

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

CIV 2007 485 000095

**BETWEEN**

**NEW ZEALAND MAORI COUNCIL**

First Plaintiff

**THE FEDERATION OF MAORI**

**AUTHORITIES INCORPORATED** being an  
incorporated society representing Maori Authorities

Second Plaintiff

**AND**

**ATTORNEY-GENERAL** sued on behalf of the  
Minister of Finance, the Minister in Charge of  
Treaty of Waitangi Negotiations and the Minister  
for State Owned Enterprises

First Defendant

**SIR GRAHAM LATIMER, PAUL MORGAN,  
KINGI SMILER, JANET MASON, GREGORY  
FORTUIN AND ANGELA FOULKES** being the  
Trustees of the Crown Forestry Rental Trust

Second Defendants

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**AMENDED STATEMENT OF CLAIM**

**Dated: 15 February 2007**

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**SOLICITORS**

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## AMENDED STATEMENT OF CLAIM

The Plaintiffs by their solicitors say:

1. The New Zealand Maori Council is a legal entity formed pursuant to s.17 Maori Community Development Act 1962.
2. The Federation of Maori Authorities Incorporated is an Incorporated Society, established in 1987, to protect, foster and advance the interests of the Federation and to foster and promote the development, sound management and economic advancement of Maori Authorities, including present and future Maori claimants under the Treaty of Waitangi Act and present and future Maori beneficiaries of the Crown Forestry Rental Trust.
3. The First Defendant is sued on behalf of the Minister of Finance, the Minister in Charge of Treaty of Waitangi Negotiations and the Minister for State Owned Enterprises referred to jointly or severally in this proceeding as “the Crown”.
4. The second defendants, namely Sir Graham Latimer, Paul Morgan, Kingi Smiler, Janet Mason, Gregory Fortuin and Angela Foulkes are the Trustees of the Crown Forestry Rental Trust.

### **Background History**

5. On or about 20 July 1989, an agreement (“July Agreement”) was reached between the First and Second Plaintiffs and the Crown on land-use rights of the Crown forestry assets and the Crown’s proposed disposal programme, following the decisions in the *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 and the *New Zealand Maori Council v Attorney-General* [1989] 2 NZLR 142.
6. Clause 6 of the July agreement stated that the Plaintiffs and the Crown would use their best endeavours to enable the Waitangi Tribunal to

identify and process all claims from potential Maori claimants relating to forestry lands and to make recommendations within the shortest reasonable period.

7. Clause 4 of the July agreement contained an assurance from the Crown that the final agreements reached in relation to forestry and assets will conform with the provisions of the “*pro forma legal agreement*”, namely, to enable the Waitangi Tribunal to process the claims.

### **Deed Poll**

8. In or about 17 October 1989, the Plaintiffs and the Crown entered into a Deed Poll, which recognised that protecting Maori customary land claims under the Crown Forest Assets Bill was inappropriate. The Deed specifically recorded that:

- (a) The Crown proposed not to register its title to forest land until the tribunal cleared all claims (Recital D); and
- (b) The Crown gave a specific undertaking not to register land under the Land Transfer Act until all claims had been cleared under the Treaty of Waitangi Act and the tribunal had confirmed whether the land is liable to be returned to Maori ownership.  
(Clause 2)

### **Crown Forest Assets Act 1989**

9. In 1989, the Crown Forest Assets Act 1989 (“CFA Act”) was passed. It was enacted to provide for:
  - (a) The management of the Crown’s forest assets;
  - (b) The transfer of those assets while at the same time protecting the claims of Maori under the Treaty of Waitangi Act 1975; and
  - (c) In the case of successful claims by Maori under that Act, the transfer of Crown forest land to Maori ownership and for payment by the Crown to Maori of compensation.

10. Section 35 CFA Act imposed restrictions on the sale of Crown forest land. In particular s.35 (1) (a) provided that the Crown shall not sell or dispose of any Crown forest land except in accordance with s.8 of the CFA.
11. Section 35(1)(a)(ii) CFA Act provides that the Crown shall not sell, assign or otherwise dispose of any interests in any Crown forestry licence unless the Waitangi Tribunal has made a recommendation under s.8 HB(1)(b) or s.8 HB(1)(c) or s.8 HE of the Treaty of Waitangi Act 1975.
12. Section 8 CFA Act enables responsible Ministers on behalf of the Crown, *“for the purpose of managing Crown forest land, or Crown forestry assets or Crown forestry licence and in accordance with good business practice”* to transfer the fee simple or any interest in any Crown forest land in exchange for the fee simple or any other estate or interest in any adjoining land for such consideration and on such terms and conditions as the responsible Ministers may approve.
13. Section 8 HB(1)(a) Treaty of Waitangi Act 1975 enables the tribunal to recommend either that the land be returned to Maori ownership, or under 8HB(1)(b), (c) or HE, not returned to Maori ownership.

