

Legal Implications of the "Riot Act" Proclamation

The Archambault and Drumheller riots have given rise to much discussion concerning the proper amount of force that should be used in order to suppress a major disturbance. Within the *Criminal Code* of Canada there are provisions relating to unlawful assemblies and riots which apply equally to public as well as penitentiary disturbances. These provisions, among other things, outline the amount of force that can be used with legal justification in a riot declared situation.

The purpose of this article is to briefly examine the so-called "*Riot Act*" and to highlight the legal and practical considerations that accompany the reading of it. When can the "Riot Act" Proclamation be read? The "*Riot Act*" proclamation referred to in section 67 of the *Criminal Code* may be read by a Justice of the Peace whenever twelve (12) or more persons are "unlawfully and riotously assembled together". The term "riotously" refers to the tumultuous disturbance of the peace. Since these words are subject to interpretation, a brief examination of the terms "unlawful assembly" and "disturbing the peace tumultuously" is warranted.

A review of the relevant provisions of the *Criminal Code* and related jurisprudence reveals that an unlawful assembly occurs when at least three (3) or more persons assemble and form a common purpose, and there are reasonable grounds to believe that there will be a tumultuous breach of the peace: See *Regina V. Thomas* [1971, 2 WWR 734 (B.C. Co. Ct.). In *Regina V. Kalyn*, (1980) 52 CCC (2nd) 378 (Sask. Prov. Ct.) the court held that if the assembly is tumultuous - that is, the disturbance is caused by a multiple of people and consists of more than just noise - then it may be deemed riotous. However, the assembly is riotous, *at the latest*, when force or violence begins to be used or where there is an attempt to overpower peace officers who are performing their protective duties.

The "*Riot Act*" proclamation, when used, must be issued in the following words or words to the like effect:

"Her Majesty the Queen charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business upon the pain of being guilty of an offence for which, upon conviction, they may be sentenced to imprisonment for life. GOD SAVE THE QUEEN". Who can read the "Riot Act" Proclamation? Pursuant to the provisions of section 67 of the *Criminal Code*, the so-called "*Riot Act*" proclamation may only be read by certain individuals such as justices of the peace, provincial court judges, mayors, and sheriffs.

Aside from the provinces of Quebec and Manitoba - where they have designated senior institutional staff as justices of the peace for the purpose of reading the "*Riot Act*" - the other provinces have insisted that local justices of the peace be asked to travel to the institution in order to declare whether or not the disturbance is a riot. What is the effect of reading the "Riot Act" Proclamation? In the event that there is a major or minor disturbance in a penitentiary, the warden or superintendent may order the inmates to cease their unlawful assembly and disperse, pursuant to the *Penitentiary Service Regulations* and the *Penitentiary Act*. Should the inmates fail to obey the order, they would be subject to disciplinary penalties and the warden could direct staff to take forceful action. In the absence of the "*Riot Act*" proclamation, the peace officers may rely solely upon the provisions of sections 25 and 32 of the

Criminal Code as justification for their actions in administering or enforcing the law. However, the legal justification found in these provisions for using force that is intended or likely to cause death or grievous bodily harm is limited. Indeed, according to section 25 of the *Criminal Code*, the Peace Officer is **not** justified in using force that is intended or is likely to cause death or grievous bodily harm *unless* he believes on reasonable and probable grounds that it is necessary for the purpose of preserving himself or anyone under his protection from death or serious bodily injury.

In the event, however, that the conditions found in section 67 of the *Criminal Code* are met and the "*Riot Act*" proclaimed, then in addition to the limited justification for the use of force found in sections 25 and 32 of the *Criminal Code*, section 33 imposes a duty on peace officers to disperse or to arrest persons who do not comply with the Proclamation. In their efforts to do this, subsection 33(2) provides that no civil or criminal proceedings will lie against a peace officer in respect of any death or injury caused by the inmates resistance. Moreover, in addition to the disciplinary penalties referred to above, the inmates who have not dispersed within thirty (30) minutes of the reading of the Proclamation may be guilty of an indictable offence and liable to imprisonment for life.

The advantages of having the "*Riot Act*" proclamation read are clear. Firstly, the protection afforded to peace officers with respect to the amount of force used is much broader than otherwise. Secondly, there is a greater incentive for the inmates to disperse and cease their assembly as failure to do so may result in life imprisonment.

Therefore, should the conditions of section 67 of the *Criminal Code* be met, institutional staff should ensure that the "*Riot Act*" proclamation is read at the earliest possible moment during the crisis.