Exit InSights

July 2026 Update

A MARKET APART

A Comparative Analysis of
Emerging Companies Exit Trends in Canada against the
ABA's *Canadian Private Target M&A Deal Points Study*

FASKEN

EMERGING TECH

Contents

Disclaimer

The information provided in this report is for general informational purposes only. While we have made every attempt to ensure that the information contained in this deal study is accurate and complete, we make no guarantees and accept no responsibility for any errors or omissions, or for any results related to the use of this information.

This deal study does not provide any legal, financial, or investment advice and should not be interpreted or relied upon as such. The views and opinions expressed in this report are those of the authors alone and do not necessarily reflect the official policy or position of Fasken Martineau DuMoulin LLP, or any affiliated organizations or entities. Any action taken based on the information in this deal study is strictly at your own risk, and we will not be liable for any losses or damages in connection with its use.

Readers are advised to consult with professional advisors for specific advice tailored to their circumstances. The data and analyses provided herein are based on information available at the time of publication, and are subject to change without notice.

Letter from the Authors

In January 2026, we published ***Exit InSights***, a deal point study examining Canadian private M&A transactions involving venture capital (VC)-backed and high-growth technology companies over the 2019 to Q1 2024 period. This July 2026 update includes a comparative analysis of *Exit InSights* data against findings in the American Bar Association's 2025 Canadian Private Target M&A Deal Points Study, covering transactions from 2020 to 2022 ("**Canadian ABA Deal Study**").

The objective is to highlight areas of divergence between Canadian tech exits (as reflected in our *Exit InSights*) and a broader Canadian private-target dataset, and explain their practical significance.

The comparisons presented in this update should be interpreted in light of two key considerations.

First, the studies cover different timeframes: *Exit InSights* spans a broader period, including more recent market conditions, whereas the Canadian ABA Deal Study is limited to transactions completed between 2020 and 2022.

Second, the datasets reflect distinct underlying compositions: the Canadian ABA Deal Study covers a broad cross-section of Canadian private-target transactions across multiple industries, while *Exit InSights* focuses specifically on exits of technology and venture-backed targets. As a result, observed differences may indicate variations in sample composition, evolving market dynamics and sector-specific drafting approaches, including in areas such as risk allocation related to data governance, pricing mechanics and post-closing liability structures.

Constantinos Ragas
Partner & National Co-Leader | Emerging Technology & Venture Capital | Montréal
+1 514 397 5244
cragas@fasken.com

Will Shaw
Partner & National Co-Leader | Emerging Technology & Venture Capital | Toronto
+1 416 865 4554
wshaw@fasken.com

Geoff Pedlow
Partner | Emerging Technology & Venture Capital | Vancouver
+1 604 631 4765
gpedlow@fasken.com

Key Drivers:
Technology Mix and Deal Size

Technology as a Category vs. Technology as the Focus

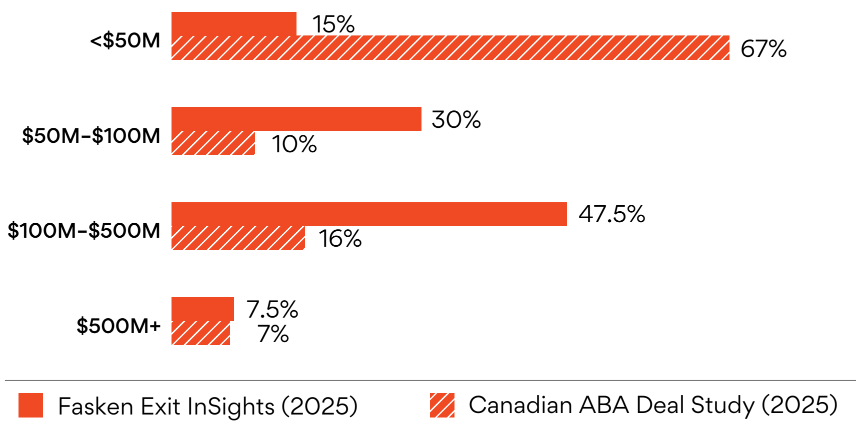
Technology transactions are treated as a single category in the Canadian ABA Deal Study, representing 15% of its dataset. *Exit InSights*, by contrast, is mostly technology-centric and, as a result, provides greater visibility into trends within technology exits.

This distinction in scope is significant when interpreting the data. Many of the deal points that attract heightened negotiation in technology exits, and that appear more frequently in *Exit InSights*, are directly tied to the risk and diligence profile of technology businesses. These dynamics are particularly evident in areas like privacy, cybersecurity, and the precision of pricing constructs where transaction value is sensitive to how the parties define the target's financial position and liabilities.

Deal Size as a Contributing Variable

Deal size is a significant variable between the two datasets: the Canadian ABA Deal Study tends to capture smaller transaction values, while *Exit InSights* is weighted toward larger deals.

Transaction Value



In practice, transaction size often affects the degree of bespoke structuring that the parties can support. Larger deals are more likely to justify a full "enterprise value bridge" in the documentation, including detailed treatment of working capital, cash and debt concepts, more granular definitional mechanics, and a more fully developed post-closing liability structure. While these features may also appear in smaller transactions, budgets, negotiation leverage, and process constraints lead to simplification. Differences in the economic profile of the underlying deals tend to produce corresponding differences in the documents.

Governing Law:
Canadian Provincial Baseline vs. Cross-Border Influence

Governing law is one of the clearest indicators that Canadian technology and VC-backed exits often operate within a cross-border deal ecosystem. In the Canadian ABA Deal Study dataset, agreements are governed predominantly by Canadian provincial law, most often Ontario or British Columbia. In *Exit InSights*, while Canadian law remains the primary governing framework (65%), non-Canadian governing law, notably Delaware (25%) and New York (7.5%), appears much more frequently.

