



Office of the Ethics Commissioner
Bureau du commissaire à l'éthique

DECEMBER 2005

THE SMITH INQUIRY

pursuant to the
CONFLICT OF INTEREST CODE FOR
MEMBERS OF THE HOUSE OF COMMONS



Report made pursuant to request by Mr Pierre Poilievre, Member for Nepean - Carleton
for an Inquiry in relation to Mr David Smith, Member for Pontiac

Bernard J. Shapiro

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CONFLICT OF INTEREST CODE FOR
MEMBERS OF THE HOUSE OF COMMONS

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EXECUTIVE SUMMARY

On November 11, 2005 the Member for Nepean-Carleton requested the Ethics Commissioner to conduct an inquiry into whether the member from Pontiac had fully complied with the rules, guidelines and standards as set out in the *Conflict of Interest Code for Members of the House of Commons* (the Code).

The Member from Nepean-Carleton also referred to irregularities that a KPMG audit had found in relation to \$15 million in contracts that had been awarded by Consulting and Audit Canada since 2001. In particular, reference was made to sole-sourced contracts directed to a computer consulting firm (Abotech Inc.) of which the Member from Pontiac used to be the president.

The Member for Nepean-Carleton specifically questioned whether the Member from Pontiac had fully disclosed his personal interests and, those of his family members particularly as they related to Abotech Inc. as required by the Code.

It is clear from the information gathered during this inquiry that the Member from Pontiac had sold and transferred his interest in Abotech Inc. to his wife and two children one year before he was first elected to the House of Commons. The fact that the Member no longer retained any ownership interest in Abotech Inc. and that his wife and two children were the sole owners of this company was accurately disclosed by them in accordance with the Code. As well, the member's wife and two children disclosed, as required by the Code, the existence of the contracts that Abotech Inc. had with the federal government.

Therefore, the member from Pontiac had disclosed his private interests and those of his family members particularly as they related to Abotech Inc. and its dealing with the federal government and by so doing had complied fully with the requirements of the Code.

Finally, the Ethics Commissioner cannot render findings in relation to the issuance of the sole-source contracts by Consulting and Audit Canada and Abotech Inc. since these events all occurred prior to the Member from Pontiac being elected to the House of Commons and before the Code came into force on October 4, 2004. The *Conflict of Interest Code for Members of the House of Commons* does not have a retroactive affect.

INTRODUCTION

Legislative Background

This inquiry was undertaken pursuant to the *Conflict of Interest Code for Members of the House of Commons* (the Code). Section 27 of the Code stipulates that a Member who has reasonable grounds to believe that another Member has not complied with his or her obligations under the Code may request an inquiry. Section 28 of the Code states that once an inquiry is completed, the report is submitted to the Speaker, who presents it to the House when it next sits. The report is then available to the public upon being tabled in the House. It should be noted that Subsection 28(3) states that following a dissolution of Parliament, the Ethics Commissioner makes the report public.

The Smith Inquiry

On October 19, 2005, I received a letter from Mr. David Smith, the Member for Pontiac, asking me to examine the facts surrounding certain allegations about his compliance with the Code and to provide him with a confidential opinion, in accordance with Section 26 of the Code.

On November 11, 2005, three weeks later, I received a letter dated October 26 from Mr. Pierre Poilievre, Member for Nepean-Carleton (see attached Appendix I). He asked me to begin an inquiry to determine whether Mr. Smith had complied with the rules, guidelines and standards set out in the Code, with respect to the firm Abotech Inc.

In his letter, Mr. Poilievre asked me to determine whether Mr. Smith had infringed certain provisions of the Code, namely, sections 2, 8, 9, 10 and 20. Section 2 sets out the guiding principles of the Code, while sections 8 to 10 deal with certain rules of conduct. Section 20 relates to the various disclosure requirements for Members and their family members. In his request for an inquiry, Mr. Poilievre asked me the following questions:

- Did Mr. Smith disclose to you or your office that he is a former President of Abotech Inc.?
- Has Mr. Smith or his family (those currently with a holding interest in Abotech Inc.) disclosed to you or your office all contracts that Abotech Inc. has had or currently has with any government entity?
- Did Mr. Smith disclose to you or your office that Mr. Brazeau, reportedly a member of his local Liberal riding association, held a position as a contracting officer with Consulting and Audit Canada?
- Did Mr. Smith disclose to you or your office that Mr. Brazeau had interaction with Abotech Inc. on behalf of Consulting and Audit Canada given that Mr. Smith's family has an interest in Abotech Inc. and that Mr. Smith was formerly the head?
- Does Mr. Smith have a relationship now with Abotech Inc. that is consistent with the Disclosure Summary signed by Mr. David Smith on June 7, 2005?

