proposals concerning ESG concerns have seen notable gains.[471] In 2025, climate-related proposals at major Canadian banks such as Toronto-Dominion (TD), Canadian Imperial Bank of Commerce (CIBC), and Bank of Montreal (BMO) achieved record levels of support, with TD's climate proposal receiving 38.3%.[472] Additionally, in 2024, over half of all shareholder proposals in Canada focused on environmental or social issues, marking a shift from prior years when executive compensation dominated the agenda.

In 2024, a small group of shareholders filed many proposals, a significant number of which were withdrawn after successful negotiations with company management.[473] This shows that shareholder proposals are a useful way to engage with companies, often resulting in management changes or policy adjustments before the AGM.[474] Hence, this behind-the-scenes dialogue underscores the influence shareholder proposals can wield beyond formal voting outcomes.[475] Shareholder proposals are effective because they shape corporate agendas and encourage indirect responsiveness, not just because they win votes.[476]

[470] Oshionebo, supra note 10, at 636-641.
[471] Fazzalari and Rogers, *supra* note 314.
[472] SHARE, "Investors at Canadian banks support climate proposals at historic highs" (2025), online: < https://share.ca/blog/investors-at-canadian-banks-support-climate-proposals-at-historic-highs/>.
[473] Gibson Dunn, "Shareholder Proposal Developments During The 2024 Proxy Season" (2024), online: < https://www.gibsondunn.com/wp-content/uploads/2024/11/shareholder-proposal-developments-during-the-2024-proxy-season.pdf>.
[474] *Ibid.*
[475] *Ibid.*
[476] *Ibid.*

Companies may pre-emptively change policies, adopt hybrid approaches, or engage in informal discussion, demonstrating how proposals drive ongoing dialogue and improve governance standards.[477]

In conclusion, shareholder proposals in Canada rarely get formal approval, but they still play an important role in corporate governance. They are becoming more influential due to increasing support, more involvement from institutional investors, and frequent negotiations. These proposals act as catalysts for informal influence, ongoing dialogue, and gradual policy changes, not just formal changes.

4.5 ILLUSTRATIVE CASE STUDIES

This section presents two illustrative case studies: one focusing on an ESG proposal that, despite not achieving majority support, garnered significant shareholder attention, and another examining a successful governance-related proposal that led to substantive changes in corporate practices. Together, these examples highlight the diverse pathways through which shareholder proposals can influence corporate behaviour regardless of voting outcomes.

[477] Dunn, *supra* note 473.

4.5.1 The 2024 Suncor Energy Inc. Shareholder Proposal on Climate Risk Disclosure[478]

In 2024, the advocacy group Investor for Paris Compliance (I4PC) submitted a shareholder proposal to Suncor Energy Inc., requesting enhanced financial disclosures relating to climate-related transition risks.[479]

Specifically, I4PC urged Suncor to go beyond generic environmental reporting and provide scenario-based analysis illustrating how various climate transition pathways such as those consistent with limiting global warming could affect the company's financial performance and business model.[480] The proposal reflected growing investor concern over the adequacy of climate-related disclosures in sectors with high exposure to carbon transition risks, such as oil and gas.[481]

At Suncor's AGM with shareholders on 7 May 2024, approximately 11.5% of shareholders voted in favour of the proposal.[482] While this level of support fell well short of the majority threshold, it nonetheless signalled that a significant segment of the investor base was attentive to climate risk and dissatisfied with the company's current reporting practices.[483] In response, Suncor's management asserted that its existing climate disclosures were

[478] See generally Investor for Paris Compliance, "Contextual Information Regarding Net Zero Financial Reporting Resolution Filed At Suncoor (2024), online: < https://www.investorsforparis.com/wp-content/uploads/2024/04/Suncor-April-2024.pdf>, Suncoor Energy Inc., "Suncoor Energy Reports Voting Results from Annual General Meeting" (2024), online: < https://www.suncor.com/-/media/project/suncor/files/news-releases/2024/2024-05-07-news-release-suncor-energy-reports-voting-results-from-agm-en.pdf?modified=20240507210107>, Investor for Paris Compliance, "Suncoor shareholders to vote on financial accounting practices related to the energy transition" (2024), online: < https://www.investorsforparis.com/suncor-shareholders-to-vote-on-financial-accounting-practices-related-to-the-energy-transition/> and Investor for Paris Compliance, "Suncoor releases results on shareholder proposal" (2024), online: < https://www.investorsforparis.com/suncor-2024-agm-results/>.