This difference matters because governing law does not fully capture the negotiation and drafting influences at play. A significant proportion of *Exit InSights* transactions, even those governed by Canadian law, involve non-Canadian buyers or parent entities. These parties often approach the transaction with expectations shaped by their home jurisdiction and precedent ecosystem, which can persist even where Canadian law ultimately governs. As a result, governing law functions only as a partial indicator of deal dynamics: in many technology exits, documents reflect a hybrid approach in which Canadian legal architecture is overlaid with non-Canadian market expectations, particularly in areas such as risk allocation, pricing mechanics, and post-closing remedy structures.

Financial Terms:
Prevalence of, and Precision in, Purchase Price Adjustments

Higher Inclusion of Purchase Price Adjustments in *Exit InSights* Deals

A key point of divergence between the two datasets is the prevalence of post-closing purchase price adjustments (“**PPAs**”). In the Canadian ABA Deal Study, PPAs appear in just over half of transactions (54%), whereas in *Exit InSights*, PPAs are included in a substantial majority of transactions (87.5%).

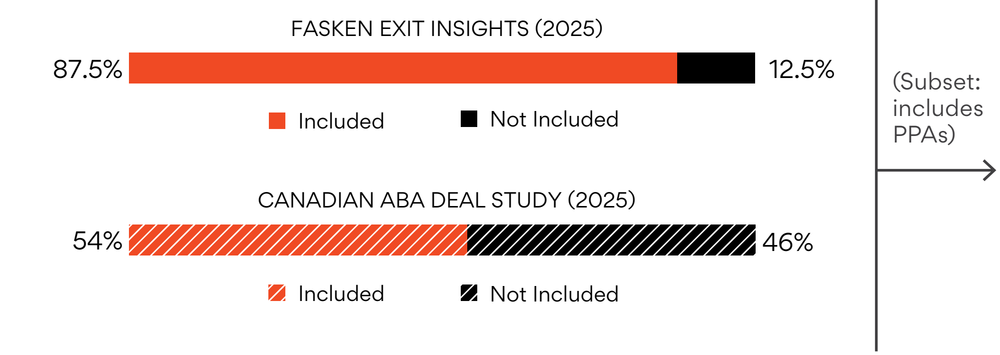
This trend is consistent with market practice in larger, technology-focused exits: as the deal size increases and the diligence process becomes more extensive, buyers often place more emphasis on tightening pricing mechanics, both to limit value leakage between signing and closing and to reduce the probability of post-closing disputes.

Frequent Use of Complete Enterprise Value Bridge in *Exit InSights* Deals

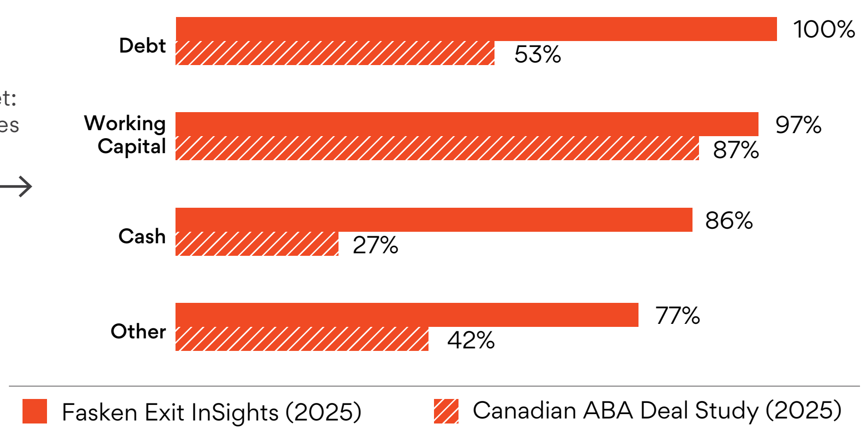
Where PPAs are used, *Exit InSights* agreements more frequently include not only working capital adjustments, but also explicit debt and cash concepts.

From a commercial perspective, these inclusions reduce ambiguity. The more clearly the agreement distinguishes among (i) the operating assets and liabilities being acquired, (ii) whether cash should be treated as a purchase price component, and (iii) debt-like items that should be effectively paid off or deducted from the purchase price, the narrower the scope for post-closing disagreement about whether a particular item was intended to impact price.

Post-Closing Purchase Price Adjustments



Adjustment Metric
(by percentage of deals with PPAs)

