

**SETTLEMENT AGREEMENT**

THIS AGREEMENT ENTERED INTO THIS 3<sup>th</sup> DAY OF FEBRUARY, 2003

Between

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
AS REPRESENTED BY  
THE MINISTER RESPONSIBLE FOR  
INDIAN RESIDENTIAL SCHOOLS RESOLUTION, CANADA**  
(hereinafter referred to as the "Government")

and

**THE PRESBYTERIAN CHURCH IN CANADA,**  
(hereinafter referred to as the Church)

and

**THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA**  
(hereinafter referred to as the "Board")

WHEREAS the Government and the Church participated in developing and operating a system of residential schools for Aboriginal children in Canada;

AND WHEREAS the Government has apologized and the Church has offered a confession for the unintended harm to Aboriginal people incurred at residential schools;

AND WHEREAS a number of former residential school students have alleged abuse and other wrongs against the Government and the Church;

AND WHEREAS the Government and the Church recognize that court proceedings can be adversarial, lengthy and costly and often not the best way to resolve abuse claims;

AND WHEREAS former students who were abused at residential schools should be paid Compensation for injuries resulting from Validated Claims;

AND WHEREAS the Government and the Church agree to share responsibility for abuse at the residential schools and to establish a framework to apportion and pay Compensation owing for Validated Claims;

AND WHEREAS the Government and the Church are committed to working jointly with Claimants to develop fair, safe, effective and timely processes to validate and resolve IRS Abuse Claims, which processes will seek to avoid causing additional trauma

for Claimants while also protecting the reputations of named abusers from unfounded allegations;

AND WHEREAS the Government recognizes the importance of enabling the continuing contribution of the Church in Canadian society and through this Agreement supports its ongoing viability;

THIS AGREEMENT WITNESSETH:

## PART I DEFINITIONS

1.1 For all purposes of this Agreement and of all indentures, agreements or other instruments supplemental hereto or in confirmation, amendment or modification hereof, the terms defined in this Part shall have the following meanings unless otherwise expressly defined in such other documents:

“ADRP” means an alternate dispute resolution process or processes established in accordance with Part II of this Agreement.

“Agreement”, “hereto”, “herein” and similar expressions refer to this Agreement and any amendments thereto and include all schedules attached to this Agreement.

“Board” means The Trustee Board of The Presbyterian Church in Canada, incorporated by a Special Act of Parliament entitled An Act to incorporate The Trustee Board of the Presbyterian Church in Canada, S.C. 1939, c. 64, as amended by An Act respecting The Trustee Board of The Presbyterian Church in Canada Act, S.C. 1962-63, c. 23, as further amended by An Act respecting The Trustee Board of The Presbyterian Church in Canada, S.C. 1966-67, c. 116, and recognized by the Ontario Legislature in An Act respecting the Trustee Board of The Presbyterian Church in Canada, S.O. 1939, c. 69, and by similar legislation in the other provinces of Canada.

“Claimant” means a former student of an IRS or other person who has made an IRS Abuse Claim.

“Church” means The Presbyterian Church in Canada, an unincorporated association which includes congregations, members and adherents of The Presbyterian Church in Canada who did not become part of the United Church of Canada on June 10, 1925, together with persons who since that date have joined The Presbyterian Church in Canada as members or adherents, and the General Assembly, its committees and commissions, the Assembly Council, and all synods, presbyteries, and sessions of The Presbyterian Church in Canada, but

does not include employees or agents of the Church except in the capacity they hold in common with all members and adherents.

“Compensation” means damages, Costs and interest as awarded or agreed upon in an IRS Abuse Claim.

“Costs” means assessed costs, agreed upon costs or ADRP costs to be paid to a Claimant for an IRS Abuse Claim.

“Foreign Mission Committee” means The Foreign Mission of The Presbyterian Church in Canada which entered into agreements dated April 1, 1911 with His Majesty the King, represented by the Superintendent General of Indian Affairs of Canada, for the operation of the Cecilia Jeffrey Boarding School and the Birtle Boarding School and which reported annually to The General Assembly of The Presbyterian Church in Canada and had oversight of, inter alia, missionary work to aboriginal peoples.

“Government” means the Government of Canada.

“IRS” means one or more of the Indian Residential Schools set out in Schedule “A” hereto, and Indian Residential School has the same meaning.

“IRS Abuse Claim” means a claim for Compensation for the mistreatment or neglect of a child arising from or connected to the operation of an Indian Residential School, other than a claim arising from loss or diminution of aboriginal language or culture, that is founded on:

- one or more intentional torts such as physical or sexual assault, forcible confinement or the intentional infliction of mental suffering where the Government, the Church or the Board has or accepts vicarious liability;
- negligence or breach of fiduciary duty where the Government, the Church or the Board has or accepts any part of the legal responsibility;
- any other head of liability recognized by the courts as of the date this Agreement comes into force, where the Government, the Church or the Board has or accepts any part of the legal responsibility.

“Receiver” includes Receiver-Manager.

“Resolution Process” means a method other than an ADRP used to resolve IRS Abuse Claims outside the litigation process.

“Settlement Fund” means the fund established by the Church pursuant to this Agreement, such fund to be used for the purposes of paying Compensation to Claimants.

“Validated Claim” means an IRS Abuse Claim that has been found to be proven:

- by a final decision of an ADRP, other Resolution Process or a court;
- or as a result of an assessment conducted by Government counsel in accordance with this Agreement.

“WMS” means the Women’s Missionary Society of The Presbyterian Church in Canada which entered into agreements dated May 22, 1962, with Her Majesty the Queen in Right of Canada, for the operation of the Cecilia Jeffrey Indian Residential School and the Birtle Indian Residential School and which reports annually to The General Assembly of The Presbyterian Church in Canada.

- 1.2 The following Schedule is appended to this Agreement and is incorporated into and forms part of it by this reference as fully as if contained in the body of this Agreement:
- 1.2.1 Schedule A: Indian Residential Schools Related to the Church.
- 1.3 For the purpose of Sections 2.3, 2.18, 4.5, 4.6, 4.7, 4.8, 5.6.1, 5.8, 5.9, 6.14, 6.15, 8.2, and 8.13 of this Agreement, the Church includes The Foreign Mission Committee and the WMS.

