

# Ensuring an ethical organization

The collapse of Enron and the resulting enactment of Sarbanes-Oxley brought renewed focus to the importance of business organizations having a formally established Code of Conduct.

By Doug Archer

To be effective in creating and sustaining an ethical business environment, a Code of Conduct must be more than a set of rules laid out in a glossy company brochure.

The International Federation of Accountants (IFAC) defines a Code of Conduct as the: *“Principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organization in a way that contributes to the welfare of its key stakeholders and respects the rights of all constituents affected by its operations.”*<sup>1</sup>

The challenge is embedding these principles, values and standards into an organization’s culture so that its employees and representatives truly internalize them. To achieve this, a company’s Code of Conduct must be supported by a program that promotes and, more importantly, reinforces standards of ethical behaviour on a daily basis. This article outlines the essential elements of such a program (a graphic representation of these elements is presented in Exhibit 1).

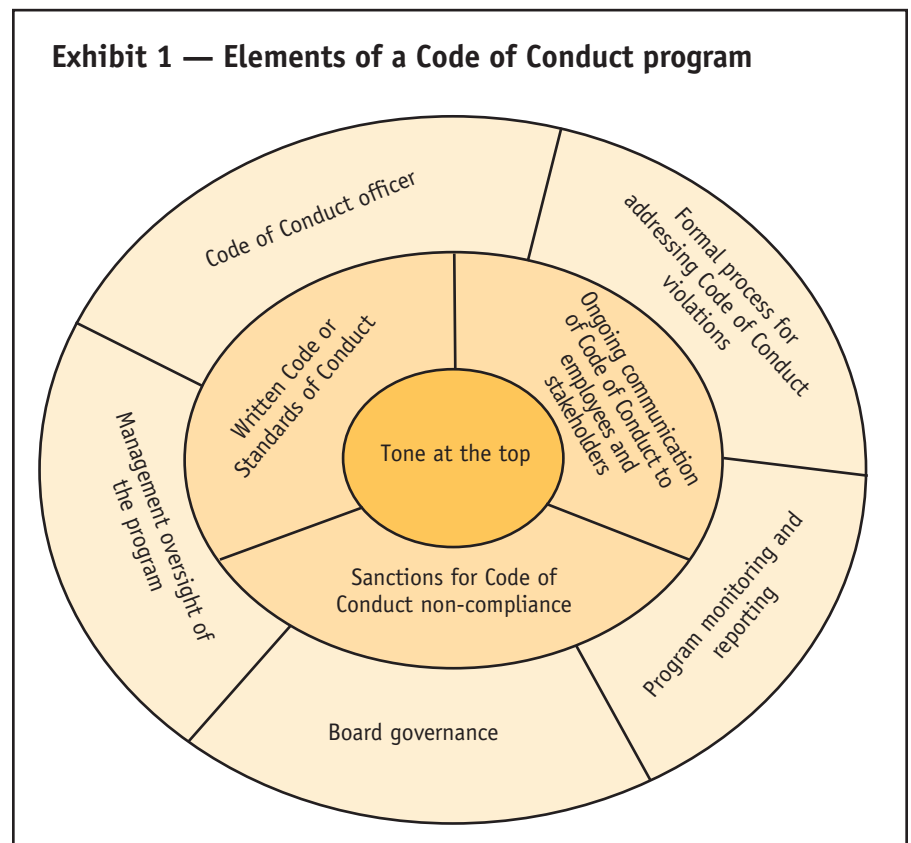
## Tone at the top

An organization’s ethical atmosphere begins with the “tone at the top.” Leaders who are seen to be fair and

completely supportive of a company’s values and principles are the cornerstone of any Code of Conduct program. Starting with the CEO, senior managers must continually demonstrate the company’s core values

and reinforce standards of behaviour. They must foster a culture of open disclosure and fair treatment, and take an active role in overseeing and continually enhancing the Code of Conduct program.

Exhibit 1 — Elements of a Code of Conduct program





### Establishing standards of conduct

A Code of Conduct program must start with the establishment of rules of behaviour. If the members of an organization do not clearly understand what standards of behaviour are expected of them, they cannot be held accountable to those standards.

Many companies choose to produce a general handbook that provides an overview of the company's values and the standards of behaviour required from employees, directors, and other stakeholders to support those values. The handbook normally provides references to relevant supporting policies or procedures where more detailed information can be obtained. While the senior executives of a company must oversee its development, a Code of Conduct is best written by a cross-functional, multi-disciplinary team made up of both employees and managers. Using such an approach fosters buy-in and ownership of the Code of Conduct across all areas of the organization and supports the identification of a wide spectrum of ethical issues and risks for inclusion in the Code. The composition of the team can also be extended to include representation from employee unions and external suppliers.

Every Code of Conduct is somewhat unique, reflecting an organization's specific culture, operating environment and workforce. Notwithstanding this, a company's values should be specifically identified in the Code, as these form the basis of any standards of behaviours. The duties of employees, contractors, directors and other affected stakeholders should also be identified, including the requirement that they always be fit for duty, adhere to the policies and procedures of the company, and work in such a way that the interests of the company, its stakeholders, and the environment are safeguarded (additional suggested content for a typical Code of Conduct is shown in Schedule I).