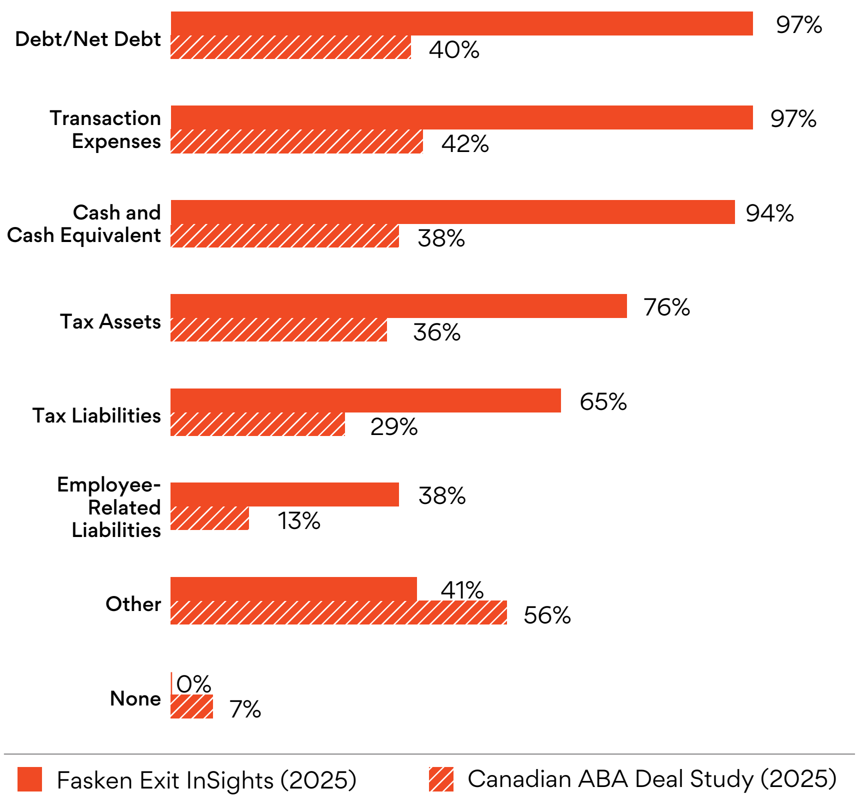


Working Capital Exclusions: More Precision in *Exit InSights* Deals

A further point of distinction is how working capital is defined: *Exit InSights* deals were more likely to include express exclusions that narrow the scope of the working capital construct.

Working Capital Exclusions

(by percentage of deals with working capital adjustments)



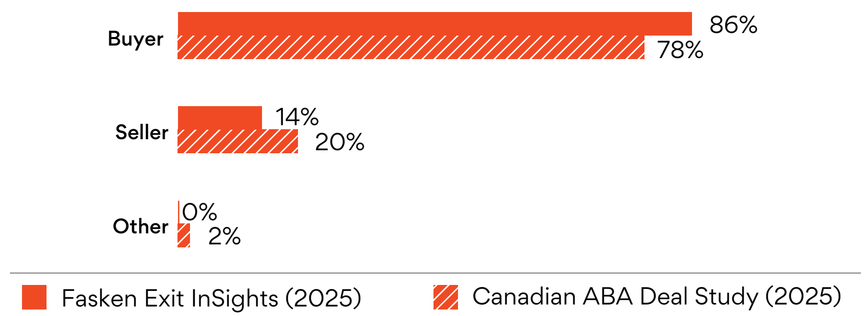
In the *Exit InSights* agreements, working capital was more frequently defined as a prescriptive list of included and excluded items. These definitions commonly included carve-outs designed to prevent double-counting and to remove high-friction items from the adjustment mechanism. The objective is to reduce exposure to post-closing disputes by requiring the parties to agree, at signing, on the precise operation of the adjustment.

Mechanics and Process: Buyer-Prepared Closing Statements and Earnouts

Both datasets show a buyer-led approach to preparing the closing statement or closing balance sheet in transactions with PPAs, and this approach was slightly more prevalent in *Exit InSights* deals (86%) than in Canadian ABA Deal Study deals (78%).

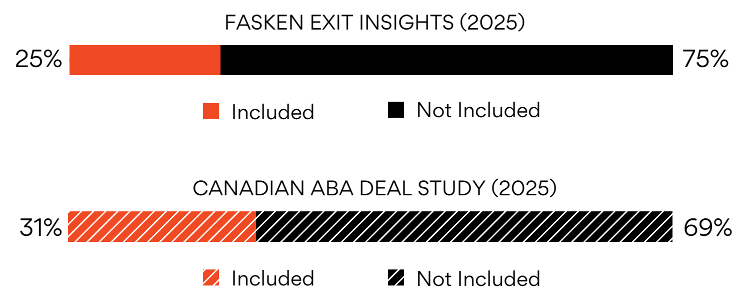
Party Preparing Closing Balance Sheet

(by percentage of deals with PPAs)



Earnouts appear in both studies in a minority of deals: the Canadian ABA Deal Study shows a modestly higher incidence (31%) than *Exit InSights* (25%). This variation may be explained by, among other factors, the period covered by the Canadian ABA Deal Study (2020-2022), which coincided with heightened forecasting uncertainty, as well as differences in buyer mix and valuation-bridging preferences.

Earnout Provision

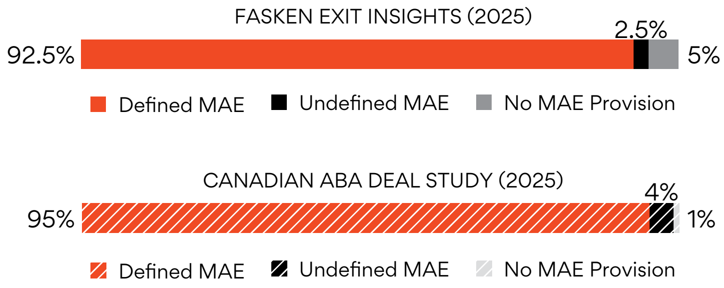


Pervasive Qualifiers:
Risk Allocation & MAE and Knowledge Qualifiers

MAE: Ubiquitous in Both Datasets, But More Consistently Modern in *Exit InSights*

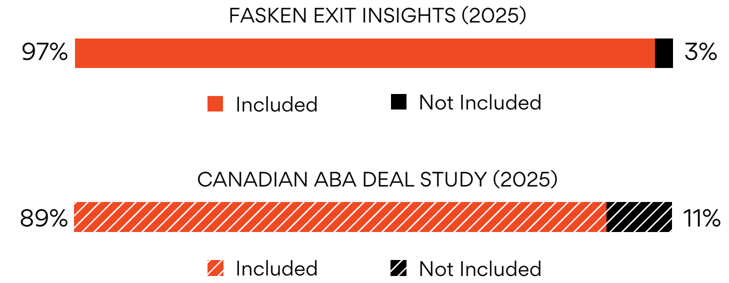
Each dataset confirms that Material Adverse Effect (“**MAE**”) definitions are near-universal.