- Does the Code have measures in place to ensure that, if these allegations are correct, Mr. David Smith and Mr. Brazeau will not be in a position where there is a conflict of interest or the appearance of a conflict of interest as it relates to Abotech Inc.?

Subsection 27(2) of the Code stipulates that a request from a Member must be in writing and set out the reasonable grounds for the belief that the Code has not been complied with.

I am of the view that the inquiry request submitted by Mr. Poilievre meets the criteria established by this provision of the Code. I therefore agreed to undertake this inquiry. Consequently, as mentioned in the report entitled “*Issues and Challenges 2005*” submitted to the Standing Committee on Access to Information, Privacy and Ethics, particularly Policy Approach 4, I suspended my response to Mr. Smith’s request for a confidential opinion.

On November 14, 2005, I sent a letter to Messrs. Poilievre and Smith, and to the Speaker of the House of Commons, informing them that I was agreeing to undertake the inquiry requested by Mr. Poilievre. A copy of Mr. Poilievre’s request for an inquiry was included with my letter to Mr. Smith and the Speaker of the House of Commons.

The inquiry thus served to determine whether Mr. Smith complied with the various provisions of the Code with respect to his personal interests and his relationship with Abotech Inc., a computer consulting firm.

While conducting the inquiry, I also looked at the provisions dealing with Members’ interest in partnerships or private corporations, namely, sections 18 and 19. Section 18 of the Code states that Members are not allowed to have interests in a private company that is a party to a contract with the Government of Canada. However, Section 19 of the Code contains an exception for contracts that predate a Member’s election. The exception does not, however, apply to contracts that are renewed or extended. That being said, it must be remembered that the Code did not come into effect until October 4, 2004, the date that the 38th Parliament began.

PROCESS

The process of information gathering for this inquiry consisted of 5 steps. First, my Office met with Mr. Smith for a formal follow-up interview, which was recorded and transcribed. Second, my Office also contacted Public Works and Government Services Canada (PWGSC) to obtain their authorization to use, for the purposes of the inquiry, the various documents previously brought to our attention, which included a list of the contracts awarded to Abotech Inc. by Consulting and Audit Canada (CAC) between 2000 and 2005, as well as the results of searches conducted on Industry Canada’s Strategis Website. They agreed to our request. Third, my Office met with Mr. Frank Brazeau, whose name is mentioned in Mr. Poilievre’s request for an inquiry. This interview was also recorded and transcribed. Fourth, my Office also contacted the office of Mr. Poilievre to offer him the opportunity to meet with us. He advised us that he had no

additional information other than what he had already provided. Finally, we provided Mr. Smith with a summary of the facts gathered during our inquiry in order to give him the opportunity to express his opinion in the event of any discrepancy with the information in our possession.

COSTS

The only costs incurred during this inquiry, aside from the costs represented in the time and effort of the staff of the Office of the Ethics Commissioner, are the costs of the court reporter service and costs of the publication of the final report. These costs will be absorbed by the budget of the Office of the Ethics Commissioner. For the general interest of readers of this report, details of the special costs are listed in Appendix II.

FACTS

Confidential information provided

A number of the issues raised by Mr. Poilievre involve compliance measures taken by Mr. Smith in the context of the Code. In order to respond to these questions, it is necessary to take a look at various events which have taken place since the Code came into effect.