[479] *Ibid.*

[480] *Ibid.*

[481] *Ibid.*

[482] *Ibid.*

[483] *Ibid.*

sufficient and consistent with industry standards, including the Task Force on Climate-related Financial Disclosures (TCFD) framework.[484]

The board declined to adopt the proposed measures, arguing that further financial scenario disclosures were unnecessary.[485] However, the public discussion generated by the proposal drew attention to the limitations of the company's climate-related reporting and contributed to a broader investor dialogue on the financial materiality of climate transition risks in the energy sector.[486] Although the proposal did not pass, its impact was nonetheless significant as it helped initiate dialogue, raise investor awareness, and apply reputational pressure, thereby encouraging issuers to reassess the adequacy of their governance and disclosure frameworks.[487]

This case study underscores that shareholder proposals can have meaningful impact even in the absence of majority support or formal adoption. Thus, the 2024 Suncor example illustrates how shareholder activism can shape corporate behaviour not only through formal mechanism like voting outcomes, but also through indirect channels of accountability, such as public attention, reputation, and continued engagement.[488]

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[484] Investor for Paris Compliance, *supra* note 478.
[485] *Ibid.*
[486] *Ibid.*
[487] *Ibid.*
[488] *Ibid.*

4.5.2 “Say on Pay” Votes on Executive Compensation[489]

During the late 2000s, shareholders in Canada started demanding more control over executive pay. This was driven by worries that some top executives were being overpaid, and shareholders had little say in the matter.[490]

One significant initiative to address this concern was the introduction of a non-binding vote on executive pay, commonly referred to as “Say on Pay.[491]” This mechanism allows shareholders to cast an advisory vote at a company’s AGM, indicating approval or disapproval of the board’s executive compensation decisions.[492] Although the vote is not legally binding, it is still a crucial way to hold accountable by showing corporate boards how investors feel.[493]

The push for “Say on Pay” was mainly driven by big institutional investors and shareholder groups like Shareholder Association for Research and Education (SHARE).[494] They proposed that public companies include an advisory vote on executive compensation in their proxy ballots.[495]

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[489] See generally Jill Davis, “Mandatory “Say-on-Pay” May Be on the Way in Canada” (2019), online: Blakes < https://www.blakes.com/insights/mandatory-sayonpay-may-be-on-the-way-in-canada/>, SHARE, “Share Engagements In Focus: Improving executive compensation” (2022), online: SHARE < https://share.ca/blog/share-engagements-in-focus-improving-executive-compensation/>, Paul Hodgson, “A Brief History of Say on Pay” (2009), online: Ivey Business Journal < https://iveybusinessjournal.com/publication/a-brief-history-of-say-on-pay/> and Institute for Governance of Private and Public Organizations, “Giving Shareholder a Say on Pay: A measure leading to better governance.” (2010), online: < https://ised-isde.canada.ca/site/direction-entreprise-concurrence-insolvabilite/sites/default/files/attachments/Institute_for_Goverance_Private_Public_Co_SayPay.pdf>.
[490] *Ibid.*
[491] *Ibid.*
[492] *Ibid.*
[493] *Ibid.*
[494] *Ibid.*
[495] *Ibid.*

This idea quickly became popular, and by 2009 and 2010, a significant number of Canada's largest public companies including major banks had adopted "Say on Pay" votes.[496] The implementation of "Say on Pay" led to greater transparency in executive compensation, increased board-shareholder engagement, and in cases of significant dissent, revisions to pay practices.[497] Over time, the vote became standard among major Canadian firms, reinforcing a governance culture of accountability and responsiveness.[498]

This case illustrates the effectiveness of shareholder proposals in bringing about systemic change. Although advisory in nature, "Say on Pay" votes have empowered shareholders to influence corporate governance meaningfully and fostered more responsible decision making among directors. It exemplifies how well-structured and widely supported proposals can translate into lasting institutional reforms.