## PART II MUTUAL COMMITMENT TO THE FAIR, SAFE AND EFFECTIVE RESOLUTION OF CLAIMS

- 2.1 The Church, the Board and the Government agree that validation, resolution or defence of a specific IRS Abuse Claim or Claims will be in accordance with the terms set out in this Agreement.
- 2.2 The Church, the Board and the Government agree to co-operate in the fair, safe and effective validation, resolution and defence of IRS Abuse Claims by:
- 2.2.1 developing and implementing ADRPs or other Resolution Processes with input from stakeholders in accordance with the principles set out herein;
- 2.2.2 settling litigation through negotiations, pre-trial conferences or court-directed mediation, or other agreed-upon means; and
- 2.2.3 conducting trials and appeals where necessary to resolve issues.
- 2.3 As soon as reasonably practicable, and no later than 60 days after this Agreement comes into force the Government, the Church and the Board will, on a without-

costs basis, discontinue third party claims and cross-claims against each other for IRS Abuse Claims, and hereby agree not to commence or recommence any further third party claims or cross-claims for IRS Abuse Claims against each other except on consent or as permitted by this Agreement.

- 2.3.1 Nothing in section 2.3 prevents the issuance of a third party notice or cross claim as permitted by Part VI of this Agreement.
- 2.3.2 The Church, the Board and the Government agree that such discontinuance shall not affect the apportionment of payment of Compensation as set out in Part IV.
- 2.4 The Church, the Board and the Government agree that they will use validation processes which:
  - 2.4.1 distinguish valid IRS Abuse Claims from unfounded IRS Abuse Claims;
  - 2.4.2 employ mechanisms that are fair to Claimants and alleged abusers;
  - 2.4.3 are confidential, respectful and safe for all participants;
  - 2.4.4 are cost effective in relation to the specific issues to be resolved; and
  - 2.4.5 lead to Compensation or other appropriate remedies for Validated Claims.
- 2.5 All ADRPs and other Resolution Processes will, to the extent possible, reflect key principles including the following:
  - 2.5.1 information relating to validation and settlement processes will be made available to Claimants;
  - 2.5.2 Claimants will participate on a voluntary basis;
  - 2.5.3 counselling and other support services will be provided to help protect the safety of participants;
  - 2.5.4 process costs including legal costs for all participants will be minimized;
  - 2.5.5 Claimants will have access to independent legal advice;
  - 2.5.6 processes will be non-adversarial and will attempt to avoid unnecessary trauma for Claimants and will attempt to protect all parties from unfounded allegations;
  - 2.5.7 processes will be geographically and culturally accessible to Claimants;

- 2.5.8 the evidentiary standards applied will be appropriate to ensure effective validation of the IRS Abuse Claims.

#### Claims Proceeding within ADRPs

- 2.6 The Church, the Board and the Government agree that issues arising within the ADRPs will be dealt with according to standards set out in this Agreement, and where this Agreement is silent, existing legal principles will be followed in designing and implementing ADRPs.
- 2.7 The Church, the Board and the Government will, at a minimum, accept into an ADRP an IRS Abuse Claim by a Claimant who is seeking Compensation from them based on their vicarious liability for abuses alleged to have been committed by one or more of the following IRS workers:
- 2.7.1 dormitory supervisor;
  - 2.7.2 childcare worker;
  - 2.7.3 principal;
  - 2.7.4 administrator;
  - 2.7.5 teacher;
  - 2.7.6. priest, minister and other clergy; and
  - 2.7.7 other employees whose specific duties gave rise to particular opportunities for child abuse.
- 2.8 The Government, the Board and the Church may agree to include additional IRS Abuse Claims and to determine fault-based liability issues within ADRPs.
- 2.9 Where a liability issue pertaining to an IRS Abuse Claim has not been accepted as appropriate for resolution within ADRPs, the Government, the Board and the Church will consider ways to facilitate the early resolution of the issue by the courts with a view to considering expansions of the scope of the ADRPs. The Government, the Board and the Church agree to negotiate whether to include within ADRPs additional categories of IRS abuse cases once the courts have determined the liability issue in question at a level that resolves the matter for them.
- 2.10 The ADRPs will include a fair, safe, preliminary mechanism by which enough can be learned about IRS Abuse Claims before they enter the system to allow a determination of whether the alleged abuse, if proven, would establish a basis for

resolution within the ADRP. This may be accomplished through an application form and screening process, or other appropriate mechanism.

- 2.11 The Government, the Board and the Church may agree to a framework setting out characteristics of categories of IRS Abuse Claims and levels of Compensation to be paid for each category in the applicable jurisdiction, having regard to existing Canadian court precedents. ADRPs will be designed such that the framework is binding upon participants and decision makers within them.
- 2.12 The Government, the Board and the Church may agree on standards defining the classes of cases for which compensation will be paid within ADRPs, and where they do so, ADRPs will be designed such that those standards are binding upon participants and decision makers within them.

#### Claims Proceeding Outside ADRPs

- 2.13 If IRS Abuse Claims proceed outside ADRPs or other Resolution Processes, the Government, the Church and the Board will defend and seek to resolve them pursuant to Part V unless other resolution processes have been ordered by a court or otherwise developed.
- 2.14 Settlement offers will be based on evidentiary considerations, legal principles, and any specific standards and levels of Compensation agreed to by the Government, the Board and the Church.

#### Remedies

- 2.15 A range of remedies may be offered to a Claimant with a Validated Claim, including the establishment of an historical record, acceptance of responsibility by the Church, the Board and the Government, apologies, therapy, counselling, and Compensation.

#### Standard of Proof

- 2.16 IRS Abuse Claims will be resolved in ADRPs or settled only where the standard of proof utilized by the courts for the matters of like seriousness has been met.

#### Defences

- 2.17 The Government, the Church and the Board agree that IRS Abuse Claims will be resolved without regard to possible defences which do not go to the merits, such as limitations or laches, in ADRPs, other Resolution Processes, or pre-trial conferences. At trial, Crown immunity, where applicable, will be asserted by the Government, and the Church and Board will be free to determine the defences they will assert.

## Releases

- 2.18. As part of any settlement agreement with a Claimant, the Claimant will release the Government, the Church and the Board from any and all past, present and future claims, whether or not now known to or existing at law, arising from or connected to, directly or indirectly, an Indian Residential School, including, but not limited to, claims for loss of culture and language, or violation of the existing aboriginal or treaty rights of the aboriginal people of Canada set out in s.35 of the *Constitution Act, 1982*.
- 2.18.1 The Release shall be acceptable to the Government, the Board and the Church which shall settle upon the form and content prior to the execution of this Agreement and which may from time to time amend the Release by mutual agreement in writing.
- 2.18.2 The Government and the Church will, as set out in Section 6.1, be continuing their programs to address the need for healing and reconciliation arising from the Indian Residential Schools.