During his interview, Mr. Smith permitted us to use the confidential information he had already provided to our Office in his Disclosure Statement. In order to become in compliance with the requirements of the Code, Mr. Smith needed to provide my Office, within the prescribed time period, with the information requested in the Disclosure Statement - the confidential questionnaire which I sent to members of Parliament following their election. Furthermore, Mr. Smith allowed us to use the information provided in the conduct of his October 2005 request for confidential advice, that is, the corporate documents from Abotech Inc.

The Disclosure Statement Mr. Smith completed mentioned that he had no business assets, whether in a commercial interest, a partnership or a private corporation. Furthermore, the Disclosure Statement indicated that Mr. Smith received no income other than his salary as a Member of Parliament. Finally, Mr. Smith stated that he held no other employment or profession, he did not operate a business, he was not a director or an officer in a corporation, association, trade union or non-profit organization, and was not a partner in a partnership.

Regarding activities in which the members of his immediate family were involved, Mr. Smith's Disclosure Statement mentioned that his spouse, his son and his daughter do in fact have contractual dealings with the Government of Canada. The Disclosure Statement indicated that they were all shareholders of Abotech Inc., a firm holding contracts with various government organizations through CAC.

The Disclosure Statement completed by Mrs. Anne Ethier, Mr. Smith's spouse, mentioned that she held a 40% interest in Abotech Inc. and that her two children each

held 30%. Her Disclosure Statement also made mention of contracts with CAC that were to terminate at the end of 2004.

As part of the analysis of Mr. Smith's file, in order to ensure compliance with the obligations of the Code, my Office contacted Mr. Smith and his spouse in order to obtain additional details about Mr. Smith's interests and those of his family in Abotech Inc., as well as the relationship between Abotech Inc. and the government. Mr. Smith and his spouse confirmed that Mr. Smith had held 100% of Abotech Inc.'s shares, but sold them before his election to the House of Commons. Mrs. Ethier was now the President, Secretary and Treasurer and 40% shareholder, with their two children each holding 30% of Abotech Inc.'s shares. We also learned that the two contracts with the federal government that were due to end originally in late 2004 had been extended.

In addition to the analysis undertaken, it is important to highlight the fact that Mr. Smith contacted my Office during the first week of March 2005. He informed us at that time that KPMG representatives were conducting an audit of contracts awarded by CAC and wished to meet with him to discuss the contracts carried out by Abotech Inc. when he was the company's President and sole shareholder. Mr. Smith wanted to know if he could meet with them. The advice provided at that time by my Office was that he could meet with the KPMG representatives in his capacity as the former President of Abotech Inc., but that he was not to use his position as Member of Parliament during these discussions.

Documents provided by Public Works and Government Services Canada

Before Mr. Smith contacted my Office with his request for confidential advice, accordingly, before this inquiry began, PWGSC had taken the initiative of contacting my Office in order to bring to my attention three documents regarding Abotech Inc. The first document was a summary of the fifteen contracts awarded to Abotech Inc. by CAC between 2000 and 2005. This summary contained the contract numbers, the dates the contracts were signed and when they took effect, as well as the name of the person who signed the contracts for Abotech Inc. Of these fifteen contracts, nine were signed by Mr. Smith between July 2002 and April 2003. Furthermore, the summary showed that of these nine contracts, four had been amended and that three of these contract amendments were signed by Mr. Smith in the months of September and October 2003. The other six contracts in the summary had been signed by Anne Ethier between December 2003 and July 2004, as well as four contract amendments between December 2003 and June 2004.

The other two documents provided by PWGSC consisted of corporate information about Abotech Inc., published in two Industry Canada databases on the Strategis Web site: the *Federal Corporations Data On-Line system* and the *Canadian Company Capabilities*.

The information contained in the *Federal Corporations Data On-Line system* gave the names of three directors: Anne Ethier, and Sébastien and Cynthia Smith. The information contained in *Canadian Company Capabilities*, the second database, gave the name of David Smith as a contact person and his title as President.

In light of the differences of the information contained in the two databases, my Office contacted Industry Canada in order to understand the operation of each of the databases. The *Federal Corporations Data On-Line system* database is maintained by Corporations Canada and contains the official information that companies must file with Industry Canada under the *Canada Business Corporations Act*. The information requested by Industry Canada and published in this database does not identify the various positions occupied by the directors within the company, but only requests the names and addresses of company directors.

