

## Clause 1

### Proposed Section

1. The *Criminal Code* is amended by adding the following after section 431.2:

432. (1) A person who, without the consent of the theatre manager, records in a movie theatre a performance of a cinematographic work within the meaning of section 2 of the *Copyright Act* or its soundtrack

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or

(b) is guilty of an offence punishable on summary conviction.

(2) A person who, without the consent of the theatre manager, records in a movie theatre a performance of a cinematographic work within the meaning of section 2 of the *Copyright Act* or its soundtrack for the purpose of the sale, rental or other commercial distribution of a copy of the cinematographic work

(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) is guilty of an offence punishable on summary conviction.

(3) In addition to any punishment that is imposed on a person who is convicted of an offence under this section, the court may order that anything that is used in the commission of the offence be forfeited to Her Majesty in right of the province in which the proceedings are taken. Anything that is forfeited may be disposed of as the Attorney General directs.

(4) No order may be made under subsection (3) in respect of anything that is the property of a person who is not a party to the offence.

### Current Section

N/A

## Clause 1

### Purpose and Effect

This clause would amend the *Criminal Code* to create two new offences.

Subsection 432(1) would prohibit the recording of a movie in a movie theatre without the consent of the theatre manager. It would establish a clear prohibition on conduct which is a precursor to the more blameworthy criminal activity of camcording for the purpose, or camcording as part of the DVD piracy operation under the *Copyright Act*. Camcording would be a hybrid offence punishable on indictment by imprisonment for not more than two years or on summary conviction by six months imprisonment or a fine of \$2,000, or both.

Subsection 432 (2) would prohibit the recording of a movie in a movie theatre without the consent of the theatre manager for the purpose of selling, renting or other commercial distribution of a copy of the recorded movie. Camcording for the purpose of sale, rental or other commercial distribution of a copy of the motion picture is a more serious offence. In addition to proof that the accused engaged in the unauthorized recording of a motion picture in a movie theatre, it requires proof that the individual did so for the purpose of selling, renting or other commercial distribution of copies of the film. Camcording for the purpose would also be a hybrid offence but would be punishable on indictment for not more than five years imprisonment.

Subsection 432 (3) would also provide the court with the authority to order the forfeiture of anything used in the commission of these offences such as the camcorder itself.

Subsection 432 (4) would restrict the issuance of a confiscation order.

### **Reasons for Change**

The proposed legislation is aimed at deterring unauthorized camcording activities in movie theatres in Canada.

The enforcement of these new *Criminal Code* offences would primarily be the responsibility of local police, who are better-positioned to respond to calls from local theatre operators, and would be prosecuted by provincial prosecutors.

## Article 1

### Objet et Effet

Cet Article modifierait le *Code criminel* en créant deux nouvelles infractions.

Alinéa 432 (1) aurait trait à l'interdiction d'enregistrer une oeuvre cinématographique dans une salle de cinéma sans le consentement de son gérant. Le projet de loi interdirait clairement toute conduite étant le précurseur de l'activité criminelle plus grave de l'enregistrement par caméscope aux fins du piratage de DVD au sens de la *Loi sur le droit d'auteur*. Le simple enregistrement par caméscope constituerait un acte criminel passible d'un emprisonnement maximal de deux ans ou une infraction punissable sur déclaration de culpabilité par procédure sommaire passible d'une peine d'emprisonnement de six mois ou d'une amende 2 000 \$ ou des deux.

Alinéa 432 (2) aurait trait à l'interdiction d'enregistrer une oeuvre cinématographique dans une salle de cinéma sans le consentement de son gérant en vue de la vente, de la location ou de toute distribution commerciale d'une copie enregistrée d'un film. L'enregistrement par caméscope aux fins de la vente, de la location ou d'une autre forme de distribution commerciale d'une copie d'un film constitue une infraction plus grave. En plus de la preuve que l'inculpé a enregistré sans autorisation un film dans une salle de cinéma, il faut prouver qu'il l'a fait en vue de la vente, de la location ou de toute autre forme de distribution commerciale de copies du film. L'enregistrement par caméscope en vue de la vente, de la location ou de toute autre forme de distribution commerciale d'une copie d'un film serait également une infraction hybride punissable par mise en accusation et passible d'un emprisonnement maximal de cinq ans.

Alinéa 432 (3) donnerait au tribunal le pouvoir d'ordonner la confiscation de toute chose utilisée dans la perpétration de l'infraction, comme le caméscope.

Alinéa 432 (4) impose une restriction à l'émission d'une ordonnance de confiscation.

### Raisons des Modifications

Les mesures législatives proposées serviraient à dissuader les gens de reproduire illicitement des films au moyen d'un caméscope dans les salles de cinéma du Canada.

L'application de la loi à l'égard de ces deux infractions relèverait principalement des corps de police locaux, lesquels sont mieux placés pour répondre aux appels des exploitants de salles de cinéma; il reviendrait aux procureurs provinciaux de poursuivre les délinquants.