

'The central issue is respect for the rule of law'

Peter Desbarats, former commissioner of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, spoke to the Canadian Club of Kingston on Nov. 12. Below are edited excerpts from his speech.

LITTLE DID I KNOW, WHEN THE PHONE RANG IN my home in the spring of 1995, and I was asked to join the Somalia inquiry, that I was about to embark on a phase of my life that would have a profound effect on the way I think about this country. Today I want to talk a bit about this, about the feelings of isolation and despair that it created in me at the time, and about events since then. And I want to speculate, even to hope, that there are now some signs of impatience among Canadians about the arbitrary use of political power in this country, and that we might even be witnessing the beginning of a movement not to restore democracy to this country – for we have never had what I would call an active democracy – but to appreciate, to seize and to use the democratic rights that we have so far passively enjoyed.

I believe it is particularly significant that this movement cuts right across party lines, and provides a common ground for Canadians who belong to what we used to call the “right” and the “left,” terms that are increasingly meaningless for younger Canadians and even for many of my own generation.

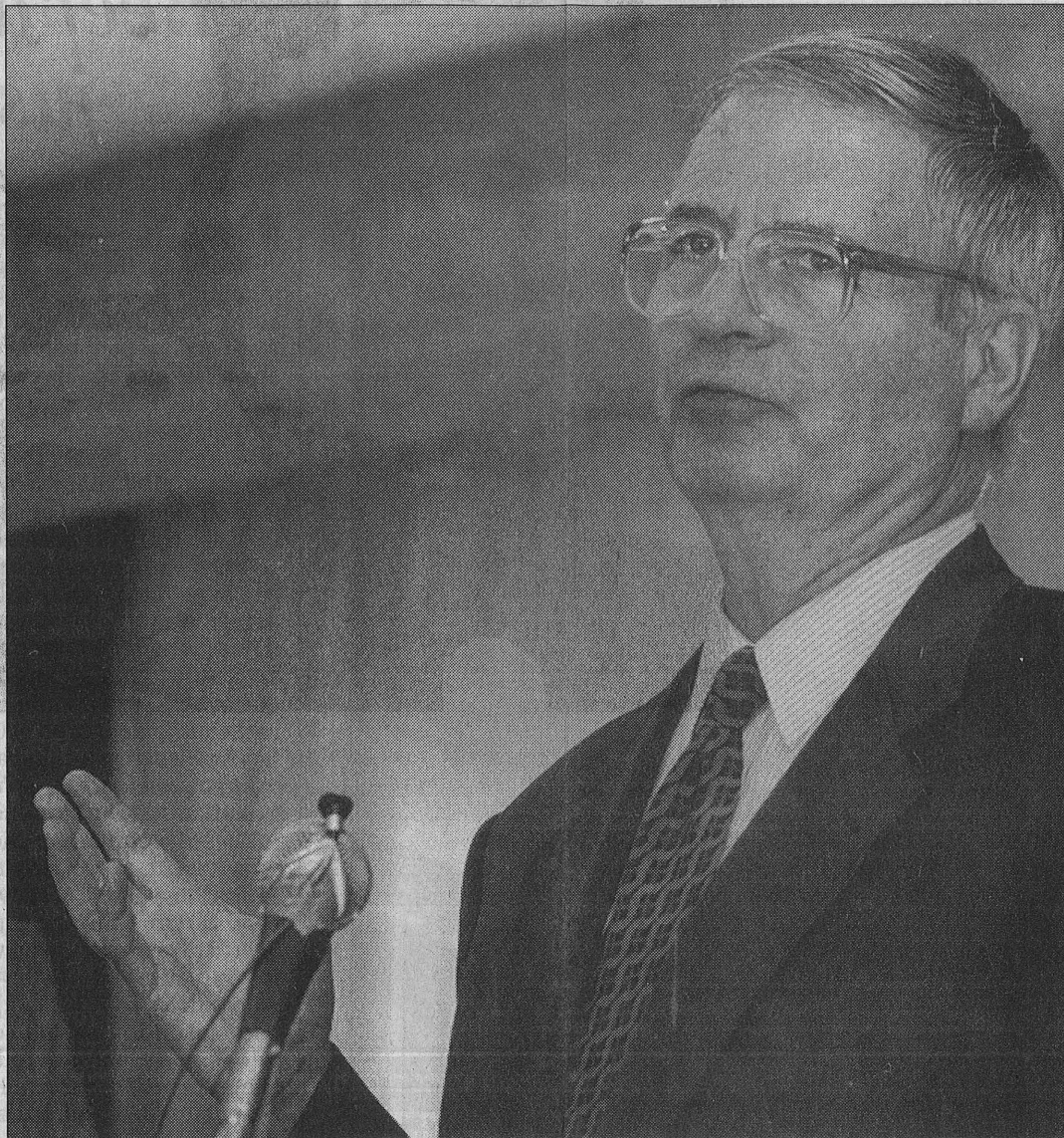
It is more than a year since our report was published, and the inquiry into events in Somalia continues unofficially and sporadically in the media. Every few weeks I get a call or an e-mail from journalists somewhere in Canada, occasionally from the United States, who are continuing to follow up the many questions left unanswered by our inquiry. Some of them relate to the secret Joint Task Force II, the unit that Scott Taylor and Brian Nolan describe in their latest book as a “secret-SAS-Rambo-type” outfit that has been linked to a series of armed robberies in Canada by renegade soldiers or former soldiers, a controversial “training exercise” in Quebec during the last referendum campaign and an American newspaper report in 1995 that members of this unit had been sent to the former Yugoslavia. Some journalists have been trying to determine if members of this unit were in Somalia and if they were involved in any of the controversial incidents there. This would be important information because this unit operates outside the normal chain of command and is controlled directly from Ottawa.