### **Crown Forestry Rental Trust Deed**

14. Section 34 CFA Act makes specific provision for the establishment of a Forestry Rental Trust
15. On 30 April 1990, the Crown by way of a Deed established a Forestry Rental Trust, referred to in s.34 CFA Act and known as the Crown Forestry Rental Trust (“CFRT”).
16. The Trust was established to:
  - (a) Receive the Rental Proceeds from Licences; and

- (b) Make the interest earned from investment of those Rental Proceeds, available to assist Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal, which involve, or could involve, Crown Forest Land subject to a Licence (“Licensed Land”).

- 17. Clause 11 of the CFRT Deed permits the allocation and distribution of trust funds:

*“if the Waitangi Tribunal recommends under s.8 HB(1)(a) of the Treaty of Waitangi Act 1975 that any particular licensed land be returned to Maori ownership. In that event, the persons to whom ownership of that licensed land is to be returned shall from the date of that recommendation be Confirmed Beneficiaries of the Trust and those Confirmed Beneficiaries shall be entitled to receive from the capital of the Trust the amount of the rental proceeds received by the trustees in respect of that licensed land since the commencement of the licence. The Confirmed Beneficiaries will also be entitled to receive the future rental proceeds in respect of that land directly from the licensee for the remaining term of the licence.” Clause 11.1(8)(c).*

(underlining added)

- 18. The CFRT Deed specifically provides under clause 11.2 that where the Waitangi Tribunal recommends under s.8 HB(1)(b) or (c) that any particular licensed land be not liable to return to Maori ownership, then the Crown shall be a Confirmed Beneficiary of the Trust and entitled to receive the rental proceeds from that licensed land.
- 19. By virtue of section 36 CFA Act, when the Waitangi Tribunal makes a final recommendation that land be returned to Maori ownership, the Crown must return the land to Maori ownership and pay compensation in accordance with Schedule 1 of the CFA Act

### **The KEC Deed**

- 20. On 30 September 2006, the Crown entered into the Deed of Settlement of historical claims of the affiliate Te Arawa Iwi/Hapu (“KEC Deed”).

21. In Part 12 of the KEC Deed, the Crown agreed to transfer Settlement Licensed Land and Deferred Licensed Land to the affiliate Te Arawa Iwi/Hapu ( “Te Arawa” ) on specific conditions.

### **Settlement Licensed Land**

22. In Clauses 12.1 to 12.3.3, the Crown agreed to transfer the “Settlement Licensed Land” being the land described in Schedule 4 Part 1, to Te Arawa, and ensure Te Arawa will be a “Confirmed Beneficiary” with all of the benefits accruing under the Treaty of Waitangi Act 1975, the Crown Forest Assets Act 1989 and the CFRT Deed.
23. The Waitangi Tribunal has made no recommendation in relation to the settlement licensed land or to Te Arawa as the Confirmed Beneficiary under s.8HB(1)(a) of the Treaty of Waitangi Act 1975 .

### **Deferred Licensed Land**

24. In Clause 12.22 of the KEC Deed, the Crown offered for sale and Te Arawa agreed to purchase, the Deferred Licensed Land and Clauses 12.23-12.46 give effect to the agreement to purchase.
25. The Deferred Licensed Land is described in Schedule 4 Part 1, which together with the “*Settlement Licensed Land*” amounts to a total land holding of 51,015 hectares being approximately over one third of the Crown forest at Kaingaroa.
26. Clause 12.25 of the KEC Deed confirms that in relation to the Deferred Licensed Land, the Crown will be a “*Confirmed Beneficiary*” under Clause 11.2 of the CFRT Deed, by which the Crown will become entitled to rental proceeds payable since the commencement of each Crown forestry licence and all the provisions of the CFRT Deed shall apply.
27. Clause 12.25.1(c) provides that from the actual deferred settlement date, when the Crown will become a “*Confirmed Beneficiary*” the governance entity of the affiliate Te Arawa Iwi/Hapu will be the

licensor under the Crown forestry licence as if the Deferred Licensed Land had been returned to Maori ownership pursuant to s.36 of the CFA, but s.36(1)(b) of the Act, namely the payment of compensation, does not apply to the return.