The *Canadian Company Capabilities* is another database available on the Strategis Web site. This is a central database providing client-oriented information where firms can register to benefit from opportunities to increase the visibility of their products and services. Registration in the database is free and companies are responsible for the information appearing in it.

Abotech Inc.'s corporate documents

As mentioned above, during his interview, Mr. Smith allowed us to use Abotech Inc.'s corporate documents provided earlier. Those documents included the minutes of the 2003 annual general meeting of shareholders of Abotech Inc., copies of the most recent contracts and contract amendments between Abotech Inc. and CAC, a copy of the *Notice of directors or notice of change of directors*, a copy of the *Abotech Inc. 2003 Annual Return* to Industry Canada, and finally a copy of Abotech Inc.'s *2003 Annual Declaration* to the *Registraire des entreprises du Québec*.

The minutes from the 2003 annual general meeting of shareholders of Abotech Inc., held on June 15, 2003, show that, on this date, Mr. Smith transferred and sold all the shares which he held in Abotech Inc. to his spouse and their two children, that is to say 40% to Mrs. Anne Ethier, 30% to Sébastien Smith and 30% to Cynthia Smith. They also show that, at the general meeting, Mrs. Ethier was elected President and Secretary of the company and was granted signing authority.

Copies of the most recent contracts and amendments between Abotech Inc. and CAC corresponded with the information provided earlier by PWGSC. These last amendments were all signed by Anne Ethier, as President.

The *Notice of directors or notice of change of directors* dated June 15, 2003 and submitted to Industry Canada shows that Anne Ethier, as well as Sébastien and Cynthia Smith became directors of Abotech Inc. on June 15, 2003 and that David Smith would cease to be a director as of April 28, 2004. This document was signed by Anne Ethier as authorized officer.

The *2003 Annual Return* filed with Industry Canada on April 28, 2004 was signed by Anne Ethier as authorized officer, and states that there had been a change of directors in the past year.

Abotech Inc.'s 2003 *Annual Declaration* filed with the *Registraire des entreprises du Québec* provides information as of August 22, 2004. It shows that Anne Ethier and Sébastien and Cynthia Smith are shareholders. Mrs. Ethier's name also appears as President, Secretary and Treasurer.

Interviews

When Mr. Smith was interviewed, my Office confirmed with him the information already obtained and asked him some additional questions, particularly with regard to his interests in Abotech Inc. and his relationship with Mr. Brazeau.

My Office sought, in particular, to understand why the *Notice of directors or notice of change of directors* filed with Industry Canada stated that Mr. Smith would cease to be a director only as of April 28, 2004, given that Abotech Inc.'s corporate minutes show that Mr. Smith was no longer a shareholder and that Mrs. Ethier was the President, Secretary and signing authority as of June 15, 2003. In this regard, Mr. Smith was not sure of the exact reason for the discrepancy. He mentioned that it could perhaps be explained by the fact that April 28, 2004 corresponded with Abotech Inc.'s fiscal year end and it was possible that the notice of the changes would have been sent to Corporations Canada only when the company's 2003 *Annual Return* was filed.

During the interview, Mr. Smith confirmed that he no longer held the positions of President and Secretary, as well as no longer held any interest in Abotech Inc. after June 15, 2003. He also informed us that, prior to his being elected, he had been employed by PWGSC. Given that he was the sole shareholder of Abotech Inc. and that this company held contracts with CAC, an entity of PWGSC, Mr. Smith met with certain individuals from the ethics sector of PWGSC and sought advice in order to avoid any potential conflict of interest. At that time, the advice provided was that he should sell the company, which was done.

My Office therefore attempted to find out why the documents obtained from PWGSC show that Mr. Smith signed contract amendments as President of Abotech Inc. after June 15, 2003. Again, Abotech Inc.'s corporate minutes indicate that since June 15, 2003, Mrs. Ethier is the President, Secretary having the signing authority. On this question, Mr. Smith mentioned to us that he had initially acted as a "coach" to his spouse, because she did not have extensive business experience. Mr. Smith advised us that in signing the documents he perhaps made a mistake but he had done so in complete unawareness.