MAE Provision

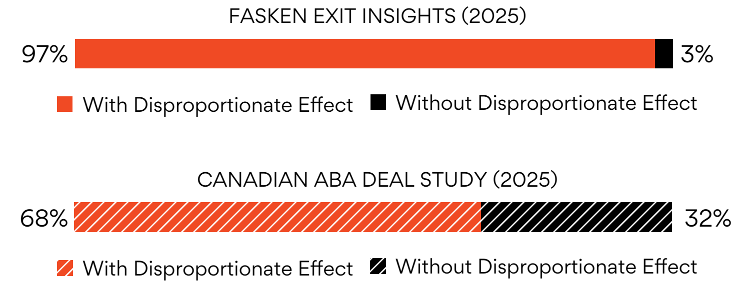


The more meaningful differences lie in their formulation. *Exit InSights* deals more consistently include MAE carve-outs and, importantly, a disproportionate-effect qualifier.

MAE Carve-Out
(by percentage of deals with Defined MAE)



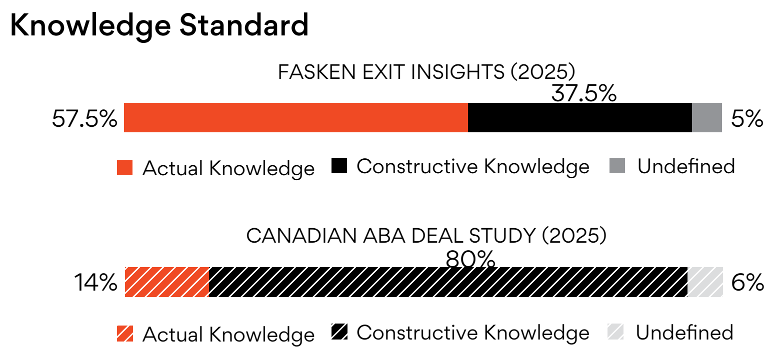
MAE Carve-Outs Qualified by Disproportionate Effect
(by percentage of deals with MAE Carve-Outs)



This drafting combination is often described as a modern MAE architecture where macro-level events are carved out (so the buyer does not bear general market risk), but target-specific harm that disproportionately affects the business remains in scope. In practice, this is one of the clauses where drafting consistency can meaningfully influence interim-period risk allocation and negotiations around deal certainty.

Knowledge Qualifiers: Impact of Venture-Backed Stakeholder Dynamics

Knowledge standards diverge markedly between the two studies. *Exit InSights* agreements more frequently include actual knowledge, whereas the Canadian ABA Deal Study deals more frequently use constructive knowledge.



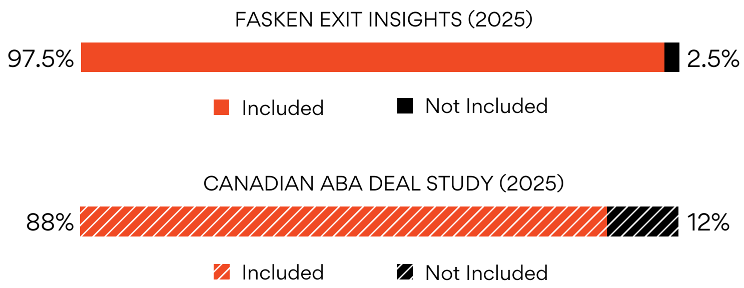
A plausible explanation relates to differences in stakeholder composition and information access across the two samples. Venture-backed exits frequently include a diverse seller group, comprising founders, management, and a broad base of passive investors, including VCs, angels, and other holders. Within such groups, access to operational information is uneven, with only a subset of individuals directly involved in the business. In that context, the use of actual knowledge standards may better align with the practical limits of information available across the seller base. By contrast, non-VC-backed transactions more often involve a smaller and more concentrated group of sellers with closer involvement in the business, which may support the use of constructive knowledge standards that assume an ability to undertake reasonable inquiry and verification.

Representations and Warranties, Approach to Disclosure and Tech-Specific Risks

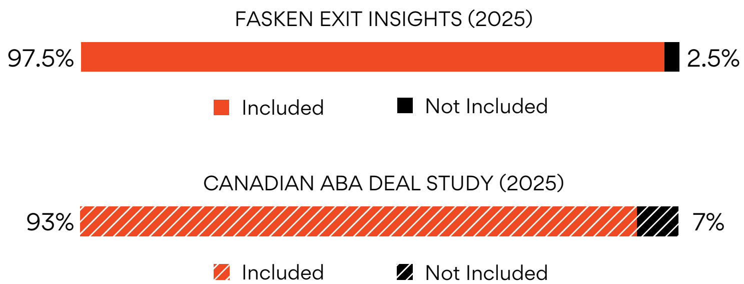
High Prevalence of Baseline Representations and Warranties

Both studies show high prevalence of baseline representations and warranties such as compliance with laws and no undisclosed liabilities. *Exit InSights* trends slightly higher on both.

No Undisclosed Liabilities Representation



Compliance with Law Representation

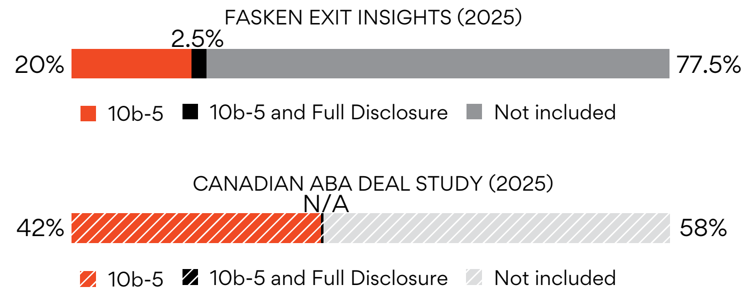


In practice, these representations often carry meaningful weight in post-closing claims, in part because they can be drafted broadly and can capture a range of issues. As a result, their frequency of inclusion is best understood as part of the broader remedies architecture: even where a representation is framed strongly, economic exposure is frequently calibrated through survival periods, caps, baskets, and, particularly in many technology and VC-backed exits, representation and warranty insurance.