I have no idea whether there is substance to any of these suspicions but it is significant that the Somalia story is continuing to unfold. I’m sure that we haven’t heard the end of it.

On a larger scale, the history of the military has been mixed since our report was published. Most of the news about the military has been negative and this, oddly enough, has been a positive development for many of our soldiers. The Commons committee that investigated conditions on bases across the country generated, through its hearings and its report, a flood of horror stories in the media which continue to this day. I think that most Canadians by now are aware that military pay scales are too low, that military hardware is running down and not being properly replaced and that our soldiers are working longer and more frequent tours of duty on peacekeeping assignments that are becoming more dangerous. Certainly the political climate is supportive at this point for an increase in military spending that would primarily benefit the ordinary soldier, and I would certainly argue for it. In this respect, I don’t understand why the current Chief of the Defence Staff keeps publicly linking this with the need for further increases in pay for senior officers, an issue that does not have widespread public support. I would think that it would be tactically smart to capitalize now on public sentiment in favour of giving the lower ranks the kind of financial and material support that they need, and not to confuse the issue by talking about the needs of the upper echelons who toil in the trenches at National Defence Headquarters.

I THINK IT IS ALSO TIME FOR OUR POLITICIANS TO grapple honestly with the problem of over-commitment. I know that we have had innumerable defence reviews over the years, but we still seem unable to define our international role in a way that Canadians can understand and that we are willing to support financially. One of the major factors in the many problems that surfaced during the mission in Somalia was the fact that military planners were scraping the bottom of the available manpower barrel when they sent the flawed Airborne Regiment to that country. Controversies over the purchase of helicopters and submarines illuminate basic disagreements about what our armed forces are supposed to be doing. I’m not pretending that these are simple questions in peacetime but I am saying that Canadians are now in a mood to support a well-equipped and well-paid military force if its role is clear, and that it is the government’s responsibility to make it clear.

One of the positive aspects of my own experi-



Michael Lea/The Whig-Standard

Peter Desbarats speaks at the Canadian Club in Kingston

ence on the Somalia inquiry was contact with ordinary soldiers and junior officers in visits to four bases in Quebec, Ontario, Manitoba and Alberta. This wasn’t a major part of our work but it was an eye-opener for someone like myself with no military experience. I was surprised by the readiness of many ordinary soldiers and junior officers to speak frankly with us about their experiences in Somalia and in some cases to offer to testify publicly, even when it was probably not in their career interests to do so. This impressed me, just as the defensiveness and evasions of some of the senior officers who appeared before us left an entirely different impression on me and on thousands of Canadians who watched our hearings on television....