Based on the information obtained from PWGSC and Mr. Smith, it is therefore established that the latter had signed three contractual amendments during the months of September and October 2003, on behalf of Abotech Inc., at a time when he was still a public servant.

Finally, my Office asked for and obtained an interview with Mr. Frank Brazeau, the former CAC employee mentioned in Mr. Poilievre's request for an inquiry. The purpose of the interview was to obtain information in regards to the various ties which may have existed between Mr. Smith and Mr. Brazeau.

During this interview, which was recorded and transcribed, Mr. Brazeau confirmed to my Office that he has known Mr. Smith for a very long time, as they grew up in the same town and were almost the same age. This corresponds to statements made by Mr. Smith in his interview with respect to his relationship with Mr. Brazeau. Mr. Brazeau also told us that he had had little contact with Mr. Smith between 1981 and 2000. During this period, any meetings were purely fortuitous.

The professional relationship between Mr. Brazeau and Mr. Smith began around 2001, when Mr. Brazeau was working for CAC. Mr. Smith, who was then President and sole shareholder of Abotech Inc., asked for a meeting with Mr. Brazeau in order to discuss and enquire more about the process to be followed in order to obtain federal government contracts. Mr. Brazeau informed Mr. Smith of the various parameters that needed to be met in order to be considered by CAC.

In terms of Mr. Brazeau's political involvement, Mr. Brazeau told us that he had been approached by Mr. Smith to help him with his nomination and in the 2004 election campaign. Later on, Mr. Brazeau was elected as Secretary of the Liberal Association in the Pontiac riding in mid-December 2004. He had not been very active and resigned in August 2005.

CONCLUSION

This inquiry commenced as a consequence of the request of the Member of the House of Commons from Nepean-Carleton, alleging that various sections of the *Conflict of Interest Code for Members of the House of Commons* (Code) had been breached. The Member for Nepean-Carleton also questioned whether the Member for Pontiac had, as required by the Code, fully disclosed his personal interests and those of his family members, particularly as they related to Abotech Inc.

It is necessary, at the outset, to put into context the facts of this case, particularly as they relate to the coming into force of the Code and, as well as when Mr. Smith first became a member of Parliament.

The Code came into force on the commencement of the 38th Parliament which was on October 4, 2004. And, it was as a consequence of the call of the federal general election in May of 2004 that on June 28, 2004 Mr. Smith was first elected to the House of Commons as the Member of Parliament for Pontiac. Since the application of the Code does not have a retroactive application it would be inappropriate for me to address the conduct of Mr. Smith or the actions that he had taken before the commencement of his first mandate as a Member of Parliament or the coming into force of the Code.

However, the information obtained during this inquiry regarding the events that occurred in the past are relevant to the question of whether the Member from Pontiac and his family members disclosed their private interests as required by the Code.

As a consequence of the coming into force of the new Code on October 4, 2004, Mr. Smith, as well as the remaining 307 other Members of Parliament were requested to complete a confidential disclosure statement in order to comply with the requirements of the Code.

Paragraph 21(1)(c) of the Code requires that Members and their family members disclose to the Ethics Commissioner all benefits they or any private corporation in which they have an interest have received in the preceding twelve months or are entitled to receive in the next twelve months as a result of a contract with the government of Canada. As well, section 18 of the Code provides that Members of the House of Commons are not to have any interest in a private corporation that is a party to a contract with the Government of Canada unless, the Ethics Commissioner is of the opinion that the interests are unlikely to affect the Members obligations under the Code.

Mr. Smith did not have any interest in a private corporation that had contracts with the federal government. His ownership interest in Abotech Inc. had been transferred and sold to his spouse and dependent children in June 2003. This transfer and sale was made as a consequence of the advice he had received from the Department of Public Works and Government Services in order to deal with a conflict of interest concern they had at that time. As well, Mr. Smith's spouse and dependent children disclosed, their ownership interests in Abotech Inc. and the contracts that they had with the Government of Canada.

It is therefore, quite clear from the facts of this case, that Mr. Smith and the members of his family complied fully with the requirements of the new Code.