## PART III: IRS SETTLEMENT FUND

### Establishment of Fund

- 3.1 Forthwith on the execution and delivery of this Agreement, the Board will establish the Settlement Fund by irrevocably setting aside from its own resources the sum of \$2,100,000.00 (the "Settlement Amount").
- 3.2 The Board hereby irrevocably declares itself to be the trustee of the Settlement Amount for the benefit of those entitled to be paid Compensation from it pursuant to Part IV of this Agreement, and will use and expend the same only in accordance with the provisions of this Agreement.
- 3.3 The Board will segregate the Settlement Fund by maintaining separate and segregated accounts of the operation, management and expenditure thereof, and will provide the Government with quarterly financial statements of the operation of the Settlement Fund.

### Investment Policy and Interest

- 3.4 The Board may invest any part of the Settlement Amount not immediately required for the payment of Compensation in Government Treasury Bills and /or term deposits or redeemable guaranteed investment certificates of Canadian chartered banks or trust companies, and the interest accruing on and accretions to the Settlement Amount shall be used by the Board, first for the payment of



reasonable administration costs of the operation of the Settlement Fund and thereafter as determined by the Board.

#### Payments from Fund

- 3.5 The Settlement Fund will be the source of payments to be made in accordance with Part IV for Validated Claims.

#### Events of Default:

- 3.6 The occurrence of any of the following events or conditions will be a default:
- 3.6.1 if monies are not paid out of the Settlement Fund pursuant to the terms of this Agreement; or,
- 3.6.2 if the Church or the Board amalgamates with another entity on terms which do not provide that the amalgamated entity secures the full outstanding balance remaining in the Settlement Fund as of the date of amalgamation, or becomes insolvent or bankrupt or makes a proposal or files an assignment for the benefit of creditors under *The Bankruptcy and Insolvency Act* or similar legislation in Canada or any other jurisdiction, or ceases doing business, or winds up, unless prior to such amalgamation, insolvency, bankruptcy, or assignment another entity that is solvent and with sufficient funds to do so secures the balance remaining in the Settlement Fund on the date of the insolvency, bankruptcy, or assignment and assumes the obligations of the Church or the Board under this Agreement.

#### Remedies Upon Default:

- 3.7 In the event of default as defined in Section 3.6, in addition to any other rights or remedies to which the Government and/or Receiver may be entitled by law, the Government may declare this Agreement void by notice in writing to the Church and the Board and may resume the issuance of third party notices and cross-claims, and the Government and/or a Receiver, as applicable, will have the following additional rights:
- 3.7.1 The Government may by instrument in writing appoint any person as a Receiver of the Settlement Fund. The Receiver shall be appointed pursuant to and operate under the laws of Ontario.
- 3.7.2 The Government may from time to time remove or replace a Receiver or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by the Government or the court will, for the purposes relating to responsibility for the Receiver's acts or omissions, remuneration and expenses, be considered to be the Board's agent.

- 3.7.2.1 Prior to appointing any person as a Receiver under Section 3.7.1 or applying to court under Section 3.7.2 for appointment of a Receiver the Government may allow the Settlement Fund and the Board a 60 day period to use good faith efforts to remedy the default.
- 3.7.3 The Government or the Receiver may take possession of all or any part of the real and/or personal assets of the Settlement Fund, and retain it or them for as long as the Government or Receiver considers appropriate, receive any income from the Settlement Fund and enforce such obligations of the Church and the Board to the Settlement Fund which the Government or the Receiver considers appropriate.
- 3.7.4 The Government or the Receiver may use, collect, sell, or otherwise dispose of, release, release to any person and otherwise deal with the assets of the Settlement Fund, in such manner upon such terms and at such times as the Government or the Receiver considers appropriate. The Government or Receiver may make any sale, or other disposition of the assets of the Settlement Fund in the name of and on behalf of said entity or otherwise.
- 3.7.5 All proceeds recovered pursuant to Sections 3.7.3 or 3.7.4 shall be applied, first, to pay the expenses related to the appointment of the Receiver and the reasonable expenses and remuneration of the Receiver or the Government with respect to the exercise of the powers under this Agreement as agreed to by the Board or assessed by a court and, second, to discharge or satisfy any obligations of the Settlement Fund, the Church and the Board to pay Validated Claims under this Agreement.
- 3.8 This Agreement comes into force on the third day following compliance in full with Section 3.1.

PART IV  
APPORTIONMENT AND PAYMENT OF COMPENSATION

- 4.1 Upon the resolution of an IRS Abuse Claim by:
- 4.1.1 a final decision of an ADRP or other Resolution Process;
  - 4.1.2 a settlement agreement signed by the Government pursuant to Part V; or
  - 4.1.3 a trial or appellate judgment when counsel for the Government certifies that this Agreement applies;

and, where any applicable appeal or review period has lapsed without an appeal or review being filed, the Board shall, in the order in which they are received, within 60 days pay from the Settlement Fund to the Claimant of the Validated Claim or such Claimant's counsel, an amount equal to 30% of the Compensation set out in the decision, settlement agreement or judgment and the Government shall pay to the Claimant or such Claimant's counsel an amount equal to 70% of such Compensation.