Full Disclosure and 10b-5 Provisions: Lower Prevalence in *Exit InSights*

The data in both studies indicate that many agreements remain silent on full disclosure / 10b-5 style provisions. *Exit InSights* transactions are more frequently silent on this point (77.5%), while Canadian ABA Deal Study transactions more frequently include this type of representation (42%).

Disclosure Representations



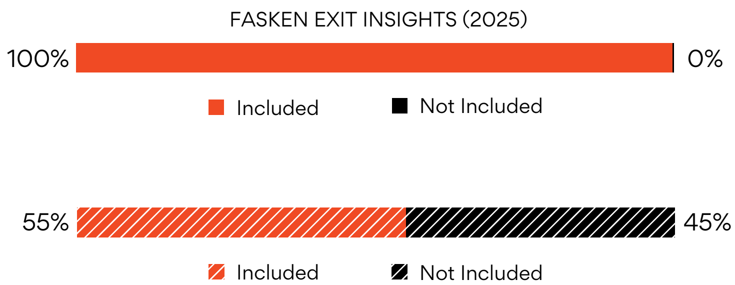
*No distinction between 10b-5 only and 10b-5 and Full Disclosure

One interpretation of this divergence is that technology exits more commonly allocate diligence risk through a combination of targeted, subject-matter-specific representations and express non-reliance (see below for more context). Rather than adopting a broad catch-all disclosure concept, the parties may prefer to specify the specific risk areas that matter most and align disclosure practices and remedies accordingly.

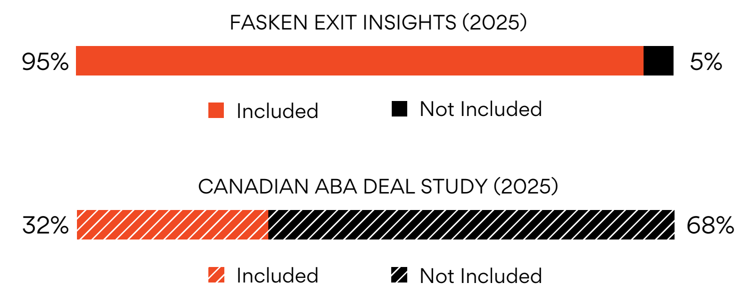
Privacy and Cybersecurity: A Defining Divergence

An important difference to note between the two datasets is in the use of privacy and cybersecurity representations: in *Exit InSights* deals, privacy and cybersecurity representations are treated as near-baseline provisions, appearing in nearly all deals (100% and 95%, respectively), whereas in the Canadian ABA Deal Study transactions they appear far less frequently (55% and 32%, respectively).

Privacy Representation



Cybersecurity Representation

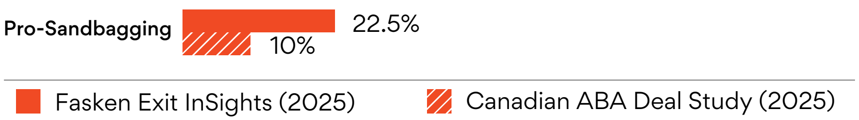


The significance of this divergence extends beyond the observation that technology transactions place greater weight on data-related risk. In many technology businesses, data handling practices and security posture are integral to the product, the customer relationship, and the underlying value of the enterprise.

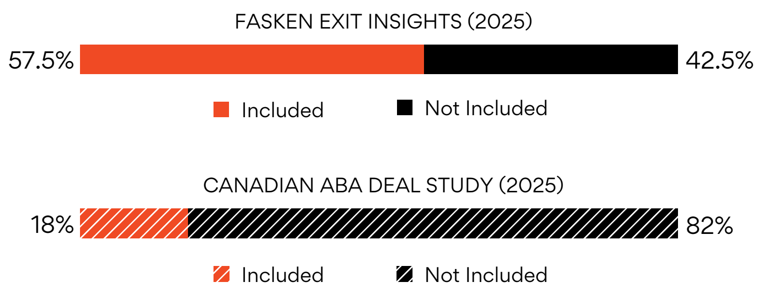
Sandbagging and Express Non-Reliance

Agreements are frequently silent on sandbagging in both studies, with *Exit InSights* modestly more likely to include pro-sandbagging language. More significant is the prevalence of express non-reliance clauses in *Exit InSights* which records a materially higher incidence than the Canadian ABA Deal Study.

Sandbagging



Express Non-Reliance



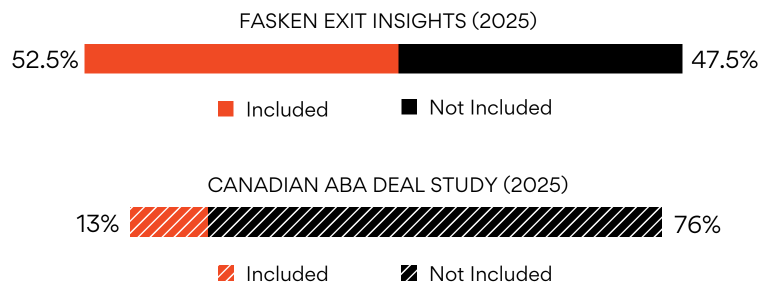
This pattern is consistent with a four-corners approach to risk allocation, in which the buyer confirms it is not relying on extra-contractual statements, and the negotiated representations, warranties, and schedules become the primary mechanism for disclosure and remedies.