Finally, as noted earlier, Mr. David Smith, while a public servant with PWGSC sought advice from his Department regarding a potential conflict of interest issue. Following that advice Mr. Smith transferred and sold his interest in Abotech Inc. to his family members.

However, following the transfer and sale, to his family members, Mr. Smith signed three (3) contract amendments on behalf of Abotech Inc. with Consulting and Audit Canada when he was still a public servant with PWGSC.

This therefore raises two issues.

First, from a general policy perspective under the *Public Service Values and Ethics Code*, the effectiveness of the transfer of interest to family members when the interest is a private corporation which has contracts with the government of Canada.

I have informed the Office of Public Service Values and Ethics within the Public Service Human Resources Management Agency of Canada that they may wish to address this issue from a general policy perspective in light of the specific compliance measures that are available under both the *Conflict of Interest Code for Members of the House of Commons* and the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

The second issue relates to the fact that Mr. Smith signed amendments to contracts as President when he was no longer an officer of the company. Since this information came to light as a consequence of our review of the PWGSC – KPMG audit documents they provided, to us, we have informed PWGSC of our observation in order to ensure that they are aware of this fact should it have any relevancy to the follow-up associated with the audit.

Answers to the questions raised by Pierre Poilievre, MP

The main issues dealt with above do not, however, address all of the questions raised by the Member for Nepean-Carleton. As the Member for Pontiac agreed to the use by my Office of the confidential information provided in his initial Disclosure Statement and his request for an opinion, I am able to respond to all of the specific questions raised by the Member for Nepean-Carleton. The answers to the following questions also assist in understanding the issues raised in this inquiry.

1. Did Mr. Smith disclose to you or your office that he is a former President of Abotech Inc.?

The Code does not require that Members disclose information relating to private activities or interests that they may have had in the past. In the Disclosure Statement which Mr. Smith filed on December 3, 2004, he was only required to disclose his various activities in connection with Abotech Inc. in the event that he still had ties with the company, which was not the case.

In his Disclosure Statement, Mr. Smith indicated that he held no other employment or profession, he did not operate a business, he was not a director or an officer in a corporation, association, trade union or non-profit organization, nor was he a partner in a partnership. This information was accurate, Mr. Smith had ceased being an officer and director of the company prior to his election to the House of Commons.

2. Has Mr. Smith or his family (those currently with a holding interest in Abotech Inc.) disclosed to you or your office all contracts that Abotech Inc. has had or currently has with any government entity?

Mrs. Ethier's (Mr. Smith's spouse) Disclosure Statement was also filed on December 3, 2004. She provided information regarding all of the contracts then in effect between Abotech Inc. and the federal government.

3. Does Mr. Smith have a relationship now with Abotech Inc. that is consistent with the Disclosure Summary signed by Mr. David Smith on June 7, 2005?

As mentioned above, the minutes of the 2003 Annual General Meeting of shareholders of Abotech Inc. show that Mr. Smith ceased to be a shareholder and that Mrs. Ethier was awarded signing authority and became President and Secretary as of June 15, 2003.

The *Notice of directors or notice of change of directors* submitted to Industry Canada shows that Mr. Smith was no longer an Abotech Inc. Director on April 28, 2004, while Abotech Inc.'s 2003 *Annual Declaration* filed with the *Registraire des entreprises du Québec* shows that, as of August 22, 2004, Mr. Smith was no longer the President, the Secretary or a shareholder in Abotech Inc. It is therefore certain that Mr. Smith was no longer a shareholder, a Director, President or Secretary and therefore no longer held any interest in the company when the Code came into effect on October 4, 2004.

Even though Mr. Smith's name still appears as President of Abotech Inc. in the *Canadian Company Capabilities* database, it is important to be aware of the distinction between this Web site and the *Federal Corporations Data On-Line system* database, two Web sites maintained by Industry Canada under Strategis. The *Federal Corporations Data On-Line system* is the official Web site to which I referred for the purposes of this inquiry. The *Canadian Company Capabilities* database is a site where the companies themselves are responsible for the information it contains. The fact that Mr. Smith's name still appears as President leads to some confusion, and it would be desirable that the information on the site be updated.

