

**ALTERNATIVE MEASURES PROGRAM FOR ADULTS
IN ABORIGINAL COMMUNITIES**

PURSUANT TO SECTIONS 716 to 717.4 OF THE CRIMINAL CODE

WHEREAS the Attorney General of a province may, pursuant to section 717 of the *Criminal Code* (R.S.C. (1985), c. C-46), authorize a program allowing the use of alternative measures other than judicial proceedings under the *Criminal Code* to deal with a person alleged to have committed an offence;

WHEREAS the Minister of Justice and Attorney General of Québec authorized the creation of such a program in Aboriginal communities on 28 June 2001 and the signing of agreements to define its operation;

WHEREAS since that time, the office of the Director of Criminal and Penal Prosecutions has been created, and whereas the Director is the prosecuting authority in Québec with responsibility for negotiating such agreements;

WHEREAS the *Act respecting the Ministère de la Justice* (R.S.Q., chapter M-19) empowers the Minister of Justice to develop policies and implement measures with regard to criminal and penal matters (section 3, paragraph c.1) and whereas the *Act respecting the Director of Criminal and Penal Prosecutions* authorizes the Director to develop policies and implement measures to apply alternatives to prosecution (section 22);

WHEREAS certain communities want offences committed in a context of family or domestic violence to be admissible for the alternative measures program (AMP);

WHEREAS the Ministère de la Justice and the Director of Criminal and Penal Prosecutions, after being advised that a community wants offences committed in a context of family or domestic violence to be admissible for the alternative measures program (AMP), must jointly and before entering into an agreement with the community, ensure the support of organizations providing assistance for victims, including those helping women;

WHEREAS the Director of Criminal and Penal Prosecutions must, in criminal and penal proceedings, take the necessary measures to ensure that the legitimate interests of crime victims are taken into account and that witnesses are respected and protected;

WHEREAS the Director of Criminal and Penal Prosecutions directs all criminal and penal prosecutions in Québec on behalf of the State in accordance with the policies and measures established by the Minister of Justice;

It is advisable to establish this alternative measures program.

1. **Definitions**

- 1.1 "Justice committee" means a community structure made up of citizens representing an Aboriginal community that organizes and maintains justice and dispute resolution services; also known as a "community justice committee";
- 1.2 "Offence" means an offence covered by the alternative measures program in accordance with section 4 ("Offences covered by the program");
- 1.3 "Alternative measures" means measures other than judicial proceedings under the *Criminal Code* taken against a person who is eighteen years of age or over and alleged to have committed an offence;
- 1.4 "Prosecutor" means the Director of Criminal and Penal Prosecutions and the prosecutors acting under the Director's authority;
- 1.5 "Court" means the Court of Québec.

2. **Objectives of the alternative measures program**

The objectives of the program are to:

- 2.1 Pay particular attention to the rights and needs of the members of Aboriginal communities, taking their cultural realities into account;
- 2.2 Enhance the effectiveness of the fight against crime by involving the Aboriginal communities;
- 2.3 Increase the involvement of victims, families and the community in order to intervene more effectively to combat criminal behaviour and reduce the occurrence of criminal behaviour in the future;
- 2.4 Allow prosecutors and the justice committees of Aboriginal communities to act together at all stages in the alternative measures process;
- 2.5 Deal with alleged offences in a fair, independent, open and transparent manner, in a way that is respectful of the rights of victims and alleged offenders;
- 2.6 Encourage persons who accept responsibility for the act or omission that forms the basis of their alleged offence to take responsibility for their conduct, play an active role in providing reparation for the harm done, and address the problems that may have contributed to their involvement in the justice system;
- 2.7 Promote the rehabilitation of such persons by mobilizing the resources and assistance available in the community;
- 2.8 Ensure that the terms and conditions of the alternative measures constitute a fair, proportionate and relevant response to the alleged offence.

3. General rules and procedures for alternative measures

- 3.1 The use of alternative measures is only possible after the prosecutor has authorized the laying of an information;
- 3.2 The justice committee proposes alternative measures that take into account the needs of the accused, the interests of society and the interests of the victim, and notifies the prosecutor of them;
- 3.3 The alternative measures plan offered to the accused describes the nature of the alternative measures and the steps needed to accomplish them within a set time. The alternative measures may comprise: community work, compensation, treatment/counselling, mediation, or any other measure considered appropriate by the justice committee;
- 3.4 Alternative measures may be combined with other programs approved by the province, such as a drug treatment program or a domestic violence program;
- 3.5 The prosecutor may apply alternative measures at any stage in judicial proceedings prior to the plea of guilty;
- 3.6 Before agreeing to alternative measures, the prosecutor must ensure that the conditions of section 717 of the *Criminal Code* are met;
- 3.7 The prosecutor must also consider that the accused cannot benefit from the "Program to deal non-judicially with certain criminal offences committed by adults".¹

4. Offences covered by the program

The program covers offences allegedly committed by an Aboriginal person or a non-Aboriginal person in a community for which the justice committee has responsibility.

4.1 Offences included

Alternative measures may be applied, at the prosecutor's discretion:

- to the following offences under the *Criminal Code* (R.S.C. 1985, c. C-46):
 - a) offences prosecutable only as summary conviction offences;
 - b) hybrid offences subject to a maximum sentence of 2 or 5 years, whether prosecuted by summary conviction or by indictment;
 - c) offences prosecutable only as indictable offences and subject to a maximum sentence of 2 or 5 years;
 - d) hybrid offences subject to a maximum sentence of 10 years, prosecutable by summary conviction, except crimes against the person.