Indemnification Structure:
Survival, Baskets, Caps, and the RWI Effect

Representation and Warranty Insurance Adoption: The Most Consequential Structural Differentiator

A consequential structural difference between the two studies is the incidence of representation and warranty insurance (“**RWI**”), which appears far more frequently in *Exit InSights* (52.5%) than in the Canadian ABA Deal Study (13%).

RWI Inclusion



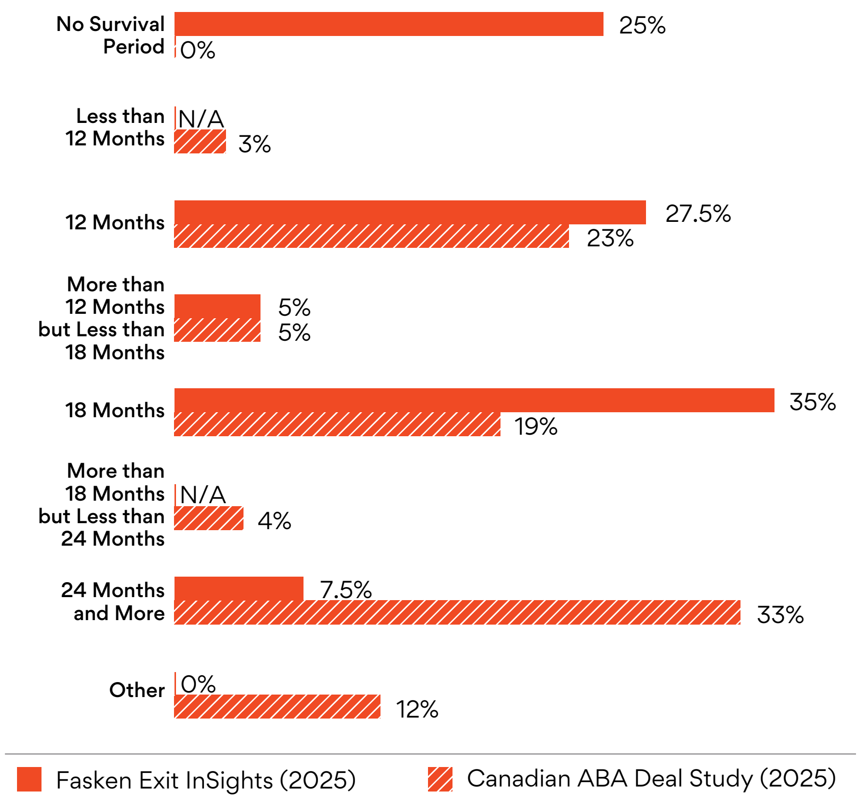
The significance of this divergence is that RWI can reshape the remedies stack of a transaction. Where an insurer is underwriting representation risk, the parties often recalibrate survival periods, baskets, and caps in a way that reduces seller exposure and channels post-closing recovery through an insurance policy, subject to the applicable retention, policy exclusions, and claims process requirements.

Survival: Shorter Durations and Meaningful “No Survival” Cohort in *Exit InSights*

One of the notable differences between the two studies is survival for general representations and warranties.

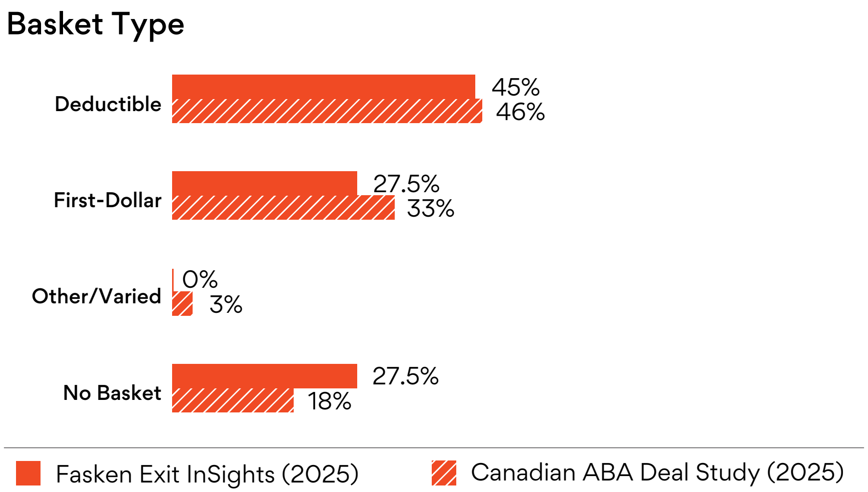
In the *Exit InSights* dataset, a meaningful portion of transactions (25%) carry no post-closing survival for general representations and warranties. This tendency is consistent with the preference among venture-backed sellers to minimize long-tail indemnification exposure and provide greater certainty around the timing and availability of distributions to their investor base.

