

## Final Covenant not to Sue

IN CONSIDERATION of the agreement by the Office of Indian Residential Schools Resolution Canada on behalf of Her Majesty the Queen in Right of Canada to resolve my claim arising from or connected with my attendance at and/or the operation of Indian Residential Schools within the Indian Residential Schools Alternative Dispute Resolution Process (“the ADR Process”);

AND IN CONSIDERATION of the payment or promise of payment of the sum of \$\_\_\_\_\_ plus costs [*delete reference to costs if the Claimant is unrepresented*] and disbursements of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_ (“the Award”):

1. Subject to paragraph 4 [*OR “paragraph 3” if para 3 below is deleted because no action had been commenced*], I hereby agree not to assert any further claim or cause of action of any description I ever had, now have, or may in future have against Her Majesty the Queen in Right of Canada, the Attorney General of Canada, their successors and assigns, and their Ministers, officers, employees, servants, and agents (“the Government Parties”) (whether I now know about these claims or causes of action or not), arising out of any tortious, civil, criminal or any other form of legal or equitable wrong occurring in the context of, and/or harm of any description whatever suffered by me as a result of any or all of:

- (a) My attendance at \_\_\_\_\_ Indian Residential School [*insert name of one or more IRS actually attended by the Claimant*], and/or
- (b) My participation in a program or activity associated with or offered at or through any Indian Residential School, and
- (c) The operation generally of Indian Residential Schools.

2. Paragraph 1 of this Covenant not to Sue extends to claims that belong to and could be made by me personally, whether asserted directly by me, or by any other person, group or legal entity on my behalf or as my representative, through a class action or otherwise.
3. [*Delete this paragraph if the plaintiff did not commence an action before applying to ADR*] In addition, and subject to paragraph 4 of this Covenant not to Sue, I hereby agree not to assert any further claim against the Government Parties which was or could have been asserted against them by me in an action against the Attorney General of Canada and [*insert names of any other parties*], being [*Court File No.*] issued in the [*judicial district*] of the [*proper name of court*], for compensation and damages relating to my experiences at Indian Residential School (the “Action”). I agree to discontinue the Action as part of this settlement.
4. This Covenant not to Sue shall not operate as a bar to my initiating a claim against the Attorney General of Canada or Her Majesty the Queen in Right of Canada for losses of specific aboriginal cultural practices and/or for loss of an aboriginal language suffered by me as a result of my attendance at one or more Indian Residential Schools, nor as a bar to my pursuing such a claim should the Canadian courts so permit.
5. This document is a covenant not to sue the Government Parties, and is not and will not be construed as a release of the Government Parties. The claims and causes of action referred to in paragraphs 1, 2 and 3, subject to paragraph 4 [*OR “1 and 2, subject to paragraph 3” if para. 3 above is deleted because no action had been commenced*], are referred to in this Release as “the Covenant-Barred Claims”.
6. This Covenant not to Sue does not affect my right to commence or continue any action for damages against [*identify all relevant Church organizations*]

("the Church") involved in the operation of \_\_\_\_\_ Indian Residential School [*insert name of particular school(s) attended by the claimant*]. However, if I elect to make a claim for damages against the Church, I agree:

- (a) My claim against the Church will be restricted to the portion of my damages which arise from the sole or proportionate liability of the Church;
  - (b) I will not make any claim against the Church for the portion of my damages, if any, which might have been found to arise from the proportionate liability of the Government Parties, such that the Church could then assert a claim for contribution for those damages against the Government Parties or any of them;
  - (c) I will specify in my claim that I am waiving all my rights to recover from the Church any portion of my damages that are the proportionate liability of the Government Parties or any of them;
  - (d) I will ensure that the Statement of Claim in any action commenced or continued by me against the Church reflects the commitments of this paragraph, if necessary by amending the Statement of Claim in an existing action; and
  - (e) I will advise the Court of the provisions of this paragraph of the Covenant not to Sue, and if, and to the extent directed by the Court I will advise the Court and the Church of the amount of the Award.
7. I will not make any further claims of any kind against the Government Parties or any of them with respect to the Covenant-Barred Claims. I accept that the payment of the Award is meant to be a full, final and binding

settlement, as against the Government Parties, of all the Covenant-Barred Claims without exception.

8. I understand that if at any time I, or anyone on my behalf, make any further claim or demand, or threaten to start an action against any of the Government Parties in respect of any of the Covenant-Barred Claims, they may rely on this Covenant not to Sue as an estoppel and a complete defence to any such claim or action.
9. I represent and warrant that I have not assigned any of the Covenant-Barred Claims to any person or corporation.
10. I agree that I will not make any claim in relation to the Covenant-Barred Claims against any person or corporation, other than the Church, who could claim contribution or indemnity in respect of my claim from the Government Parties or any of them.
11. I further undertake and agree to indemnify the Government Parties in respect of claims that may be brought against them by any person, legal entity, government or government agency, whether by way of subrogated right or otherwise, that arise out of or are in any way connected with the Covenant-Barred Claims. This paragraph includes, but is not restricted to, claims for contribution or indemnity asserted by the Church against the Government Parties in any action started by me against the Church under paragraph 6, [*OR "under paragraph 5", if paragraph 3 above is deleted because no action had been commenced*] claims relating to medical and/or dental services or treatment provided to me, and claims relating to compensation paid to me by any government or governmental authority for any of the Covenant-Barred Claims that are criminal assaults.
12. If I later commence a claim that is not a Covenant-Barred Claim for damages for harm or injuries which are the same as or similar to the harm

- or injuries resulting from the Covenant-Barred Claims, and the Government Parties or any of them are made parties to such action, the fact and amount of this settlement, as well as details of the damages or harm which I claimed in the Covenant-Barred Claims, may be disclosed by the Government Parties to the court in the context of such later claim.
13. I further covenant and agree that in connection with any further litigation against the Church arising out of or connected with the Covenant-Barred Claims:
- a) I irrevocably authorize and direct that the Church pay any amounts found to be owing to me, in respect of damages, interest and/or costs, to my solicitor of record;
  - b) I irrevocably authorize the said solicitor to receive all such payments on my behalf; and
  - c) I irrevocably authorize and direct the said solicitor to use the said funds to indemnify the Government Parties in full as required by this agreement before the balance of such funds are paid out to me.
14. I acknowledge and declare that I fully understand the terms of this Covenant not to Sue, and that I have signed the Covenant not to Sue voluntarily for the purpose of obtaining the benefit of the ADR Process and the Award. I further acknowledge that I have sought and obtained legal advice in respect of the Covenant-Barred Claims and this Covenant not to Sue.

I have signed this Covenant not to Sue the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
***[Name of Covenantor]***

(SEAL)

**Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_