- 4.2 Where counsel for the Government informs the Board that all or part of the Compensation awarded at a trial relates only to an intentional tort committed prior to May 14, 1953, the Board shall pay the Claimant 100% of such Compensation from the Settlement Fund, and Section 4.1 shall apply only to the balance of such Compensation if any.
- 4.3 Where counsel for the Government informs the Board that Compensation is payable to a Claimant whose Validated Claim is based on one or more events the first of which occurred on or after April 1, 1969, Section 4.1 shall not apply. In such circumstances, as among the Government, the Church and the Board, the Government shall be responsible for and pay 100% of the Compensation and no payment shall be made from the Settlement Fund for such claim.
- 4.4 Notwithstanding any other obligation of the Fund, the Board shall pay to the Church from the Settlement Fund all Compensation the Board and the Church have paid to a Claimant to settle an IRS Abuse claim prior to the coming into force of this Agreement.
- 4.5 The Parties hereto agree that the Church and Board's liability for all Compensation for IRS Abuse Claims shall not exceed the amount of the Settlement Fund as set out in Section 3.1 and in the event that all funds are paid into and out of the Settlement Fund pursuant to the terms hereof, other than Section 4.6, any remaining liability the Church and the Board have for IRS Abuse Claims shall be paid by the Government. The following Parts and sections of this agreement shall thereafter have no further force and effect: all of Part II except Sections 2.2, 2.3, 2.5, 2.6, 2.17, and 2.18; all of Part III; all of Part IV except Sections 4.5, 4.7 and 4.8; and Sections 5.4, 5.6.2, and 5.6.3.
- 4.6 In the event that on January 1, 2020, there are no IRS Abuse Claims pending or, two years from the date that there are no IRS Abuse Claims pending, whichever comes first, any balance in the Settlement Fund shall be paid to the Board. Should any IRS Abuse Claims arise after the balance in the Settlement Fund has been released to the Board, the liability of the Board and the Church for such IRS Abuse Claims shall be limited to returning to the Settlement Fund the amount of the Settlement Fund released to the Board.

- 4.7 In the event that all IRS Abuse Claims have been settled, or in the event that all funds have been paid into and out of the Settlement Fund pursuant to the terms hereof, other than Section 4.6, then notwithstanding anything to the contrary herein or elsewhere contained, the Government will release and forever discharge the Church and the Board from any and all causes of action, claims or demands for damages for IRS Abuse Claims. In such event the Government will also agree not to make any claims or demands or commence, maintain or prosecute any action, cause or proceeding for damages, compensation, loss or any other relief whatsoever against the Church or the Board arising directly or indirectly from any IRS Abuse Claim.
- 4.8 The Government agrees that payment into and payment out of the Settlement Fund in accordance with this Agreement, other than Section 4.6, shall operate conclusively as an estoppel in the event of any such claim, action or proceeding and may be pled as such, and further agrees to indemnify and save harmless the Church and the Board from any and all claims or demands for damages and assessed costs and disbursements payable to any party other than the Church or the Board in any IRS Abuse Claim.

PART V:  
ALLOCATION OF RESPONSIBILITIES  
TO VALIDATE AND SETTLE ABUSE CLAIMS

- 5.1 It is the Government's intention to defend and resolve all IRS Abuse Claims in which it is a named party. For claims based on intentional torts arising prior to May 14, 1953, the Government will assert immunity if the matter proceeds to trial and will play no role in the defence after a court finds such immunity. The Government will provide written notice of its intention to the Church and the Board not later than 30 days before the start of such trial.
- 5.2 The Church and the Board may elect not to participate in the validation, resolution or defence of IRS Abuse Claims, but Compensation will be paid as provided for in this Agreement. Where the Church and the Board participate in the validation, resolution or defence of an IRS Abuse Claim, it shall be at their own expense.
- 5.3 The Government, the Church and the Board each accept and acknowledge that their respective representatives and counsel are instructed by, act for, and represent only their principal.
- 5.4 The Church, the Board and the Government agree that instructions given to their respective counsel will be consistent with the intent and terms of this Agreement.

- 5.5 Where the Church and the Board elect not to participate in the validation, resolution or defence of IRS Abuse Claims, then the Church and the Board will at their own expense:
- 5.5.1 comply with all reasonable requests from the Government for information and assistance during the proceedings;
  - 5.5.2 provide counsel for the Government and any researchers or experts retained by them, with full access to all relevant files and databases, excepting documents with respect to which solicitor-client privilege or other lawful privilege applies and is asserted. Any information obtained from records pursuant to this section will be used exclusively for the defence of the IRS Abuse Claim or Claims for which the information was sought unless otherwise agreed in writing;
  - 5.5.3 participate in any apologies, reconciliation or closure ceremonies that are agreed to as part of the resolution of an IRS Abuse Claim or Claims, and, provided the terms of this Agreement have been followed, support the result achieved as if it had been represented by counsel and had defended the Claim or Claims;
  - 5.5.4 provide disclosure and production of relevant documents in their possession or control, provide witness statements on request, attend at the discovery of their witnesses, and otherwise facilitate the testimony of witnesses within their employ; and
  - 5.5.5 accommodate a Claimant's reasonable request that a representative of the Church and the Board attend a hearing while a Claimant is giving evidence or otherwise relating his or her experience at an IRS.
- 5.6 Where the Church and the Board elect not to participate in the validation, resolution or defence of IRS Abuse Claims, the Government:
- 5.6.1 will facilitate all reasonable requests to ensure that where employees or former employees of the Church or the Board are the subject of an IRS Abuse Claim or Claims, such employees or former employees will have an opportunity to have their account of events heard in any resolution process. The Government will not be responsible for any expense related to the participation of the employee or former employee of the Church or the Board unless the Government requires the participation of such employee or former employee for its own purposes;
  - 5.6.2 intends to participate in trials, ADRPs and other Resolution Processes as necessary to ensure that appropriate inquiries are made of the Claimants and any other witnesses, to lead such evidence as may be admissible and appropriate, and to make submissions; and

- 5.6.3 where an ADRP or other Resolution Process does not provide for a decision on Compensation, or in any out-of-court settlement, will participate in and may conclude negotiations to determine the amount of Compensation, provided the amount of Compensation is consistent with any standards and levels agreed to by the Government, the Church and the Board.
- 5.7 The Government agrees to co-operate with the Church and the Board to minimize the circumstances in which the Claimant pursues independent causes of action or theories of liability against the Church and the Board.
- 5.7.1 The Government or the Church and the Board will advise a Claimant and may advise the court that if either is liable for any portion of an IRS Abuse Claim, such Claimant will receive 100% of Compensation, and no issue of apportionment between them need be litigated to secure full Compensation.

#### Reciprocal Releases and Indemnities

- 5.8 The Church and the Board agree that they will bring no action or claim whatsoever against the Government or its counsel related in any way to the validation, resolution or defence of any IRS Abuse Claims, and agree that this section shall operate as a full and complete defence to any such claim and that the Church and the Board shall be barred from recovering any and all amounts claimed by way of damages, interest, costs or expenses in any way related to such claims. The Church and the Board further agree to jointly and severally indemnify the Government for any and all costs, expenses and damages suffered by the Government as a result of such action or claim being brought against the Government or its counsel by them.
- 5.9 The Government agrees that it will bring no action or claim whatsoever against the Church or the Board or their counsel related in any way to the validation, resolution or defence of any IRS Abuse Claims, and agrees that this section shall operate as a full and complete defence to any such claim and that Government shall be barred from recovering any and all amounts claimed by way of damages, interest, costs or expenses in any way related to such claims. The Government further agrees to jointly and severally indemnify the Church and the Board for any and all costs, expenses and damages suffered by the Church and the Board as a result of such action or claim being brought against the Church or the Board or their counsel by the Government.
- 5.10 Sections 5.8 and 5.9 do not operate to prevent the Government, the Church or the Board bringing actions to enforce the provisions of this Agreement.