28. On the registration of the transfer of the fee simple estate in the Deferred Licensed Land to the said governance entity of the affiliate Te Arawa Iwi/Hapu, the land ceases to be Crown forest land and neither the Crown nor any Court or tribunal may do anything under the Crown Forest Assets Act, if it is inconsistent with Part 12 of the KEC Deed.
29. The deferred settlement date for the Deferred Licensed Land is the date specified in a notice within four months of the settlement date of the KEC Deed or if no notice is given, the date which is six months after the settlement date.

**First Cause of Action: Breach of Undertaking in the Deed Poll of 17 October 1989**

The Plaintiffs repeat the allegations in paragraphs 1 – 29 hereof and say:

**Against the First Defendant:**

30. The Crown gave an assurance to the First and Second Plaintiffs, in the July agreement that the final agreements reached in relation to forestry and assets will enable the Waitangi Tribunal to process claims in relation to the Crown Forestry Assets.
31. By Deed Poll dated 17 October 1989, the Crown gave a specific undertaking not to register land under the Land Transfer Act until all claims had been cleared under the Treaty of Waitangi Act and the Waitangi Tribunal had confirmed whether the land is liable to be returned to Maori ownership.
32. The said undertaking is contained in Clause 2 of the Deed Poll.

33. In breach of its assurance to the First and Second Plaintiffs in the July agreement and in breach of its undertaking in the Deed Poll, the Crown has entered into the KEC Deed, agreeing to transfer the Settlement Licensed Land and the Deferred Licensed Land to the affiliate Te Arawa Iwi/Hapu.
34. In becoming a “*Confirmed Beneficiary*” under Clause 11.2 of the Trust Deed of the Crown Forestry Rental Trust, the Crown will receive approximately \$61 million unlawfully and wrongfully, such rental proceeds being trust funds under the CFRT Deed.
35. The Crown will receive the said benefits as if Clause 11.2 of the CFRT Deed applied, namely where the Waitangi Tribunal recommends that Licensed Land be not liable to return to Maori ownership, when the Waitangi Tribunal process has not been followed.
36. Pursuant to Clause 12.3 KEC Deed, the Crown has agreed with TeArawa that Te Arawa will be a “Confirmed Beneficiary” as if Clause 11.1 of the CFRT Deed applied, namely where the Waitangi Tribunal recommends that Licensed Land is liable to be returned to Maori ownership.
37. Te Arawa will receive the Settlement Licensed Land and accumulated rental proceeds, as if Clause 11.1 of the CFRT Deed applied when the Waitangi Tribunal process has not been followed.
38. As a result of the breach of its undertaking, the Crown will deprive claimants before the Waitangi Tribunal of:
  - (a) Future benefits in relation to the Crown forestry land at Kaingaroa Forest
  - (b) Crown Forestry Land in Kaingaroa Forest, in respect of which claimants have made a claim but have not yet been heard.
  - (c) Rental proceeds from the Crown Forestry lands comprising the Settlement Licensed Land and the Deferred Licensed Land

- (d) Any adequate remedy in the absence of sufficient Crown Forestry land in Kaingaroa Forest, to which the claimants may have a rightful entitlement.
  - (e) Adequate funding from the CFRT to assist in the prosecution of the claimants claims before the Waitangi Tribunal.
39. The Crown, acting in breach of its undertaking as pleaded, will cause financial, economic and proprietary loss to current claimants before the Waitangi Tribunal, the full extent of which will need to be the subject of enquiry.

**Against the Second Defendants:**

40. Under Clause 11.1 CFRT Deed, following the recommendation of the Waitangi Tribunal, the Second Defendants must allocate and distribute such Trust funds to Confirmed Beneficiaries, who are entitled to receive from the capital of the Trust, the amount of the rental proceeds received by the Trustees in respect of that Licensed Land since the commencement of the licence.
41. By virtue of the Crown's breach of its undertaking, the Second Defendants, in allocating or distributing CFRT funds **to Te Arawa and** to the Crown, without a recommendation from the Waitangi Tribunal, will be acting contrary to Clause 11 of the CFRT Deed and the objects of the Trust.

