

Why Moving On From A CEO Can Be Costly And Complicated



In normal conditions, [Toronto-Dominion Bank](#)'s veteran chief executive, now approaching the ten-year mark in the top job, might be putting the final pieces of a succession strategy in place.

Instead, the 67-year-old finds himself attempting to stickhandle the bank out of a scandal that has some clamouring for his head.

The first sign of trouble was the scrapping of the bank's US\$13.4 billion takeover of U.S.-based [First Horizon Corp.](#), which would have cemented TD's standing in the upper tiers of the U.S. financial sector.

More worrisome, now, is the uncertainty over a series of probes south of the border into lapses in [TD's anti-money-laundering controls](#), which reportedly led to hundreds of millions of dollars of drug money being laundered through the bank.

It is not merely the prospect of fines that some analysts have said could exceed US\$2 billion – TD can easily afford that, thoughts its shareholders could no doubt envision a better use of the funds.

The more concerning issue is that the regulatory scrutiny – which already led to the collapse of the First Horizon deal – could now severely cramp TD's prospects for U.S. growth as well as drag on its existing operations there.

I had talked in a previous column about the risk of firing a CEO – or, in that case, a [CFO](#) – no matter the circumstances. Such a drastic move can send a message to the market that a company's known problems might be more endemic than publicized – or that there might be additional, undisclosed ones yet to surface. The market recoils at such risk, particularly so with banks, upon which so much of the economy is reliant.

Some analysts now think Masrani will have to go. But if he leaves now, it would be in perceived disgrace and the market's apprehension would be that he is wearing the money laundering scandal and failed takeover.

But what if he is innocent of all of that, and did his best in every respect to prevent those dual calamities? At the end of the day, even a CEO is not unrestrained and unchecked by their board, other executives and institutional constraints.

And let us assume, not unreasonably, that he has an employment contract, delineating his severance entitlement. Given the courts' recent fixation on dismissals that are unduly embarrassing, if indeed Masrani did an excellent job in all of these respects – and its worth noting that the bank exceeded market expectation in second quarter results released this week – he could be in position to sue for far more than the amount of his contract, if TD dismisses him now in a manner which permits the market to believe that therein lay its problems.

It is not just CEOs and CFOs who have such potential claims. I have had many clients over the years complain that some scandal in their company presents a risk to their reputation and re-employability. There has never been a case where damages have been awarded in such circumstances. At least, not yet. But the law is an ever evolving instrument and precedent would suggest that, if a company was so careless as to negligently endanger the reputation of its employees, at some point, employees might be able to resign in protest and claim constructive dismissal, giving them the same legal rights as if they were fired. And given the circumstance of such a constructive dismissal claim, additional damages might well be awarded for the long-term impact on that employee's reputation.

A case for damages would be even more clear if an employee was terminated in the context of a scandal so as to create the impression that they were implicated in it. It would be clearest yet if the employee was made that scandal's unwarranted scapegoat.

Of course, if we still had a retirement age, Masrani would have set off a couple of years ago into the sunset with no one looking askance.

That particular battle will not be refought with our aging population.

Such a term limit might have offered Masrani the retirement he expected.

Instead, he is facing a much less graceful exit.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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