[T]here is a fine line sometimes between trying to hurry up a process and infringing on its independence.

The Chretien government simply blasted through that line in the case of our own inquiry and it did so, as I said at the outset of this speech, for reasons that were blatantly political. Every Canadian understands that.

At the time, I said that this precedent would cause serious problems for future inquiries, and it hasn’t taken long for that prediction to come true. The Liberal government’s decision last year to shut down the Somalia inquiry led directly to last month’s decision to interfere in the work of the RCMP Public Complaints Commission by refusing to fund legal representation for protesters who demonstrated in the streets of Vancouver during last year’s Asian economic

summit.

When that decision was announced, I received many calls from the media asking me whether I saw a connection with what had happened to our own inquiry. The connection was so obvious that the question surprised me. So I responded with another question: Would a government that had done something as unprecedented as shutting down an inquiry hesitate to merely manipulate an inquiry, particularly after it had discovered that it could actually close down a public inquiry without fear of political repercussions?

Only this kind of arrogant attitude can explain Solicitor-General Andy Scott’s careless, almost carefree discussion of the inquiry to a travelling companion on a recent flight, his stubborn defence of this glaring impropriety, and his more recent pronouncement that legal representation for the former protesters is not required because of the “informal” nature of Public Complaints Commission process. If the commission is such a casual process, why hasn’t the RCMP, officials of the Prime Minister’s Office or the Prime Minister himself offered to appear without benefit of counsel?

Then there was the television interview by one of the government lawyers at the APEC inquiry who claimed that the protesters didn’t require lawyers because they weren’t accused of anything, as if people suspected of breaking the law need publicly financed lawyers while their alleged victims should be deprived of the same right. We can probably expect more of these absurdities as the government digs itself deeper into an untenable position.

While the structure and mandate of the RCMP’s Public Complaints Commission are not precisely the same as those of a Royal Commission, the issue of its independence is just as critical. No one yet knows whether the three commissioners in this case made an effort to assert control of their own procedure. We do know that, in the end, Solicitor-General Scott didn’t try to protect even the appearance of the commission’s independence when he announced a decision that will have a decisive effect on its deliberations and its report, if it survives the current hiatus created by allegations of bias by an RCMP officer against its chair.

Here again, I experienced déjà vu. The chair of our inquiry was charged with bias by a senior military officer; only we continued with our process while the courts heard and dismissed the allegation. In Vancouver, the response of the commission chair was to suspend hearings and now the future of the inquiry is in doubt.

Already there have been demands for a full-scale public inquiry to replace the Public Complaints commission in this case, illustrating what I said earlier about the essential role of such inquiries in this type of situation. But the government’s ability to appoint an inquiry is now restricted by its decision to terminate the Somalia inquiry. If the government wanted to appoint such an inquiry – and I don’t regard that as even a remote possibility – what is the first question going to be from anyone approached to serve on it? And from the media? It will be to ask what guarantee is there that the inquiry will be allowed to complete its work. This is a question which was never asked before, which never had to be asked before.

And who will chair such an inquiry? Last month the chief justice of the Supreme Court, speaking on behalf of the Canadian Judicial Council, urged the government to think twice before it appoints judges to such inquiries. Mr. Chief Justice Antonio Lamer warned that service on an inquiry can damage the future usefulness of a judge “because of the possible impairment to his or her appearance of independence.”

