

TO BE USED IN LITIGATION CLAIMS FROM OUTSIDE ONTARIO WHERE NO CHURCH IS PARTICIPATING:  
JULY 16, 2004.

## FINAL COVENANT NOT TO SUE

WHEREAS I, [*Plaintiff*] of [*address*], in the province of [*province*], Canada, have commenced 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").

NOW THEREFORE in consideration of the payment of \_\_\_\_\_ Dollars (the "Settlement Funds"), the receipt and sufficiency of which I hereby acknowledge, I covenant and agree as follows:

1. Subject to paragraph 3, 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, and their former, current, and future Ministers, directors, officers, employees, servants, agents, counsel, successors and assigns (all of whom are hereinafter jointly and severally referred to as "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 the following, and/or harm of any description whatever suffered by me as a result of any or all of the following:
  - (a) My attendance at \_\_\_\_\_ Indian Residential School [*insert name of one or more IRS actually attended by the Claimant*], or any other Indian Residential School in Canada, and/or
  - (b) My participation in a program or activity associated with or offered at or through any Indian Residential School; and/or
  - (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. 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.

4. 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 and 2, subject to paragraph 3, are referred to in this Covenant not to Sue as “the Covenant-Barred Claims”.
5. 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 Settlement Funds.
6. I agree to discontinue the Action as against the Government Parties as part of this settlement. I will not make any further claims of any kind against the Government Parties with respect to the Covenant-Barred Claims. I accept that the payment of the Settlement Funds is meant to be a full, final and binding settlement, as against the Government Parties, of all the Covenant-Barred Claims without exception.
7. 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, any of the Government Parties may rely on this Covenant not to Sue as an estoppel and a complete defence to any such claim or action.

8. I represent and warrant that I have not assigned any of the Covenant-Barred Claims to any person or corporation.
9. I represent and warrant that no person, agency or other entity is entitled to indemnity or compensation in connection with the matters alleged in the Action.
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 any of the Government Parties.
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 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 agree and warrant that in connection with any further litigation with 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 Settlement Funds. I further acknowledge that I have sought and obtained legal advice in respect of the Covenant-Barred Claims and this Covenant not to Sue.

15. This Covenant not to Sue binds my heirs, descendants, legal representatives, successors and assigns, and inures to the benefit of the Government Parties and to their heirs, executors, administrators, successors and assigns.

**WITNESS** my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 200\_ at \_\_\_\_\_, in the Province of \_\_\_\_\_.

**SIGNED, SEALED AND DELIVERED**

in the presence of

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
\*\*

**AFFIDAVIT OF EXECUTION**

I, \_\_\_\_\_, of the City of \_\_\_\_\_,  
in the Province of \_\_\_\_\_, MAKE OATH AND SAY AS FOLLOWS:

1. THAT I was personally present and did see \*\*\*\* named in the within instrument who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein.
  
2. THAT the same was executed at \_\_\_\_\_, in the Province of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 2003, and I am the subscribing witness thereto.
  
3. THAT I know the said \*\*\*\* and s\*he is in my belief of the full age of eighteen (18) years or more.

SWORN BEFORE ME at \_\_\_\_\_ )  
\_\_\_\_\_, in the Province of \_\_\_\_\_ )  
\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_, 2003. \_\_\_\_\_ )  
\_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_  
A COMMISSIONER FOR OATHS  
in and for the Province of \_\_\_\_\_.  
My commission expires:  
-or- Being a Solicitor.

\_\_\_\_\_