4.6 CHALLENGES AND CONSIDERATIONS

While shareholder proposals play an important role in promoting transparency, accountability and corporate responsiveness, they are not without their limitations and critiques.

The process can often be contentious, particularly where proposals are perceived by management as threatening corporate autonomy or misaligned with long-term strategic objectives. Resistance from boards and executives remains a recurring obstacle, especially

[496] See generally *supra* note 489.
[497] *Ibid.*
[498] *Ibid.*

when proposals touch upon sensitive issues such as executive compensation, board composition, or climate-related disclosures.

As Martin et al. have noted in their empirical analysis of U.S. proxy data, shareholders are more inclined to support proposals that aim to curtail excessive executive compensation rather than those that simply call for disclosure or transparency.[499] Their research further indicates that compensation-related proposals framed through a governance lens such as aligning pay with performance tend to attract more shareholder support than those grounded in broader social or ethical considerations.[500] Although this study focuses on the U.S., its insights remain relevant in the Canadian context, where shareholder concerns often mirror global governance trends.[501]

Another common critique of the shareholder proposal mechanism is the risk of proposal overload or frivolous submissions, which can distract management and board members from focusing on long-term strategic planning.[502] Some critics worry that giving in to too many shareholder demands might make companies focus too much on short-term goals.[503] It could also encourage them to make small changes just to please investors, instead of making real, meaningful reforms.[504] This is particularly salient in cases where proposals are poorly framed, repetitive, or lack material relevance to the corporation's operations.[505]

However, emerging evidence from Canadian proxy seasons suggests that while a majority of shareholder proposals may fail to achieve formal approval, they often lead to productive

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[499] Martin and Thomas, *supra* note 399.
[500] *Ibid.*
[501] *Ibid.*
[502] Jill E. Fisch, "Governance by Contract: The Implications for Corporate Bylaws" (2018), online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2930529>.
[503] *Ibid.*
[504] *Ibid.*
[505] *Ibid.*

discussions and policy changes through private negotiations and more dialogue.[506] The fact that proposals are sometimes withdrawn after management makes agreements, points to the indirect but significant influence shareholders can exert even without majority support.[507] Ultimately, firms should approach shareholder proposals not merely as compliance hurdles but as opportunities for reflection, engagement and governance enhancement.[508] When treated seriously and addressed transparently, even unsuccessful proposals can enrich corporate strategy by highlighting stakeholder concerns, bringing up risks that were not fully appreciated, and reinforcing a culture of accountability.[509]

4.7 CONCLUSION

This chapter has demonstrated that shareholder proposals, while often non-binding and facing structural barriers, remains a vital mechanism through which shareholders can influence corporate behaviour and performance in Canada. These proposals serve not only as tools for signaling investor concerns but also as catalysts for accountability, transparency, and long-term value creation.

Empirical patterns and case studies show that, even when proposals do not receive majority approval, they can exert reputational pressure, bring about internal reviews and contribute to incremental changes in governance practices especially in areas such as executive compensation and climate risk disclosure. However, the impact of shareholder proposals is

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[506] Paula Tkac, "One Proxy at a Time: Pursuing Social Change through Shareholder Proposals" (2006) Economic review (Federal Reserve Bank of Atlanta) 91(Q 3):1-20, online: <https://www.researchgate.net/publication/5025717_One_Proxy_at_a_Time_Pursuing_Social_Change_through_Shareholder_Proposals>.
[507] Aguilera, *supra* note 396.
[508] *Ibid.*
[509] Renneboog and Szilagyi, *supra* note 290.

not automatic; it is mediated by various factors, including proposal design, how important the issue is, investor coalitions, and board responsiveness.