Survival Period
(by percentage)



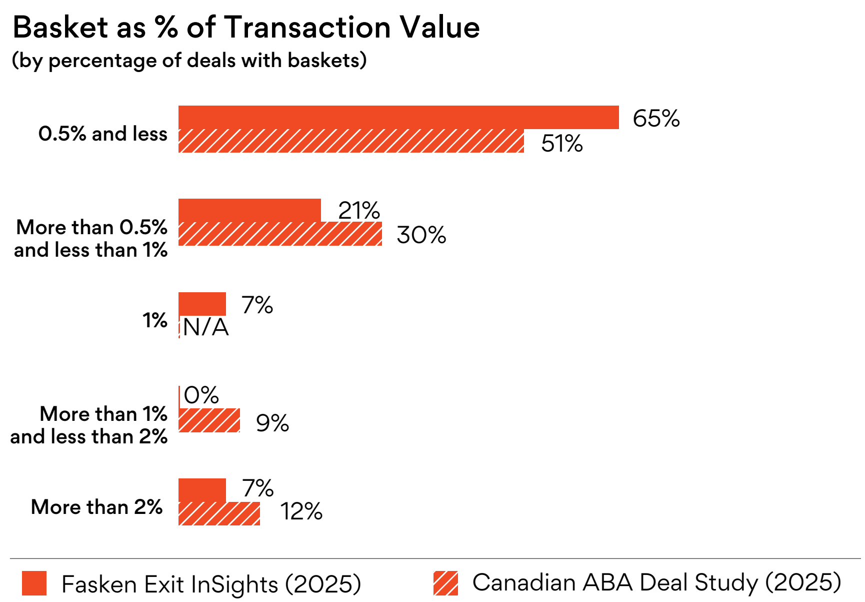
Basket Type: Broadly Consistent Across Both Datasets

Basket type is broadly consistent between the two studies. Deductible baskets remain common, tipping/first-dollar baskets retain a meaningful presence, and the absence of any basket appears in a minority of deals.



Baskets and Caps (as Percentage of Transaction Value): An Insurance-Shaped Liability Profile in *Exit InSights*

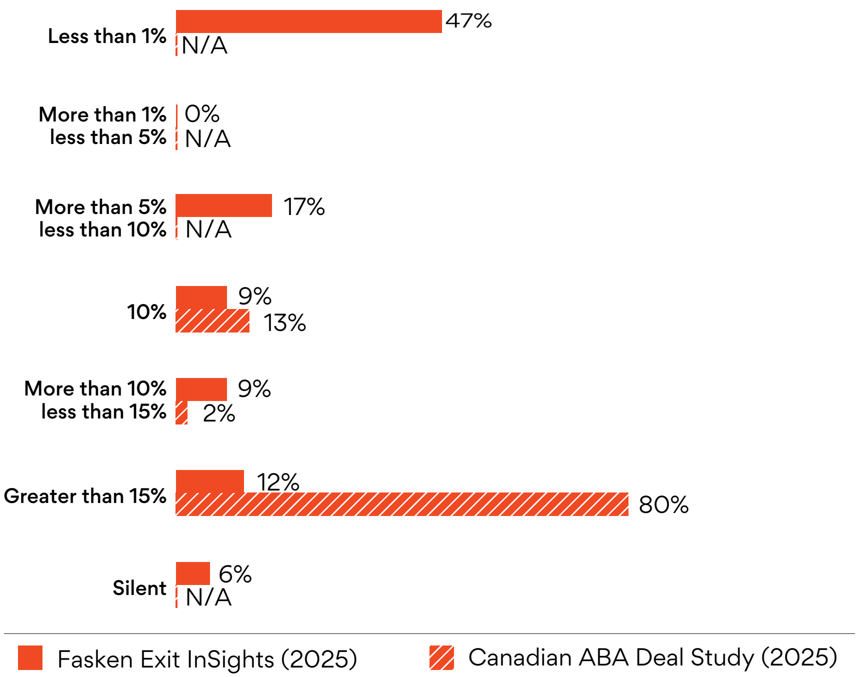
With respect to basket size as a percentage of transaction value, *Exit InSights* shows a higher concentration of transactions in lower basket ranges compared to the Canadian ABA Deal Study. This trend is also prominent within the insured subset of *Exit InSights* data.



The contrast is even more pronounced with respect to caps. The Canadian ABA Deal Study is weighted towards higher cap ranges, while *Exit InSights* shows substantially more transactions in low cap ranges, particularly among its insured deals.

Caps: Amount as % of Transaction Value

(by percentage of deals with determinable caps)



These data points are best understood as components of an integrated liability structure rather than as standalone metrics. Where RWI is present and sellers are focused on minimizing post-closing tail exposure, the contractual liability architecture is typically constructed around the intended allocation of risk.

KEY TAKEAWAY

Same Country, Different Market

The comparative results support a distinct conclusion: Canadian technology exits do not simply represent Canadian private M&A transactions with a technology overlay. They instead point to a market structured around three identifiable features: (i) pricing precision, including purchase price adjustments, explicit debt and cash constructs, and prescriptive working capital drafting, (ii) modern diligence risk, as reflected in the prevalence of the privacy and cybersecurity representations, and (iii) a four-corners approach to risk allocation through express non-reliance and, to a lesser extent, sandbagging language.

Those drivers also help explain the remedies stack. In a venture-backed ecosystem where sellers often prioritize certainty of distributions and where representation and warranty insurance is more commonly used, survival periods, baskets, and caps are frequently calibrated to reduce seller-side exposure and to rely more heavily on structured recovery mechanisms.

In our experience, these are the pressure points that shape outcomes. Precise drafting reduces ambiguity, aligns the parties on the value being transferred, and minimizes post-closing friction that might otherwise erode negotiated outcomes.