PART VI:  
OTHER CLAIMS

- 6.1 In addition to meeting their obligations under this Agreement, the Government and the Church will be continuing their own programs to address the need for healing and reconciliation arising from the Indian Residential Schools. They will share information, and where feasible and appropriate, co-operate in their programs.
- 6.2 The Government and the Church have individually determined that no basis exists at law to found a cause of action for the loss or a diminution of aboriginal language or culture arising from or connected to the operation of an IRS.
- 6.3 The Government, the Church and the Board agree that efforts to assert claims referred to in Section 6.2, and any other claim arising from or connected to the operation of an IRS which is not an IRS Abuse Claim (hereinafter collectively referred to as a "Section 6.3 Claim"), will be vigorously opposed by them and they agree to co-operate in the defence of such claims.
- 6.4 Where a plaintiff in a Section 6.3 Claim is proceeding against only the Government as a defendant and not against the Church or the Board, including where a plaintiff has discontinued against the Church or the Board, then the Government will defend the claim against the Government.
- 6.4.1 Where the Government is of the opinion that the Church or the Board is partially or wholly responsible for any liability arising from such claim, the Government shall, as early as reasonably possible, deliver written notice to the Church and the Board setting out a description of the Section 6.3 Claim and the basis upon which the Government asserts the Church or the Board is responsible for the Section 6.3 Claim;
- 6.4.1.1 The Church or the Board may, following efforts to resolve the matter through Part VII, bring a motion in the proceedings to strike the notice on the basis that it does not disclose a reasonable cause of action.
- 6.4.2 The Church and the Board agree that as early as reasonably possible and no later than the start of trial, their counsel will attend in court and will consent to an order adding them as a party to the action and to the issuance of a judgment against them and in favour of the Government for contribution in the event the Government is found liable to the plaintiff. The extent of contribution required of the Church and the Board under the contribution judgment will be determined in accordance with Section 6.10 hereof, and the contribution may be nominal or greater.
- 6.4.3 If the Government is found liable to the plaintiff, the Church and the Board shall then resolve the apportionment of liability for such action in

accordance with the terms of Section 6.10. In support of this, the Government, the Church and the Board will advise the court of the terms of section 6.10 no later than the outset of the trial, and will ask the court, to the extent consistent with determining the plaintiff's claim, including the defence thereof, to refrain from making findings as to apportionment of liability as between the Church, the Board and the Government. Nothing herein shall restrict the evidence that the Government, the Church and the Board may present at the trial of the plaintiff's claim.

- 6.5 Where the plaintiff in a Section 6.3 Claim has named the Government and the Church or the Board and asserts that they are jointly and severally liable, the Government accepts that the Church and the Board may seek the plaintiff's agreement to discontinue against them, but where the plaintiff does not, the Church and the Board, where named, will advise the court that they consent to a judgement for contribution against them in favour of the Government, and where either of them is not named, they agree to proceed as set out in Section 6.4.2.
- 6.5.1 Where a plaintiff in a Section 6.3 Claim is proceeding against the Government, and the Church or the Board, the Government, the Church and the Board will no later than the outset of the trial also inform the court that it is not necessary to consider apportionment pending their efforts to resolve that issue pursuant to this Agreement. The Government, the Church and the Board will inform the court of the terms of Section 6.10, and ask the court, to the extent consistent with determining the plaintiff's claim, including the defence thereof, to refrain from making findings as to apportionment of liability as between the Church and the Board and the Government. They will also inform the court of a mechanism for the payment of the damages to the plaintiff subject to any stay or appeal. Nothing herein shall restrict the evidence that the Government, the Church and the Board may present at the trial of the plaintiff's claim.
- 6.5.2 The extent of contribution required of the Church and the Board under the contribution judgment will be determined in accordance with Section 6.10 hereof and the contribution may be nominal or greater.
- 6.6 In the event of a breach of Section 6.4.2 or Section 6.5 by the Church or the Board, the Government may, by notice in writing to the Church and the Board, make a claim of default and require that it be rectified within 10 days. If such breach is not rectified within 10 days of delivery of such notice, or if within that time period the Church or the Board have not brought an application returnable on no more than 10 days' notice, for relief from the application of this Section in the specific instance, the Government may declare Part VI of this Agreement to be of no force and effect from and after the expiry of 10 days following the date of delivery of such notice and Part VI shall thereupon be deemed to be and will thereupon be of no force and effect.



- 6.6.1 In addition to the provisions of Section 8.4, in the event the Government makes a declaration under Section 6.6, Part VI of this Agreement is severable from the other Parts of this Agreement which remain in full force and effect.
- 6.7 Where a plaintiff in a Section 6.3 Claim has named only the Church or the Board as a defendant and not the Government and where the Church or the Board is of the opinion that the Government is partially or wholly responsible for any liability arising from such claim, then, as early as reasonably possible, the Church or the Board shall deliver a written notice to the Government setting out a description of the Section 6.3 Claim and the basis upon which the Church or the Board asserts the Government is responsible for the Section 6.3 Claim. In such circumstances, the Government will not oppose being added as a party defendant, third party or defendant by cross-claim in a Section 6.3 Claim, as the case may be, at the instance of the Church or the Board, notwithstanding the discontinuance of and prohibition against third party and cross-claims set out in Section 6.11. The Government will be at liberty to raise in defence to an action or the third party claim or cross-claim all defences that were or are available to the plaintiff's claim and all defences available in a claim for contribution or indemnity.
- 6.8.1 Sections 6.4, 6.5 and 6.11, in their entirety, do not apply in a Section 6.3 Claim where a claimant sues in a representative capacity or where a party in a Section 6.3 Claim seeks to have the action certified as a class action or a court of competent jurisdiction has certified the action as a class action (hereinafter collectively referred as a "Section 6.3 Class Action").
- 6.8.1.1 The Government, the Church or the Board may commence or continue, as the case may be, third party proceedings or cross-claims against each other in a Section 6.3 Class Action.
- 6.8.1.2 The Government, the Church and the Board will participate in the defence of a Section 6.3 Class Action and, to the extent possible and consistent with the Government, the Church and the Board representing their own interests, the Government, the Church and the Board will cooperate with each other in the defence of a Section 6.3 Class Action.
- 6.8.2 Sections 6.1, 6.2, 6.3, 6.9 and 6.12 to 6.17, inclusive, apply in their entirety, mutatis mutandis, to a Section 6.3 Class Action.
- 6.8.3 In the event the Government obtains judgment against the Church or the Board in a Section 6.3 Class Action, then the criteria set out in Section 6.10.1 apply to determine the amount of payment to be made by the Church and the Board on the judgment and the enforcement of the contribution shall be subject to Sections 6.10.5 and 6.10.6.