Understanding these dynamics is critical to improving the effectiveness and approval rates of proposals, as explored in the preceding sections. As Canadian corporate governance continues to evolve amid rising expectations for environmental and social accountability fostering a regulatory and corporate culture that supports meaningful shareholder engagement will be increasingly essential.

By addressing the mechanism through which shareholder proposals affect firm performance and the factors that shape their approval, this chapter has provided a deeper understanding of their practical impact and strategic potential. The next chapter will bring together the main points of the thesis and suggest possible legal and policy changes to make the shareholder proposal system in Canada stronger.

CHAPTER 5: RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

This final chapter consolidates the main insights from the preceding analysis and offers a critical assessment of the current shareholder proposal regime under Canadian corporate law. It aims to bridge doctrinal, empirical, and policy considerations to propose concrete reforms that address the structural and procedural limitations identified in this thesis.

The chapter begins by summarizing the thesis findings in relation to the research questions. It then presents a suite of policy recommendations that could enhance the accessibility, effectiveness, and democratic potential of shareholder proposals in Canada. The chapter concludes with reflections on the future trajectory of shareholder proposals in corporate governance.

5.2 SUMMARY OF KEY FINDINGS

The preceding chapters demonstrate that shareholder proposals have become an increasingly influential tool for shaping corporate governance and promoting sustainable and accountable practices. However, both empirical and qualitative analysis reveal that several structural and procedural barriers continue to limit their full potential.

First, the current eligibility thresholds and procedural requirements under the *CBCA* and related legislation pose significant obstacles for retail and minority shareholders.[510] These

[510] CBCA*, supra* note 12, s-s 137(1) *Bank Act*, *supra* note 13, s-s 143(1) and 144; *ABCA*; *supra* note **Error! Bookmark not defined.**, s-s 136(1); *BCBCA, supra* note **Error! Bookmark not defined.**, s-s 187(1)*; MCA, supra* note **Error! Bookmark not defined.**, s-s 131(1); *NBBCA*, *supra* note **Error! Bookmark not defined.**, s-s 89(1); *NLCA supra* note **Error! Bookmark not defined.**, s 224; *NSCA supra* note **Error! Bookmark not**

requirements disproportionately benefit larger institutional investors, thereby undermining the democratic ideal of broad shareholder participation and access. The complexity and high cost of the process discourage smaller stakeholders from actively participating in corporate oversight.

Second, shareholder proposals exert influence through multiple mechanisms. They serve as signaling devices, communicating concerns and priorities to corporate boards and the broader investment community. They also enhance board accountability, generate reputational and strategic pressure particularly around ESG practices and foster internal dialogue and stakeholder engagement. Although proposals may not cause immediate changes, their long-term effect on corporate behaviour, disclosure practices, and market perception is significant.

Third, the dynamics of proposal approval are shaped by both the substance and presentation of proposals. Proposals that are concrete, action-oriented, and governance related tend to receive higher levels of support than those addressing board or abstract ESG issues. Proxy advisors and institutional investors play a decisive role in shaping voting outcomes, though board responsiveness varies.

Importantly, even proposals achieve significant shareholder support, there is no guarantee of implementation, given their non-binding nature and the discretion retained by corporate boards. Overall, the findings suggest that shareholder proposals, while valuable, require a more enabling legal and procedural framework to realize their democratic and governance enhancing potential.

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defined., Schedule III, para, 9(1)(a); *NWTBCA, supra* note **Error! Bookmark not defined.**, s-s 138(2); *OBCA, supra* note **Error! Bookmark not defined.**, s-s 99(1); *SBCA supra* note **Error! Bookmark not defined.**, s-s 131(1); *YBCA, supra* note **Error! Bookmark not defined.**, para 138(1)(a).

5.3 BEST PRACTICES, REFORM SRATEGIES AND POLICY RECOMMENDATIONS

This thesis has identified significant legal and practical constraints that impede the effective participation of minority shareholders in corporate governance through the shareholder proposal mechanism. While it is imperative to recognize these shortcomings, a thorough analysis should also suggest practical changes to improve shareholder engagement.