Study Authors

Constantinos Ragas
Partner & National Co-Leader | Emerging Technology & Venture Capital | Montréal
+1 514 397 5244
cragas@fasken.com

Will Shaw
Partner & National Co-Leader | Emerging Technology & Venture Capital | Toronto
+1 416 865 4554
wshaw@fasken.com

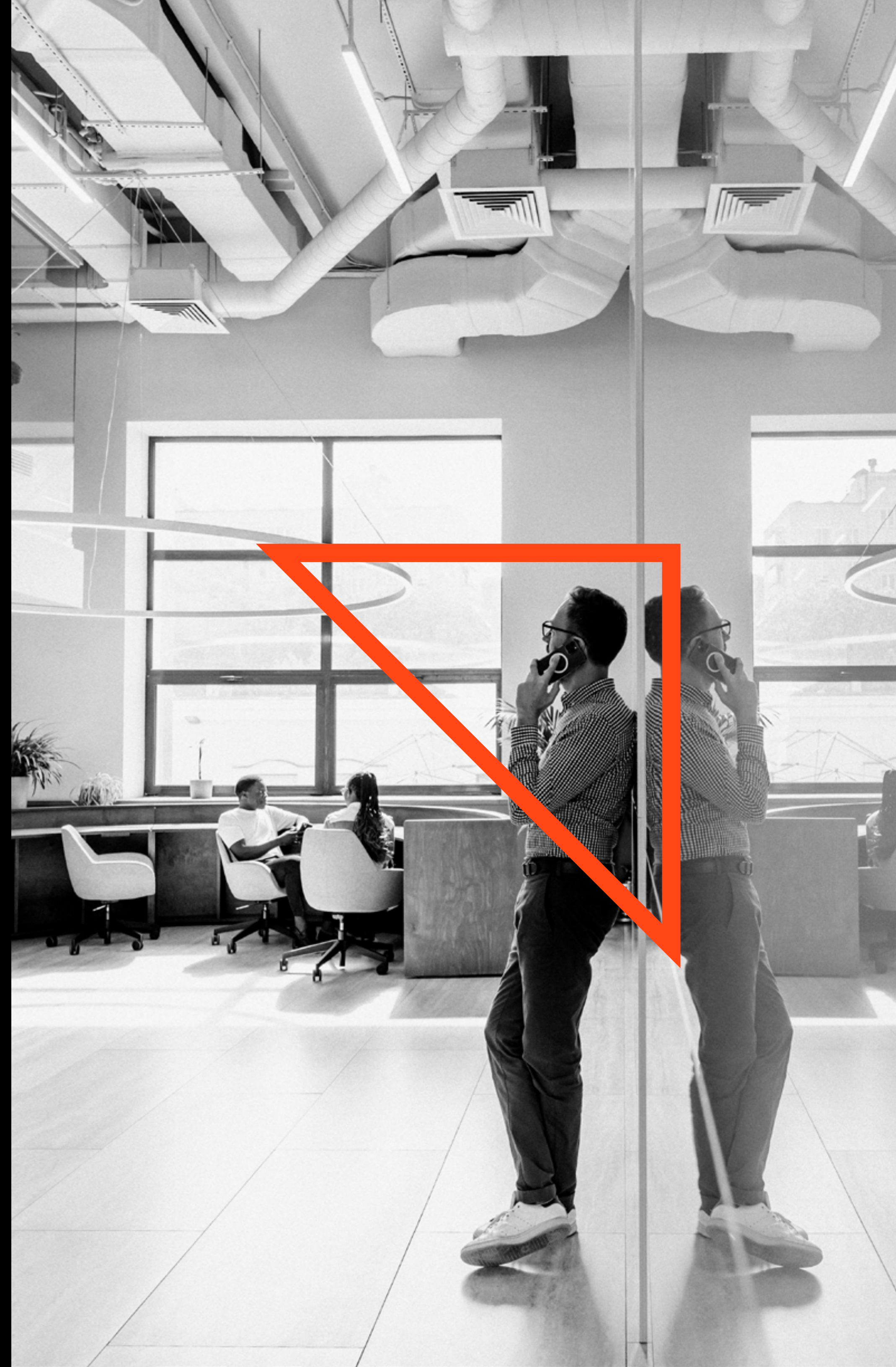
Geoff Pedlow
Partner | Emerging Technology & Venture Capital | Vancouver
+1 604 631 4765
gpedlow@fasken.com

Special Thanks

Geneviève Burdon
Counsel | Emerging Technology & Venture Capital | Montréal
+1 514 397 7496
gburdon@fasken.com

DISCOVER OUR EMERGING TECH
& VENTURE CAPITAL PRACTICE

Tomorrow starts here.
Own it with us.



Our Emerging Technology and Venture Capital Practice

**Our clients don't wait for the future.
They build it.**

As Canada's first and largest dedicated practice for emerging and high-growth companies, we bring together leading technology lawyers, founders, former in-house counsel, developers, business advisors, and industry specialists. Deeply embedded in the innovation ecosystem, we help companies navigate every stage of growth, from startup to scale-up to exit.

With a high volume of M&A and VC financing transactions, we bring deep market knowledge to every deal, helping clients stay ahead of trends and seize opportunities for innovation and growth.

We work alongside the founders, investors, and industry leaders shaping the future economy. Our experience spans the full spectrum of deep technology, including artificial intelligence (AI), SaaS, ClimateTech, MiningTech, DefenceTech, Internet of Things (IoT), MedTech, FinTech, AgTech, and Quantum Technologies.

**Tomorrow starts here.
Own it with us.**

LEARN MORE ABOUT OUR PRACTICE

#1
in Canada
by deal count

Mergermarket H1 2026

30+
years supporting founders, investors and acquirers in the innovation ecosystem

Band 1
Startups and Emerging Companies

Chambers Canada Guide 2026

900+
lawyers firmwide

Top Canadian-based Firm

VC deals and exits, deal type – Most active at late stage

Pitchbook Q1 2026

85
lawyers nationally in Emerging Tech & Venture Capital

FASKEN

Own tomorrow

About the Firm

As a premier law firm with over 900 lawyers worldwide, Fasken is where excellence meets expertise. We are dedicated to shaping the future our clients want, precisely when it matters most. For more information, visit fasken.com.

fasken.com