¹ See Directive NOJ-1 of the Director of Criminal and Penal Prosecutions

- to the offences described in paragraphs 4(1) and 4(5) of the *Controlled Drugs and Substances Act* (CDSA) (S.C. 1996, c. 19).

Since these offences may cover a vast range of behaviour, the prosecutor, in exercising discretion as to whether the offence is admissible under the program, must take into account, in addition to the conditions set out in section 717 of the *Criminal Code*, the following factors:

- all the circumstances in which the offence was committed;
- the situation, interest and point of view of the victim;
- the accused's current situation, including his or her previous dealings with the court and the steps he or she has already taken to achieve rehabilitation;
- the interests of the community;
- the accused's willingness to provide reparation for the harm caused to the victim or the community;
- the prospect of rehabilitation offered by the alternative measures available within the community and their dissuasive effect in the context of the community;
- the fact that the accused's previous offences, if any, were linked to an underlying, but recently revealed, problem with alcohol, drugs, gambling or mental health.

4.2 Offences excluded

The following offences are excluded, unless covered by the "Program to deal non-judicially with certain criminal offences committed by adults":

- a) offences incurring a minimum punishment;
- b) offences against public order (Part II of the *Criminal Code*);
- c) offences against the administration of law and justice involving corruption or a breach of trust by a public officer (Part IV of the *Criminal Code*);
- d) sexual offences (Part V of the *Criminal Code*) and the offences of child pornography or sexual assault;
- e) offences involving the mistreatment, sexual exploitation or sexual abuse of vulnerable individuals, including minors and persons with mental health problems or an intellectual impairment;
- f) offences involving firearms or other weapons or the use of such weapons, prosecuted as indictable offences (Parts III and VIII of the *Criminal Code*);
- g) offences involving a failure to comply with a judicial order;
- h) offences involving hate propaganda (Part VIII of the *Criminal Code*);
- i) offences involving the use of a motor vehicle (Part VIII of the *Criminal Code*);
- j) offences involving terrorism (Part II.1), the proceeds of crime (Part XII.2) or a criminal organization;
- k) offences committed in a context of domestic violence or a dating relationship.

Despite the above, when the main authorities concerned within the community wish to see the following offences included, they may form part of the alternative measures program:

- a) breaking and entering a dwelling-house in order to commit theft or mischief for less than \$5,000 (paragraphs 348(1) (a), (b) and (c) of the Criminal Code), in the absence of aggravating circumstances within the meaning of section 348.1 of the Criminal Code (the fact that the dwelling house was occupied at the time of the commission of the offence and that the person knew that or was reckless as to whether the dwelling-house was occupied, and used violence or threats of violence to a person or property);
- b) offences liable to a sentence of 5 years of imprisonment or less that were committed in a context of domestic violence when the victim, after having been duly informed of the criminal nature of the domestic violence, agrees to the application of alternative measures, provided the accused admits the facts and there are reasons to believe that the use of alternative measures will increase the accused's taking of responsibility for his or her behaviour.

5. Effects of alternative measures on the prosecution

If it is shown that the accused has successfully completed the alternative measures agreed on for a given offence, the prosecutor asks the court to dismiss the charge.

If the accused fails to complete the alternative measures agreed on, the prosecution may be continued.

When the alternative measures are partly completed, the prosecutor assesses if, taking all the circumstances into account, the objectives targeted by the program have been sufficiently achieved in terms of the public interest; if this is the case, the prosecutor recommends that the court dismiss the charge. If this is not the case, the prosecution resumes its normal course.

The accused may terminate the alternative measures agreed on and ask that the case be referred to the court; unless the accused consents, the court is not informed of the use of alternative measures.

An admission of guilt or a statement in which the accused takes responsibility for an act or omission is not, if the admission is made in order to benefit from alternative measures, admissible in evidence in civil suits or criminal prosecutions against the accused.

6. Implementation of the program

The implementation of the program in a community requires the signing of an agreement between the representative of the justice committee or the political authorities in the Aboriginal community concerned and the Director of Criminal and Penal Prosecutions. Before signing such an agreement, the Director of Criminal and Penal Prosecutions must be convinced that the justice committee is committed to playing a significant role in the implementation of the alternative measures.

The agreement must specify, in particular, the procedure for implementing the program, the offences covered and the types of alternative measures possible. It must also specify that the justice committee will contract an undertaking with the accused to deal with the alleged offence outside the judicial framework and will report to the prosecutor, within an agreed time, on the completion of the alternative

measures by the accused and on the accused's behaviour in the application of the alternative measures.

7. Review

This program will be reviewed three years after it comes into force.

8. Interpretation

The clauses of this program must be construed by one another, ascribing to each the meaning which results from the whole and which gives effect to the clause.

9. Coming into force

This program comes into force on the date on which it is authorized. It replaces the ministerial authorization dated 28 June 2001. However, the agreements resulting from the ministerial authorization of 28 June 2001 remain in effect until replaced by new agreements duly signed by the parties.

In my capacity as Minister of Justice and Attorney General acting under the authority of the *Act respecting the Ministère de la Justice* (R.S.Q., chapter M-19), I authorize, in accordance with section 717 du *Criminal Code*, the alternative measures program for adults in Aboriginal communities set out above, and the signing, by interested parties, of agreements to define its operation.

This authorization remains in effect until revoked.

Original signed by the Minister of Justice and Attorney General of Québec on November 10th, 2015.