- 6.9.1 The Church and the Board acknowledge that in Section 6.3 Claims the Government will be defending the claim against the Government only and in so doing will not be acting for the Church or the Board and will defend the claim as it sees fit, whether or not its defence conflicts with the interests of the Church or the Board, and the Government acknowledges that the Church and the Board, where they participate in the defence of these claims, will proceed on the basis of acting for themselves and not the Government.
- 6.9.2 Where the Church or the Board is not named by a Plaintiff in a Section 6.3 Claim, but has agreed to judgment for contribution against itself in accordance with this Agreement it may, but is not required to, participate in the trial of the Plaintiff's claim. Whether or not they participate in the trial of the Plaintiff's claim, the Church and the Board, to the extent possible without prejudicing their own interests, shall fully co-operate in the defence of the Section 6.3 Claim.
- 6.9.3 The Church and the Board in a Section 6.3 Claim will provide production of documents, will produce their representatives for discovery and their witnesses at trial in accordance with the applicable rules of Court and, to the extent possible without prejudicing their own interests, shall fully co-operate in the defence of the action.
- 6.10 Subject to any stay or appeal, where a court has imposed liability in an action set out in Sections 6.4 and 6.5 above, the Government, the Church and the Board agree that the apportionment of their respective responsibilities to pay such liability shall be determined as follows:
- 6.10.1 The Government and the Church will in good faith negotiate an apportionment of such liability based on the following criteria:
- 6.10.1.1 A fair apportionment of moral, legal and financial responsibilities;
  - 6.10.1.2 The voluntary nature of the Church;
  - 6.10.1.3 The viability and sustainability of the Church in Canada;
  - 6.10.1.4 The legal basis on which liability was found;
  - 6.10.1.5 The level of participation of the Church in the development, administration or operation of any IRS from which the successful Section 6.3 Claim arises.
- 6.10.2 If the Government, the Church and the Board do not agree to an apportionment of liability under Section 6.10.1, then any of them may commence proceedings to determine the issue of contribution.
- 6.10.3 In such proceedings, the Government, the Church and the Board agree that the evidence in the trial of the plaintiff's action shall be evidence,

together with any further evidence led by the Government, the Church or the Board. The Government, the Church and the Board also agree that the Reasons for Judgment in the plaintiff's action shall be available to and may be relied upon by the judge in the new proceedings, provided that findings made in the first trial shall not be binding upon the judge in the new proceedings, where, as a result of further evidence led in the second proceedings the judge determines that such findings should not be relied upon in the second proceedings. The Government, the Church and the Board agree that the only issue for determination in the proceedings is the extent of contribution to be paid.

- 6.10.4 In proceedings commenced under Section 6.7 and 6.10.2 the Government, the Church and the Board, will be entitled to raise all defences as to the extent of contribution that were available to the plaintiff's claim in the first proceedings, and in determining whether the contribution shall be nominal or greater, the court shall have regard to all available defences. The Government will not rely on the terms of this Agreement to resist a defence asserted by or on behalf of the Church or the Board.
- 6.10.5 Where a court has determined the apportionment of liability as among the Church, the Board and the Government and has awarded judgment in favour of the Government against the Church and/or the Board, and where the Church or the Board advises the Government that it cannot reasonably pay the judgment, the Government will make reasonable efforts to agree upon the amount to be paid and the terms of payment, and Sections 6.10.1 (apportionment principles) and 7.6 (mediation) apply.
- 6.10.6 Where discussions and mediation pursuant to Section 6.10.5 do not result in resolution of the amount to be paid, the Government further agrees that in any proceeding or step taken to enforce the judgment for contribution against the Church and the Board its recovery shall be limited to an amount determined by the court pursuant to the principles in Section 6.10.1. Such determination shall be by way of a summary application to a provincial superior court
- 6.11 As soon as reasonably practicable, and no later than 60 days after the coming into force of this Agreement, the Government, the Church and the Board shall, on a without costs basis, discontinue all cross-claims and third party claims seeking contribution and indemnity from each other in all Section 6.3 Claims and hereby agree not to commence or continue any such cross-claims or third party claims in any Section 6.3 Claim without the consent of the other as set out herein or otherwise as provided for in this Agreement.
- 6.12 In order to minimize the expenses of the Church and the Board, the Government, without acting for or representing the interests of the Church or the Board, and where it can be done without compromising its own interests, will, wherever it, the Church and the Board have a common defence position in Section 6.3 Claims:

- 6.12.1 consult with the Church and the Board as to the best strategy to employ in the defence of the claim;
  - 6.12.2 prepare and pursue motions and procedural matters that are required, subject to the Church and the Board continuing to be represented by their own counsel. The Church and the Board agree to support such steps when taken by the Government;
  - 6.12.3 carry out and share with the Church and the Board required legal, factual and historical research which is related to the plaintiff's claim and is not the subject of an applicable and asserted privilege;
  - 6.12.4 where permitted full access to the Church and the Board's files and archives, carry out the search for and production of documents;
  - 6.12.5 conduct examinations for discovery and pursue undertakings and motions arising from such discoveries;
  - 6.12.6 retain and pay experts it feels should provide evidence and lead such expert evidence at trial;
  - 6.12.7 prepare document and exhibit books for discovery and trial; and
  - 6.12.8 prepare legal research, legal argument, and briefs of case law for trial.
- 6.13 The Church and the Board agree that to the extent possible without prejudicing their own interests they will support, or not oppose, motions or arguments advanced by the Government related to limitations, laches, Crown immunity, the prospective nature of s. 35 of the *Constitution Act, 1982*, or the application of the Crown policy defence.
  - 6.14 The Church and the Board hereby further acknowledge and agree that they will bring no action or claim whatsoever against the Government or its counsel related in any way to the conduct of the validation, resolution or defence of any Section 6.3 Claim, and agree that this Section shall operate as a full and complete defence to any such claim and that the Church and the Board shall be barred from recovering any and all amounts claimed by way of damages, interest, costs or expenses in any way related to such claims. The Church and the Board further agree to jointly and severally indemnify the Government for any and all costs, expenses and damages suffered by the Government as a result of such action or claim being brought against the Government or its counsel by the Church or the Board, or their counsel.
  - 6.15 The Government acknowledges and agrees that it will bring no action or claim whatsoever against the Church or the Board or their counsel related in any way to the conduct of the validation, resolution or defence of any Section 6.3 Claim, and agrees that this section shall operate as a full and complete defence to any such claim and that the Government shall be barred from recovering any and all