To address the limitations outlined in the preceding sections, this section outlines a set of reform proposals aimed at strengthening the shareholder proposal mechanism in Canada. These recommendations stem from the doctrinal, empirical, and case-based findings presented in this thesis, and are structured around the core themes of accessibility, regulatory clarity, accountability and process improvement.

5.3.1 Lowering Eligibility Thresholds for Shareholder Proposals Submission

One of the significant barriers to shareholder participation under the *CBCA* is the relatively high ownership or voting share threshold required to submit a proposal.[511] This requirement disproportionately impact retails investors and smaller institutional shareholders, effectively excluding a large portion of the shareholder base from participating in governance matters.

To enhance inclusivity and promote broader shareholder engagement, two key adjustments merit serious consideration. First, the minimum holding period should be reduced from six months to three months. A shorter holding period would better match how investing works

[511] *CBCA, supra* note 12, s. 137.

today, since many shareholders including individual and ESG-focused investors might not keep their shares for a long time but are still very interested in the company's long-term goals and responsible management.

Secondly, lowering the monetary value threshold potentially on a sliding scale akin to U.S. SEC model would allow for greater participation.[512] Under the SEC rules, a shareholder who owned at least $2,000 in market value for three years, $15,000 for two years, or $25,000 for one year may submit a proposal.[513] This tiered approached recognizes that long-term ownership signifies a deeper commitment to the firm's future and thus warrants greater voice in governance.[514]

Lowering barriers to proposal submission would make the process more inclusive and representative, without overburdening companies. Research shows that giving more people the right to make proposals does not lead to a flood of silly or irrelevant suggestions, especially if they are still some basic rules in place.[515] In fact, allowing more shareholders to take can lead to more thoughtful and varied ideas, including important topics like ESG issues, which are often raised by smaller or newer investors.

Thus, making the process more open would also encourage shareholders to be more involved, which can help companies to be more responsive and focused on long-term success.

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[512] Securities and Exchange Commission, Rule 14a-8.
[513] *Ibid.*
[514] *Ibid.*
[515] Aguilera, *supra* note 396.

5.3.2 Clarifying and Narrowing the Exclusion Grounds

Section 137(5) of the *CBCA* outlines the reasons why companies can exclude shareholder proposals from their proxy materials.[516] However, the way these rules are used especially when saying a proposal is just a "personal grievance" or "immaterial to business operations" is often unclear and inconsistent. Both company managers and courts have interpreted these reasons differently, which makes the process confusing and unpredictable for shareholders who want to submit proposals.

To address this lacuna, legislative or regulatory reforms could make the rules clearer and more specific. For example, they could better define what counts as a personal compliant versus an issue that affects the whole company. They should update what "material" means, recognizing that things like climate change, diversity, and human rights can have a big impact on a company's future and reputation, even if they are not strictly financial.

Canada could draw reference from the U.S. system, where the SEC usually lets proposals go forward unless there is a very clear reason not to.[517] This approach is more transparent and puts the responsibility on companies to explain why a proposal should be excluded, not on shareholders to prove it should be included.[518]

In the end, making the exclusion rules clearer and narrower would make the process fairer, encourage more shareholder participation, and ensure that proposals especially those about new or non-traditional issues like ESG get the attention they deserve.

[516] *CBCA, supra* note 12, s-s 137(5).
[517] Securities and Exchange Commission, Rule 14a-8.
[518] *Ibid.*

5.3.3 Creation of a Shareholder Proposal Review Panel

To make sure exclusion rules are understood the same way and to take some of the load off the courts, a shareholder proposal review panel could be created. This panel, overseen by Corporations Canada or joint federal-provincial group, would act like a tribunal to settle disagreements about whether a proposal is allowed before anyone goes to court. This would make the process more open, stop unfair exclusion, and lower legal cost for smaller proponents, which would make things fairer and easier to access for everyone.

5.3.4 Mandating Disclosures on Proposal Implementation and Board Response

To ensure companies are accountable after shareholder votes, there should be required disclosures on whether and how proposals are implemented. This would involve "comply" or "explain" statements within 120 days, enhancing the impact of shareholder votes and helping to assess the effectiveness of proposals in influencing firm strategy and governance.