Accordingly, Mr. Smith's ties with Abotech Inc. are therefore consistent with the Disclosure Summary signed by him on June 7, 2005. Mr. Smith did not have any interest in Abotech Inc. when the Code came into effect on October 4, 2004.

4. Did Mr. Smith disclose to you or your office that Mr. Brazeau, reportedly a member of his local Liberal riding association, held a position as a contracting officer with Consulting and Audit Canada?

5. Did Mr. Smith disclose to you or your office that Mr. Brazeau had interaction with Abotech Inc. on behalf of Consulting and Audit Canada given that Mr. Smith's family has an interest in Abotech Inc. and that Mr. Smith was formerly the head?

These two questions will be dealt with together, as they both involve Mr. Smith's disclosures as they relate to Mr. Brazeau. Section 21 of the Code describes the information that the Member's Disclosure Statement must include. Specifically, paragraph 21(1)(c) stipulates that the Disclosure Statement shall "state all benefits that

the Member and the members of the Member's family, and any private corporation in which the Member or a member of the Member's family has an interest, have received during the preceding 12 months, and those that the Member and the members of the Member's family or corporation are entitled to receive during the next 12 months, as a result of a contract with the Government of Canada, and describe the subject-matter and nature of each such contract." Furthermore, paragraph 21(1)(d) specifies that, if the Disclosure Statement mentions a private corporation, it must "(i) include any information about the corporation's activities and sources of income that the Member is able to obtain by making reasonable inquiries, (ii) state the names of any other corporations with which that corporation is affiliated, and (iii) list the names and addresses of all persons who have an interest in the corporation."

The Code therefore does not require that Members disclose the kind of information mentioned by the Member for Nepean-Carleton in questions 4 and 5.

6. Does the Code have measures in place to ensure that, if these allegations are correct, Mr. David Smith and Mr. Brazeau will not be in a position where there is a conflict of interest or the appearance of a conflict of interest as it relates to Abotech Inc.?

Yes, the Code does have measures that would address this potential conflict of interest situation. As I have indicated previously in this report, Section 18 of the Code provides that members shall not have an interest in a partnership or private corporation that is a party to a contract with the Government of Canada unless the Ethics Commissioner is of the opinion that it is unlikely to affect the Member's obligation under the Code.

If it is determined that the interest is likely to affect the Member's obligation under the Code, then Subsection 19(2) of the Code provides that the Member may entrust his or her interest in the partnership or private corporation by means of a trust approved by the Ethics Commissioner which will be administered by a trustee at arms length to the Member.

Provisions of such a trust would ensure that the trustee neither seeks or obtains advice from the Member and that the Member neither offers nor provides advice to the trustee. As well, Subsection 19(2) provides that the Member would have to ensure that he resigns from any positions of office or directorships with the private corporation.

The Member would also be informed that he or she must not intercede or make representations on behalf of the private corporation to the federal government.

These measures would therefore ensure that the Member is excluded from any dealings the corporation may have with the federal government or its officials.

October 26, 2005

Dr. Bernard Shapiro
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Ottawa, Ontario
K1A 0A6

Dear Dr. Shapiro:

Re: Request for Inquiry Pursuant to Section 27 (1) of the *Conflict of Interest Code for Members of the House of Commons*

This letter is to formally request that you as Ethics Commissioner inquire into whether the Member of Parliament for Pontiac, Mr. David Smith, has fully complied with the rules, guidelines, and standards as set out in the *Conflict of Interest Code for Members of the House of Commons*. I wish to have this matter resolved to ensure that the integrity and highest standards in the House of Commons are upheld.