WHEREFORE the Plaintiffs claim:

- A. A declaration that the Crown has acted in breach of its undertaking in the Deed Poll of 17 October 1989, in entering into Part 12 of the KEC Deed.
- B. A declaration that Clauses 12.22-12.25.3 be struck from the KEC Deed forthwith.

- C. A declaration that the Crown is restrained from acting upon the transfer of Settlement Licensed Land and the Agreement for Sale and Purchase of the Deferred Licensed Land, contained in Part 12 of the KEC Deed.
- D. A declaration that Clause 12.25.1 of the KEC Deed is void.
- E. An order restraining the Second Defendants from treating Te Arawa as a “ *Confirmed Beneficiary*” under Clause 11.1 of the CFRT Deed and allocating or distributing any rental proceeds or trust funds to Te Arawa in respect of the Settlement Licensed Land referred to in part 12 of the KEC Deed.
- F. An order restraining the Second Defendants from treating the Crown as a “ *Confirmed Beneficiary*” under Clause 11.2 of the CFRT Deed and allocating or distributing any rental proceeds or trust funds to the Crown in respect of the Deferred Licensed Land referred to in Part 12 of the KEC Deed.
- G. Full indemnity solicitor/client costs against the First and Second Defendants.

**Second Cause of Action: Breach of Trust – the CFR Trust Deed**

The Plaintiffs repeat the allegations in paragraphs 1- 41 hereof and say further:

**Against the First Defendant:**

- 42. The Crown acknowledged under the CFR Trust Deed

*“that a number of Maori have asserted claims to areas of land upon which Crown Forestry Assets are located. Certain applications to the Waitangi Tribunal under the Treaty of Waitangi Act 1975 (as amended by the Crown Forest Assets Act 1989) have been filed by certain of those claimants and it is anticipated that further applications will be made.”*

43. Clause 11 of the CFRT Deed provides for allocation and distribution of Trust funds only where the Waitangi Tribunal has made a recommendation under s. 8HB(1)(a) or s.8HB(1)(b) or (c).
44. The Crown has entered into the KEC Deed, agreeing to transfer the Settlement Licensed Land and the Deferred Licensed Land to the affiliate Te Arawa Iwi/Hapu.
45. The Crown has entered into Clause 12.22-12.25 of the KEC Deed, stating that from the Actual Deferred Settlement date, it will be a “*Confirmed Beneficiary*” under Clause 11.2 of the CFRT Deed and will receive the rental proceeds in relation to the Deferred Licensed Land in Kaingaroa Forest, when the Waitangi Tribunal has made no recommendation under s.8HB(1)(b) or (c).
46. In becoming a “*Confirmed Beneficiary*” under Clause 11.2 of the Trust Deed of the Crown Forestry Rental Trust, the Crown will receive approximately \$61 million unlawfully and wrongfully, such rental proceeds being trust funds under the CFRT Deed.
47. The Crown will receive the said benefits as if Clause 11.2 of the CFRT Deed applied, namely where the Waitangi Tribunal recommends that Licensed Land be not liable to return to Maori ownership, when the Waitangi Tribunal process has not been followed.
48. Pursuant to Clause 12.3 KEC Deed, the Crown has agreed with TeArawa that Te Arawa will be a “*Confirmed Beneficiary*” as if Clause 11.1 of the CFRT Deed applied, namely where the Waitangi Tribunal recommends that Licensed Land is liable to be returned to Maori ownership.
49. Te Arawa will receive the Settlement Licensed Land and accumulated rental proceeds, as if Clause 11.1 of the CFRT Deed applied when the Waitangi Tribunal process has not been followed.