amounts claimed by way of damages, interest, costs or expenses in any way related to such claims. The Government further agrees to indemnify the Church and the Board for any and all costs, expenses and damages suffered by them as a result of such action or claim being brought against them or their counsel by any of the Government or its counsel.

- 6.16 The Government, the Church and the Board agree to establish a Cultural Claims Review Steering Committee which shall meet at the request of any of them to (a) review issues concerning the implementation of this Part and (b) consult on the most appropriate defence strategy for any claim or group of claims to which this Part applies.
- 6.17 In a Section 6.3 Claim the Government shall be responsible for and pay compensation for any liability shared with the Church or the Board where the liability as found is based on one or more acts or omissions, all of which occurred after April 1, 1969.

PART VII:  
RESOLUTION OF DISPUTES  
CONCERNING THIS AGREEMENT

- 7.1 The Government, the Church and the Board share the following objectives in the implementation of the Agreement, namely to:
- 7.1.1 co-operate with each other to develop harmonious working relationships;
  - 7.1.2 prevent, or, alternatively, to minimize disagreements;
  - 7.1.3 identify disagreements quickly and resolve them in the most expeditious and cost-effective manner; and
  - 7.1.4 resolve disagreements in a non-adversarial, collaborative and informal atmosphere.
- 7.2 The Government, the Church and the Board agree that if any dispute arises out of, or has arisen relating to this Agreement, or the breach, validity or interpretation or subject matter thereof, they will endeavor diligently to settle the dispute through good faith negotiations.
- 7.2.1 Section 7.2 does not abrogate the rights to terminate this Agreement set out in Sections 3.7 and 6.6, nor the right to seek specific performance as set out in Section 7.7.
- 7.3 If the Government, the Church and the Board do not resolve all the issues in dispute during the course of, or as a result of the negotiations, their rights with

respect to the remaining unresolved issues shall remain unaffected by the negotiations in any subsequent proceeding.

- 7.4 The Government, and the Church and the Board collectively, shall each, within (60) days of the execution date of this Agreement, appoint one person as their Nominee to an Implementation Steering Committee, for the purpose of overseeing the administration and interpretation of the provisions of this Agreement and shall provide in writing the name of their Nominee to the other. The Government shall be entitled to one Nominee and the Church and the Board collectively shall be entitled to one Nominee.
- 7.5 The two Nominees constituting the Implementation Steering Committee shall meet at Ottawa in the Province of Ontario, or otherwise in Canada as agreed, at least once each calendar year during the currency of this Agreement. The purpose of each meeting will be to review performance under this Agreement, and to resolve by consensus all disputes that arise or have arisen in the interpretation and implementation of this Agreement. The minutes of such meetings shall be signed by each Nominee at the conclusion of the meeting and filed with the Government, the Church and the Board.
- 7.6 If the Government, the Church and the Board are unable to resolve the dispute through negotiations within 120 days, any of them may request the commencement of mediation to resolve the dispute. The Mediator would be a third party neutral, who has no authority to resolve the dispute, but would facilitate resolution.
- 7.6.1 The mediation will be conducted by one Mediator jointly agreed upon by the Government and the Church and the Board collectively.
- 7.6.2 The Government, the Church and the Board will make a serious attempt to resolve the dispute through mediation by:
- 7.6.2.1 identifying underlying interests;
  - 7.6.2.2 isolating points of agreement and disagreement;
  - 7.6.2.3 exploring alternative solutions;
  - 7.6.2.4 considering compromises or accommodations; and
  - 7.6.2.5 co-operating fully with the mediator and giving prompt attention to, and responding to all communications from the mediator.
- 7.6.3 The Government, the Church or the Board may withdraw from mediation at any time by giving at least 21 days' written notice of its intention to the

others and the mediator.

- 7.7. Notwithstanding Section 7.6, the Government may by notice in writing request that the Church or the Board comply with a commitment made in this Agreement.
- 7.7.1 Where the Government has delivered a written request to the Church or the Board in accordance with this Agreement to have the Church or the Board comply with such request within 60 days and the request has not been complied with, the Government may apply by way of summary application to a court of competent jurisdiction where the Church or the Board is located for a mandatory order that the Church or the Board immediately comply with its obligation.
- 7.7.2 The Church or the Board may file responding materials to the summary application and the rules of the court having jurisdiction will thereafter determine the process to be followed in determining the summary application.
- 7.7.3 If the court hearing the summary application finds that the Church or the Board has failed to comply with its obligations under this Agreement the court may order that the Church or the Board immediately comply with its obligations.