According to media reports I have read, earlier this year, KPMG audited \$15-million in contracts awarded to a large number of companies by Consulting and Audit Canada since 2001 and found irregularities in the handling of these contracts. (*Globe and Mail*, October 19, 2005) One of the concerns raised was that sole-sourced contracts were directed to the computer consulting firm Abotech Inc., of which Liberal MP David Smith used to be the president. (*Globe and Mail*, October 19, 2005)

Other recent media reports (*Globe and Mail*, October 24, 2005) have indicated that Frank Brazeau was a contracting officer at Consulting and Audit Canada whose performance came under the scrutiny of auditors at KPMG. In addition to the past professional relationship between Mr. Brazeau and Mr. Smith, the media source (*Globe and Mail*, October 24, 2005) said that this past year Mr. Brazeau became the secretary of the Liberal association in Mr. Smith's riding of Pontiac. Media reports also stated that Association president Luc Martel confirmed that Mr. Brazeau was elected after the 2004 federal election, in which Mr. Smith first entered the House of Commons.

Some of the questions that arise from these media reports and which the inquiry you may undertake need to answer are the following:

- Did Mr. Smith disclose to you or your office that he is a former President of Abotech Inc.?
- Has Mr. Smith or his family (those currently with a holding interest in Abotech Inc.) disclosed to you or your office all contracts that Abotech Inc. has had or currently has with any government entity?
- Did Mr. Smith disclose to you or your office that Mr. Brazeau, reportedly a member of his local Liberal riding association, held a position as a contracting officer with Consulting and Audit Canada?

- Did Mr. Smith disclose to you or your office that Mr. Brazeau had interaction with Abotech Inc. on behalf of Consulting and Audit Canada given that Mr. Smith's family has an interest in Abotech Inc. and that Mr. Smith was formerly the head?
- Does Mr. Smith have a relationship now with Abotech Inc. that is consistent with the Disclosure Summary signed by Mr. David Smith on June 7, 2005?
- Does the Code have measures in place to ensure that, if these allegations are correct, Mr. David Smith and Mr. Brazeau will not be in a position where there is a conflict of interest or the appearance of a conflict of interest as it relates to Abotech Inc.?

Should these aforementioned questions prove to be founded, and Mr. David Smith is in breach of the Code, then I would ask that you look at the following principles and standards as set out in the Conflict of Interest Code for Members of the House of Commons:

- 2. Given that service in Parliament is a public trust, the House of Commons recognizes and declares that Members are expected
 - (b) to fulfill their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflict of interests, and maintain and enhance public confidence and trust in the integrity of each Member and in the House of Commons;
 - (c) to perform their official duties and functions and arrange their private affairs in a manner that bears the closest public scrutiny, and obligation that may not be fully discharged by simply acting within the law;
 - (d) to arrange their private affairs so that foreseeable real or apparent conflict of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest;
 - (e) not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of the Code.
- 8. When performing parliamentary duties and functions, a Member shall not act in any way to further his or her private interests or those of a member of the Member's family, or to improperly further another person's private interests.
- 9. A Member shall not use his or her position as a Member to influence a decision of another person so as to further the Member's private interests or those of a member of his or her family, or to improperly further another person's private interests.
- 10. (1) A Member shall not use information obtained in his or her position as a Member that is not generally available to the public to further the Member's private interests or those of a member of his or her family, or to improperly further another person's private interests.
- 10. (2) A Member shall not communicate information referred to in subsection (1) to another person if the Member knows, or reasonably ought to know, that the information may be used to further the Member's private interests or those of a

- member of his or her family, or to improperly further another person's private interests.
- 20. (1) A Member shall, within 60 days after the notice of his or her election to the House of Commons is published in the Canada Gazette, and annually on or before a date established by the Ethics Commissioner, file with the Ethics Commissioner a full statement disclosing the Member's private interests and the private interests of the members of the Member's family.
 - 20. (2) Information relating to the private interests of the members of the Member's family shall be to the best of the Member's knowledge, information and belief. The Member shall make reasonable efforts to determine such information.

Please contact me should you have any questions or require further clarification.

Sincerely,

Pierre Poilievre, M.P.
Nepean-Nepean

CC: Mr. Lawrence Cannon

INQUIRY EXPENSE REPORT

COURT REPORTING	AMOUNT
Cornell Catana	\$ 235.29
Cornell Catana	\$ 216.03
GRAND TOTAL	\$ 451.32

LIST OF WITNESSES INTERVIEWED

Mr. David Smith
Member of Parliament for Pontiac

Frank Brazeau
Telecommunication advisor