### Schedule I

#### Suggested content for a typical Code of Conduct

This list presents suggested content for a Code of Conduct. It is intended to be illustrative only.

- The organization
  - Requirement to comply with applicable laws.
  - Commitment to professional conduct.
  - Use of company assets.
  - Use of company time.
  - Use of confidential information.
  - Requirement to comply with policies and procedures.
- Employees
  - Obligation regarding fitness for duty.
  - Disclosure of private interests.
  - Acceptance of gifts and favours.
  - Hiring of relatives and associates.
  - Obligation regarding health and safety.
- Human rights
  - Right to work in an environment free of discrimination.
  - Right to work in an environment free of harassment.
  - Right to privacy.
- Customers / suppliers
  - Confidentiality of customer information.
  - Obligation for fair dealing.
  - Avoidance/disclosure of conflicts of interest.
- Financial
  - Fraud.
  - Insider trading.
  - Disclosure of information.

### Communication and awareness

Communicate. Communicate. Communicate.

The rollout and reinforcement of a company's standards of behaviour must be continuous and multi-faceted for it to be effective. In addition to company websites and newsletters for Code of Conduct messaging, leadership at all levels within an organization should use every opportunity to remind employees of the company's ethical standards and to confirm their personal commitment to those standards. Effective forums for such discussion may be business plan review meetings, safety meetings, or company performance reviews.

A comprehensive Code of Conduct communication plan must also include circulation of the written Code to all employees, as well as a formal rollout of the Code on a periodic basis. The rollout may be done in a classroom setting, but ideally it is carried out face-to-face by managers with their direct reports. In large companies, it can be done through computer-based training. Whatever the means, every employee should be required to acknowledge that they understand their responsibility to comply with the standards of behaviour delineated within the Code.

### Sanctions for wrongful behaviour

Establishing standards of behaviour without being prepared to discipline for wrongful behaviour will not promote compliance. In his book, *The Tipping Point*, Malcolm Gladwell talks about the impact of the "control environment" on determining people's behaviour. In a study of students writing school exams, he found that some students will never cheat and a small percentage will always look for a dishonest edge, but the largest section of the bell curve of students will cheat or not cheat as the control environment allows. Minimal supervision and no perceived punishment resulted in higher rates of cheating than when a strict control environment was in place. Disciplinary measures for Code of Conduct violations should be formally

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documented as part of the Code of Conduct program. To be effective and fair, such measures should be graduated to reflect that there are different levels of significance with respect to violations and, most importantly, be openly communicated to all employees, executives, and other stakeholders.

### Code of Conduct officer

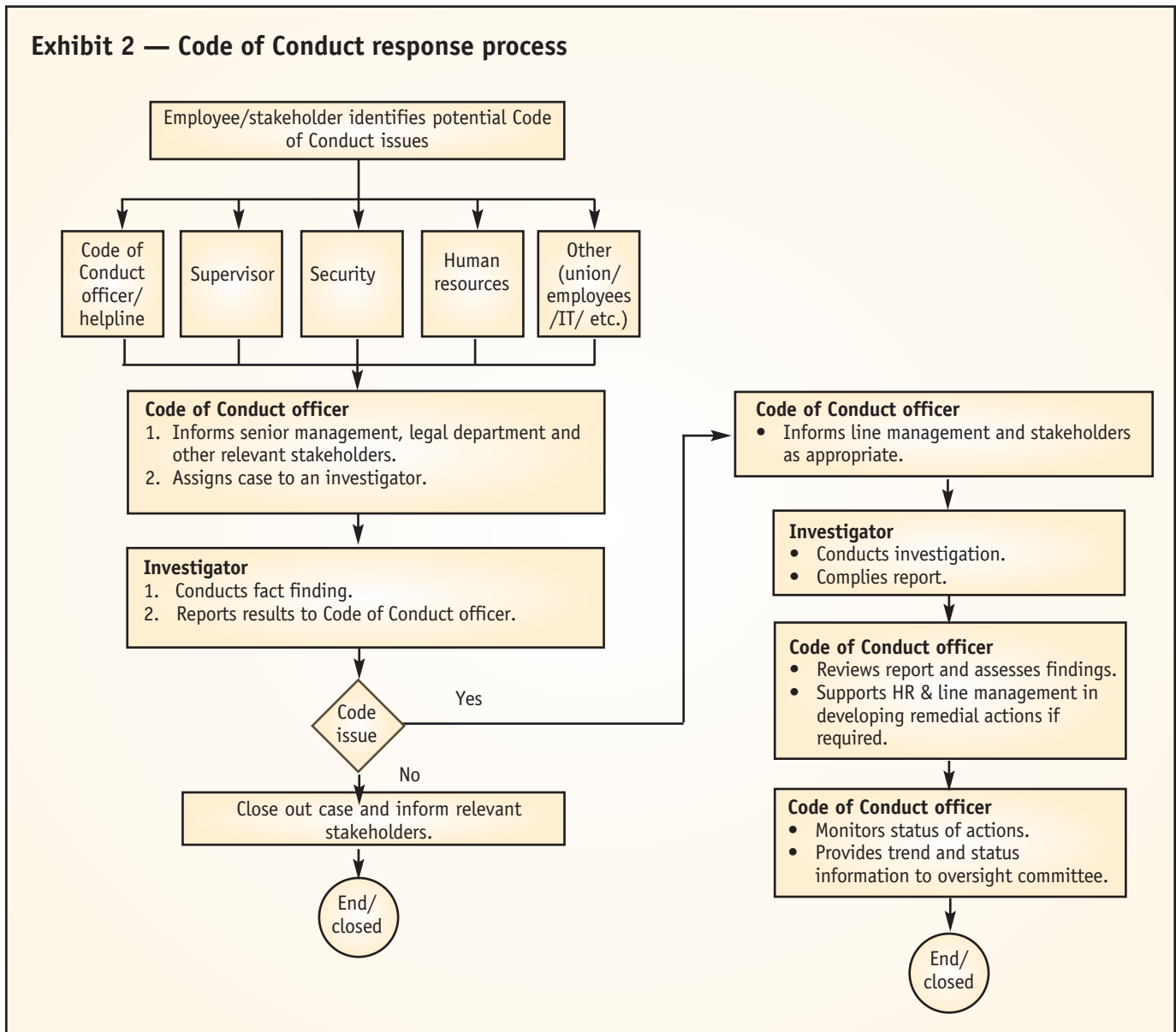
An ombudsman or compliance officer should be appointed to maintain the Code of Conduct program and help foster an ethical culture within the organization. This position should have the authority and responsibility for overseeing compliance with the Code of Conduct and for working with management and employees on addressing conduct issues facing the company. To effectively execute this mandate, the compliance officer should not only be independent and neutral, but be seen to be so. To this end, the position

