A FIVE-POINT TRANSPARENCY ACTION PLAN by Ken Rubin

Having given your committee a healthy dose of the act's many failings, it now falls on me to submit to your committee a constructive five-point plan for a changeover to a public disclosure act and a new beginning. And I know not all officials are ill-intentioned or silent. I welcome any questions you may have.

The FIRST pillar of a five-point transparency action plan is a full disclosure process instead of a government "proactive" sanitized publication effort devoid of substantial broad access.

Records for automatic, immediate, and full disclosure include on a priority basis health, safety consumer and environmental data, decision and meeting records and all financial transactions and accounts. Any delays and exemptions would be subject to immediate review. Records include food, fishery and airline inspection reports, toxic spills and site reports.

There would be no exclusions to information held by public agencies, for private bodies receiving government assistance, and for those bodies serving a public function. That includes ensuring there being full coverage for the offices of the prime minister, and ministers and other key decision makers.

SECOND is the requirement for a legal and constitutional duty to document and serve - an obligation of record keeping for documenting organizational operations in a timely manner and an obligation to help users get information, both subject to independent review and enforcement.

It would help if access to information officials could report to an arms length public access authority, intent on pro-disclosures, rather than to departmental/agency management intent on hiding records.

It would assist if there was in place a duty to document not to destroy records and strong whistle blowing legislation to ensure public officials facilitating disclosures are not subject to reprisals.

Often downplayed are the enforcement efforts and penalties needed when abuses all-too-frequently happen.

Twenty-five years ago, I helped then MP Colleen Beaumier get a new penalty section 67.1 for record alterations passed into law and testified in support of this in both the House of Commons and Senate.

But the up-to-a-$10,000 dollar fine and/or an up-to-two year jail term, a compromise settled upon, has had very little effect as a deterrent and is rarely used as an enforcement tool. Other legislation, including privacy legislation, adopted steeper

penalties.

It's time for an update given the growing failure to keep written records, to prevent massive record destruction, and too many instances of record alteration and sanitization.

That is why I am suggesting fines of up to $500,000 dollars and/or an-up-to-five year jail term for officials using creative avoidance tactics be put in place for those officials intent on not meeting their disclosure obligations.

THIRD is that effective access means no delays to rapid, full disclosure and an end to these creative avoidance tactics and penalties applied for delays. Without quick, easy access with no fees, reform is not going to happen. It also means that access is inclusive, that no one can be held libellous for filing requests and that access rights cannot be suspended.

FOURTH is that there be much fewer, very narrow exceptions to public disclosure.

That means, for example, no exemptions like the nebulous self-serving "policy advice" one and no exclusions or overrides. No record should be withheld unless substantial injury can be shown, and then only for the absolutely minimal period of time.

All remaining exceptions must be subject to rigorous ongoing independent reviews, with the default being for full disclosure. Any proposals for new exceptions must be subjected to independent review.

FIFTH and finally, Canadians, as noted, need a truly independent review process, starting with a stronger three-person commissioner office that has broader powers.

The commission's powers, besides investigating complaints on delays and exemptions, include investigating record mismanagement and failure to meet open meeting requirements; reviewing whistle blowers not being protected and public employee not being able to communicate with the public.

It should be noted that Quebec access law allows an up to five-person access commission.

All of this can only succeed if binding orders are issued on a timely basis and are enforceable, with commissioner able to issue administrative penalties or to refer criminal actions to law enforcement officials.

Canadians, however, when the commissioner does not release orders within a one year period, need the option of going directly to courts.

And the courts in reviewing secrecy claims and creative avoidance behaviour need to become more user-friendly, able to deliver timely judgments, that hopefully, with a new right to know act, will be pro-disclosure in nature.

A final but different part of the review process needed is the creation of stand-alone parliamentary transparency review committee that concentrates exclusively on transparency matters rather than also dealing with privacy and ethics matters.

In addition to statutory reviews every three years of FOI/RTI legislation, the proposed transparency committee should be continuously monitoring access developments, and offer legislation remedies for greater pro-disclosure, while seeking widespread public input and hearing from affected users.

The new transparency parliamentary committee needs, as part of its mandate, to be able to review all existing legislation to ensure that Canada has pro-disclosure clauses in all of its legislation. And not have the many secrecy prohibitions clauses that currently override the right to know, that need replacing. All new legislation would be referred to the transparency committee to ensure the proposed legislation is consistent with Canada's commitment to pro-disclosure release.