#### PART VIII: GENERAL

- 8.1. Where the Government has concluded a Settlement Agreement with a Denomination or Church Entity other than the Church and the Board with respect to IRS Abuse Claims, whether before or after the execution of this Agreement, which includes provisions that in their entirety are more favourable than those contained in this Agreement in their entirety, and where such more favourable provisions are unrelated to the specific circumstances of such Denomination or Church Entity, the Government, at the request of the Church and the Board, shall negotiate with them with a view to amending this Agreement to incorporate provisions no less favourable than those in the other Settlement Agreement.
- 8.2. Notice shall be given, save as otherwise specifically provided, in writing addressed to the Party for whom it is intended and shall be deemed received by the other Party on the day it is signed for if sent by certified mail, and if sent by facsimile, it shall be deemed received on the business day next following the date of transmission. The mailing and facsimile address of the Parties shall be:

8.2.1 As to the Church:

The Presbyterian Church in Canada,  
50 Wynford Drive  
Toronto, Ontario M3C 1J7  
Attention: The Rev. Stephen Kendall  
Principal Clerk

Fax: (416) 441-2825

Copy to:

Cassels Brock & Blackwell LLP  
Barristers and Solicitors  
40 King Street West  
Suite 2100  
Toronto, Ontario M5H 3C2  
Attention: S. John Page and H. Donald Guthrie

Fax: (416) 360-8877

As to the Board:

The Trustee Board of The Presbyterian Church in Canada,  
50 Wynford Drive  
Toronto, Ontario  
M5C 1J7  
Attention: The Rev. Stephen Kendall  
Member

Copy to:

Cassels Brock & Blackwell LLP  
Barristers and Solicitors  
40 King Street West  
Suite 2100  
Toronto, Ontario  
M5H 3C2  
Attention: S. John Page and H. Donald Guthrie

Fax: (416) 360- 8877



As to the Government:

Deputy Minister,  
Indian Residential Schools Resolution, Canada,  
90 Sparks Street  
Ottawa, Ontario  
K1A 0H4

Facsimile 613-996-2811

Copy to:

Department of Justice Legal Services,  
3<sup>rd</sup> floor, 90 Sparks Street  
Ottawa Ontario K1A 0H4

Attention: Senior Counsel

Fax: 613-996 -1810

Copy to:

Deputy Attorney General of Canada,  
Department of Justice Building  
284 Wellington Street  
Ottawa Ontario K1A 0H8

Attention: Assistant Deputy Attorney General, Aboriginal Law

Fax: 613-996-4737

or any other mailing or facsimile addresses as the Parties from time to time may notify each other of in writing.

8.3. This Agreement shall be binding on and enure to the benefit of the Church and the Board and their respective successors and assigns, and the Government.

8.3.1 The Church and the Board represent and warrant to the Government that the execution, delivery and performance of this Agreement are within their respective powers and capacities and have been duly authorized by proper proceedings and that compliance with the covenants, terms, provisions, conditions of this agreement will not conflict with, or result in a breach of any of the terms or provisions of the constituting documents, constitution, by-laws, resolutions, rules or regulations of the Church or the Board, any resolution of their officers or any agreement or instrument to which the

Church or the Board is now a Party or which purports to be binding on the Church or the Board or their respective property and assets.

- 8.4. Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction that governs the interpretation, applicability or enforceability of this Agreement shall not invalidate or impair the remaining provisions of this Agreement, which shall be deemed severable from the prohibited or unenforceable provision, and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.
- 8.5. No amendment, supplement or waiver of any provision of this Agreement or any other agreements provided for or contemplated by this Agreement, nor any consent to any departure by a Party to this Agreement or their representative shall in any event be effective unless it is in writing and signed by the Parties to this Agreement and then the amendment, supplement, waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.
- 8.6. No waiver or act or omission of a Party to this Agreement shall extend to or be taken in any manner whatsoever to affect any subsequent event of default or breach by that Party of any provision of this Agreement or the results or the rights resulting from it.
- 8.7. Time shall be of the essence in this Agreement.
- 8.8. No Member of the House of Commons or Senate may participate in or derive a benefit through this Agreement other than as a member or officer of the Church or as a Claimant.
- 8.9. This Agreement constitutes the entire Agreement among the Parties and cancels and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect of it.
- 8.10. This Agreement shall be interpreted in accordance with the laws in force in the Province of Ontario, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or is to be construed as limiting, waiving or derogating from any federal Crown prerogative.
- 8.11. The Government, the Church and the Board acknowledge that their participation in the negotiations leading to the execution of this Agreement and the execution of this Agreement do not constitute any admission by the Government, the Church or the Board that they have any legal or financial liability to any party in relation to claims arising from or connected to the operation of an IRS. The Government, the Church and the Board agree that they will not advance as evidence or argument in any legal claim against each other in relation to claims


arising from or connected to the operation of an IRS, the negotiations leading to and the execution of this Agreement.

8.12 This Agreement may be signed in counterparts.


IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their respective officers duly authorized, and for the Board, under seal, as of the date stated above.


**THE PRESBYTERIAN CHURCH IN CANADA**

Per:   
DAVID JENNINGS, CONVENOR ASSEMBLY COUNCIL

Per:   
Principal Clerk.

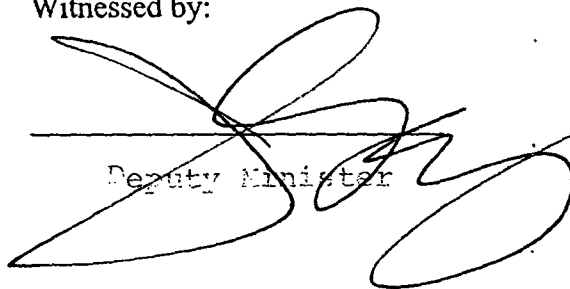
**THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA**

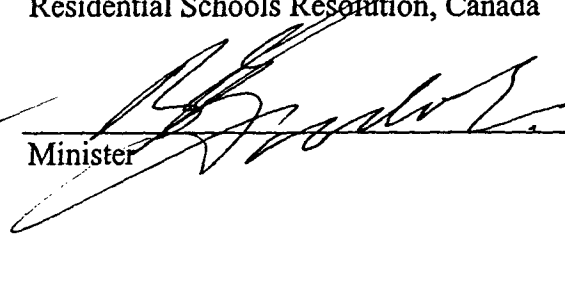
Per:   
DAVID JENNINGS, MEMBER

Per:   
MEMBER

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister responsible for Indian Residential Schools Resolution, Canada**

Witnessed by:

  
Deputy Minister

  
Minister

**SCHEDULE "A"**

**INDIAN RESIDENTIAL SCHOOLS RELATED TO THE CHURCH**

**AT ANY TIME:**

**Alberta**

Stoney Plain

**Saskatchewan**

Regina Industrial School

Muscowepetung

Crowstand

**Manitoba**

Birtle Indian Residential School

**Ontario**

Cecilia Jeffrey Indian Residential School

**BEFORE JUNE 10, 1925**

**British Columbia**

Ahousaht Indian Residential School

Alberni Indian Residential School

**Saskatchewan**

File Hills Indian Residential School

Round Lake Indian Residential School

**Manitoba**

Portage la Prairie Indian Residential School