should report directly to the company General Counsel or to the CEO, regardless of their seniority within the corporation.

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### Process for addressing violations

All Code of Conduct programs must have a formal process that allows for the reporting, investigation and resolution of



potential code violations (refer to Exhibit 2). Many avenues should be made available to employees who wish to ask questions about ethics issues or report potential Code of Conduct breaches. They should be advised that they can talk to their supervisor or manager, report to security or human resources personnel, or contact the Code of Conduct officer. But best practice also includes providing a confidential ethics hotline. A 2006 study by the Association of Certified Fraud Examiners noted that business fraud was more likely to be deterred by hotline tips than by any other means, including internal and external audits. The hotline should be accessible at all times to employees, customers and other stakeholders and must allow for anonymity if it is desired by the caller. Many companies are now using external suppliers to provide such service round-the-clock.

## Establishing standards of behaviour without being prepared to discipline for wrongful behaviour will not promote compliance.

Regardless of how they are raised, all Code issues should ultimately be communicated to the Code of Conduct officer. Working with appropriate levels of management,

the Code of Conduct officer, or assigned investigator, should carry out fact-finding into the allegation to determine if it warrants full investigation. If an investigation is required, this is co-ordinated by the Code of Conduct officer and may be carried out internally or through an external, third-party investigator. A report detailing the investigation, its results, and any disciplinary measures taken should be written and retained as an official company record. The importance of maintaining a system of appropriate records to support potential legal challenge cannot be understated.

### Program monitoring

Part of maintaining a sound Code of Conduct program is conducting regular assessments of the program and then taking action to address identified issues. Evaluating data on the frequency and nature of reported Code of Conduct violations can provide insight into ethical problems facing the company. Trends should be identified and monitored to determine if follow-up communication and/or additional training is required in specific areas.

Periodic audits of the Code of Conduct program by an external specialist are also recommended. This brings industry best practice to bear on the program and promotes continuous improvement.

### Oversight of the program

Many companies establish a compliance committee to provide ongoing oversight of the Code of Conduct program. Such committees provide a cold-body review of Code of Conduct issues and investigations, help to ensure consistency of disciplinary measures, and provide advice for the continuous improvement of the Code of Conduct and its underlying program. Such committees are often made up of senior managers, may include stakeholder representatives, and can be supplemented by external advisory experts as required. The Code of Conduct or compliance officer should also be a member of the committee.

### Governance

Corporate ethics and standards of conduct are matters of governance. The chair of the compliance committee or the Code of Conduct officer should periodically update the company's audit Committee or board of directors on the health of the Code of Conduct program, the results of significant investigations and any systematic patterns in company conduct that might be emerging. This report should also address initiatives underway to improve the company's control environment.

Adopting a Code of Conduct reflects a company's commitment to high standards of employee and stakeholder conduct. Senior management needs to view the Code as an integral part of the company's operations and continually promote, reinforce, and oversee it to help ensure an ethical organization. ■

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