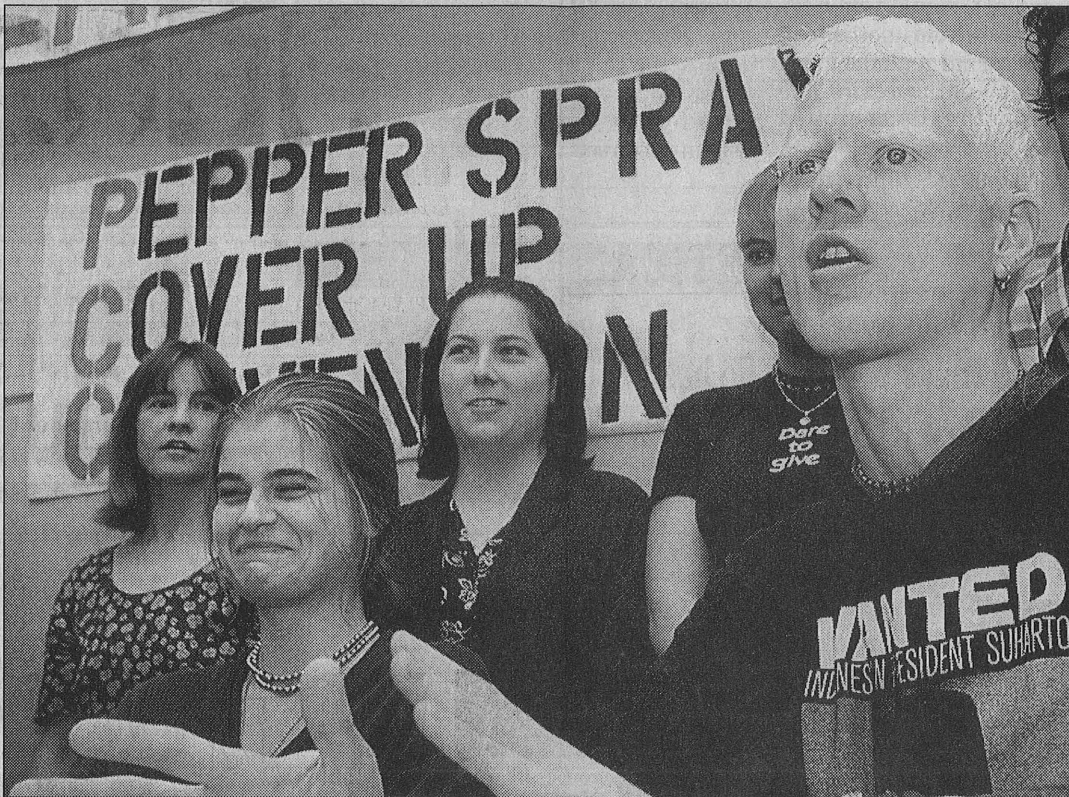
HE THEN LAID OUT A HYPOTHETICAL SCENARIO which was, in fact, an exact description of what actually happened to the chair of the Somalia inquiry, Judge Gilles Letourneau. Judge Lamer warned that “public disputes can erupt between government and a commissioner on various grounds, including the government’s refusal to produce documents, budgets or the duration of the inquiry, which can cast a judge-commissioner in the role of implacable foe of government.” He went on to say that after the inquiry is completed, the judge is likely to face legal challenges from the government or individuals under investigation that “may detract from judicial dignity and detachment.” As Judge Lamer is aware, three former or serving senior officers are still challenging sections of our report in the court – a report that is being defended in court by the very government that closed down the inquiry, and that has refused to even respond to my own demands for at least a consultative role in the defence of my work and reputation in these cases.

Judge Lamer and his fellow judges on the Canadian Judicial Council urged the government to consider in future appointing retired judges or senior lawyers to public inquiries, a suggestion that I don’t believe is practical.

None of these complications would have arisen if the government had kept its hands off the Somalia inquiry. By closing us down, it severely damaged an essential institution of democratic government, and it will take many years to undo that damage.

The central issue here is the respect of government for the rule of law. When government by its actions places itself above the law, it encourages disrespect for the law throughout society. And I think that we can see signs of that happening in our society – a society that up to now has been notably law-abiding and respectful of authority....

Canadians are now becoming concerned, and the politically dangerous word “arrogance” is being attached more frequently by the media to the government in Ottawa and to the prime minister himself. And I believe that this is happening because almost unconsciously Canadians are sensing a connection between abuse of power at the highest level and a growing disregard for the rights of people throughout all levels of government. Whether it’s Somalia or APEC, a government that covers up, a government where official documents are altered or mysteriously disappear, a government that makes a habit of placing its short-term political interests ahead of the basic rights of its citizens, is a government that is corrupting our society from the top down. And yes, there is a link between Somalia, APEC, what happened to John Hanson [a British lawyer and academic who was mistakenly arrested by Toronto police, denied contact with a lawyer and strip searched] and what may happen to you next, and you should be concerned about it.



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