50. The Crown has acted in breach of Clause 11 of the CFRT Deed, in entering into Part 12 of the KEC Deed and ousting the jurisdiction of the Waitangi Tribunal and the Treaty of Waitangi Act 1975.
51. As a result of its breach of the CFRT Deed, the Crown will deprive claimants before the Waitangi Tribunal of:
- (a) Future benefits in relation to the Crown forestry land at Kaingaroa Forest
  - (b) Crown Forestry Land in Kaingaroa Forest, in respect of which claimants have made a claim but have not yet been heard.
  - (c) Rental proceeds from the Crown Forestry lands comprising the Settlement Licensed Land and the Deferred Licensed Land
  - (d) Any adequate remedy in the absence of sufficient Crown Forestry land in Kaingaroa Forest, to which the claimants may have a rightful entitlement.
  - (e) Adequate funding from the CFRT to assist in the prosecution of the claimants claims before the Waitangi Tribunal.
52. The Crown, acting in breach of the CFR Trust Deed as pleaded, will cause financial, economic and proprietary loss to current claimants before the Waitangi Tribunal, the full extent of which will need to be the subject of enquiry.

**Against the Second Defendants:**

53. Under Clause 11.1 CFRT Deed, following the recommendation of the Waitangi Tribunal, the Second Defendants must allocate and distribute such Trust funds to Confirmed Beneficiaries, who are entitled to receive from the capital of the Trust, the amount of the rental proceeds received by the Trustees in respect of that Licensed Land since the commencement of the licence.

54. The Crown has acted in breach of the CFR Trust Deed in entering into contractual obligations under the KEC Deed, requiring the Second Defendants, to allocate or distribute CFRT funds to Te Arawa and to the Crown as a “*Confirmed Beneficiary*”, without a recommendation from the Waitangi Tribunal.
55. The Second Defendants, in allocating or distributing CFRT funds to Te Arawa without a recommendation from the Waitangi Tribunal, will be acting contrary to Clause 11 of the CFRT Deed and the objects of the Trust.
56. The Second Defendants, in allocating or distributing the said CFRT funds to the Crown, pursuant to the Crown’s obligations under Part 12 of the KEC Deed, will be acting contrary to Clause 11 of the CFRT Deed and the objects of the Trust.

WHEREFORE the Plaintiffs claim:

- A. A declaration that the Crown has acted in breach of its undertaking in the Deed Poll of 17 October 1989, in entering into Part 12 of the KEC Deed.
- B. A declaration that Clauses 12.22-12.25.3 be struck from the KEC Deed forthwith.
- C. A declaration that the Crown is restrained from acting upon the transfer of Settlement Licensed Land and the Agreement for Sale and Purchase of the Deferred Licensed Land, contained in Part 12 of the KEC Deed.
- D. A declaration that Clause 12.25.1 of the KEC Deed is void.
- E. An order restraining the Second Defendants from treating Te Arawa as a “*Confirmed Beneficiary*” under Clause 11.1 of the CFRT Deed and allocating or distributing any rental proceeds or trust funds to Te Arawa in respect of the Settlement Licensed Land referred to in part 12 of the KEC Deed.

- F. An order restraining the Second Defendants from treating the Crown as a “*Confirmed Beneficiary*” under Clause 11.2 of the CFRT Deed and allocating or distributing any rental proceeds or trust funds to the Crown in respect of the Deferred Licensed Land referred to in Part 12 of the KEC Deed.
- G. Full indemnity solicitor/client costs against the First and Second Defendants.

**Third Cause of Action: Breach of Fiduciary Duty**

The Plaintiffs repeat the allegations in paragraphs 1- 56 hereof and say further:

**Against the First Defendant:**

- 57. The Plaintiffs and the Crown have entered into the July agreement, whereby the Crown gave an assurance to the Plaintiffs that the final agreements reached in relation to forestry and assets will conform with the provisions of the “*pro formal legal agreement*”, namely to enable the Waitangi Tribunal to process the claims.
- 58. Further, the Crown entered into the Deed Poll with the Plaintiffs and gave a specific undertaking to the Plaintiffs not to register land under the Land Transfer Act until all claims had been cleared under the Treaty of Waitangi Act and the Tribunal had confirmed whether the land is liable to be returned to Maori ownership.
- 59. The CFA Act was passed, enabling the transfer of Crown forest assets, while at the same time protecting the claims of Maori under the Treaty of Waitangi Act 1975, to ensure that in the case of successful claims by Maori, the transfer of Crown forest land would be to Maori ownership, with payment by the Crown to Maori of compensation.
- 60. Section 35 of the CFA Act reinforced the Crown’s undertaking in the Deed Poll that the First Defendant shall not sell, assign or otherwise dispose of any interests in any Crown forestry licence unless the

Waitangi Tribunal had made a recommendation under s.8HB or s.8HE of the Treaty of Waitangi Act 1975.