5.3.5 Encouraging ESG Alignment and Institutional Accountability

As ESG shareholder proposals become more common, it is important for policymakers to create clearer rules about the duties of proxy advisors, institutional investors, and corporate boards regarding environmental and social risks. These rules could be based on the Canadian Coalition for Good Governance (CCGG) principles, which focus on responsible management and building long term value.

Adding these standards to current disclosure requirements, like improving National Instrument 58-101[519], would ensure more informed and consistent voting, especially on ESG issues. It would also lower the chance of greenwashing and make sure voting decisions match real sustainability and governance goals. This change would strengthen the system around shareholder proposals and make them more effective in encouraging responsible corporate behaviour.

5.3.6 Enabling Digital Platforms for Shareholder Engagement

To make it easier for shareholders to participate and overcome logistical problems, federal and provincial regulators should look into creating or approving secure online platforms where shareholders can work together to submit, discuss, and support proposals. Platforms similar to the United Kingdom's (U.K.) "ShareAction" or the U.S.'s "Say on Climate" could be modified for use in Canada. These platforms would help smaller investors form groups and improve the planning and coordination of shareholder proposals.

5.3.7 Integration of Shareholder Voices into Policy-Making and Regulatory Reform

To make corporate governance reform more inclusive, consultative groups or regular review processes should be set up where shareholder advocates, proxy advisors, or companies, and regulators can jointly evaluate the shareholder proposal system. This would ensure that the system keeps up with changing stakeholder concerns and global governance trends, especially in the area of ESG accountability.

[519] National Instrument 58-101, Disclosure of Corporate Governance Practices (2005).

5.4 AREAS FOR FUTURE RESEARCH

Future research on shareholder proposals in Canada could explore several key areas. These include comparing federal and provincial rules to assess their impact on shareholder participation, and evaluating the long-term effectiveness of ESG-related proposals.

Another study could focus on barriers faced by minority shareholders, such as high costs and technical complexity, and how digital tools might lower these barriers. Other important topics include the effects of adopting U.S. style resubmission thresholds, the influence of dual-class share structures on voting outcomes, and the role of proxy advisory firms in shaping proposal success.

Finally, examining the impact of virtual shareholder meetings and new voting technologies could reveal ways to make the process more accessible and transparent.

5.5 CONCLUSION

In conclusion, shareholder proposals in Canada remain a vital but underutilized tool for advancing corporate accountability and responsiveness. This conclusion reflects the findings of the thesis in relation to the three research questions set out in first chapter. As this thesis has demonstrated, proposals have the potential to influence firm behaviour indirectly through signaling, enhancing board accountability, applying reputational pressure, and fostering dialogue.

Yet, their full effectiveness is hindered by a range of structural and procedural barriers particularly those that affect minority shareholders. The current thresholds under the *CBCA*,

vague exclusion grounds, and non-binding nature of proposals limit both accessibility and impact.

Although the shareholder proposal mechanism has evolved, challenges such as management discretion, uneven provincial-federal harmonization, and resistance to ESG-related initiatives persist. A more enabling legal and regulatory framework is needed, one that promotes inclusivity transparency, and responsiveness in corporate governance.

The recommendations outlined in this chapter aim to move Canadian corporate governance towards a more participatory and forward-looking model. Reforms such as lowering submission threshold, narrowing exclusion criteria, and integrating digital platforms can enable more shareholders to meaningfully participate in corporate oversight.

Additionally, creating ways for regulatory dialogue and dispute resolution would strengthen the legitimacy and accountability of the proposal process. In this way, the thesis has addressed the barriers faced by minority shareholders, the mechanisms by which proposals shape corporate behaviour, and the factors influencing the approval and effectiveness. Revitalizing the shareholder proposal system is not just about changing procedures; it is essential for aligning corporate behaviour with the long-term interests of stakeholders and new societal priorities. Enhancing shareholder voice within the *CBCA* framework can promote more sustainable, and democratically accountable corporations in Canada.

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