61. Section 34 CFA Act provides for the establishment of a Forestry Rental Trust and the CFRT Deed was established to receive the rental proceeds from Crown forestry licenses and make the interest earned from investment of those rental proceeds to assist Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal involving Licensed Land.
62. The CFR Trust Deed provided for the allocation and distribution of Trust funds only where the Waitangi Tribunal made recommendations under s.8HB(1)(a) or s.8HB(1)(b) or (c).
63. At all material times, the Crown owed the Plaintiffs a fiduciary duty of loyalty, trust and confidence.
64. The Crown has acted in breach of its fiduciary duty of loyalty, trust and confidence to the Plaintiffs, by:
  - (a) Entering into Part 12 of the KEC Deed and agreeing to transfer the Settlement Licensed Land and the Deferred Licensed Land of Kaingaroa Forest, when extant claims are before the Waitangi Tribunal and future claims may also be brought;
  - (b) Conferring on Te Arawa as a “Confirmed Beneficiary” under Clause 11.1 of the CFRT Deed, in contravention of the CFRT Deed, the CFA Act, the Treaty of Waitangi Act 1975 the Deed Poll agreement Crown Forest Licensed Land and Rental Proceeds in respect of that land, under the Waitangi Tribunal has made no recommendation in relation to the Settlement Licensed Land.
  - (c) Conferring on itself an entitlement to rental proceeds as a “Confirmed Beneficiary” under Clause 11.2 of the Trust Deed, in contravention of the CFRT Deed, the CFA Act, the Treaty of

Waitangi Act 1975, the Deed Poll, the July agreement, when the Waitangi Tribunal has made no recommendation in relation to the Deferred Licensed Land; and

- (d) Contracting to receive approximately \$61 million of rental proceeds from the CFRT, in breach of the Trust's objects and provisions, particularly the allocation and distribution of Trust funds.
65. Pursuant to Clause 12.3 KEC Deed, the Crown has agreed with TeArawa that Te Arawa will be a "Confirmed Beneficiary" as if Clause 11.1 of the CFRT Deed applied, namely where the Waitangi Tribunal recommends that Licensed Land is liable to be returned to Maori ownership.
66. Te Arawa will receive the Settlement Licensed Land and accumulated rental proceeds, as if Clause 11.1 of the CFRT Deed applied, when the Waitangi Tribunal process has not been followed.
67. In becoming a "*Confirmed Beneficiary*" under Clause 11.2 of the Trust Deed of the Crown Forestry Rental Trust, the Crown will receive approximately \$61 million unlawfully and wrongfully, such rental proceeds being trust funds under the CFRT Deed.
68. The Crown will receive the said benefits as if Clause 11.2 of the CFRT Deed applied, namely where the Waitangi Tribunal recommends that Licensed Land be not liable to return to Maori ownership, when the Waitangi Tribunal process has not been followed.
69. As a result of its breaches of fiduciary duty to the Plaintiffs, the Crown will deprive claimants before the Waitangi Tribunal of:
- (a) Future benefits in relation to the Crown forestry land at Kaingaroa Forest
  - (b) Crown Forestry Land in Kaingaroa Forest, in respect of which claimants have made a claim but have not yet been heard.

- (c) Rental proceeds from the Crown Forestry lands comprising the Settlement Licensed Land and the Deferred Licensed Land.
  - (d) Any adequate remedy in the absence of sufficient Crown Forestry land in Kaingaroa Forest, to which the claimants may have a rightful entitlement.
  - (e) Adequate funding from the CFRT to assist in the prosecution of the claimants claims before the Waitangi Tribunal.
70. The Crown, acting in breach of its fiduciary duties as pleaded, will cause financial, economic and proprietary loss to current claimants before the Waitangi Tribunal, the full extent of which will need to be the subject of enquiry.

**Against the Second Defendants:**

71. Under Clause 11.1 CFRT Deed, following the recommendation of the Waitangi Tribunal, the Second Defendants must allocate and distribute such Trust funds to Confirmed Beneficiaries, who are entitled to receive from the capital of the Trust, the amount of the rental proceeds received by the Trustees in respect of that Licensed Land since the commencement of the licence.
72. At all material times, the Second Defendants owe a fiduciary duty of loyalty, trust and confidence to present and future Maori claimant beneficiaries, on whose behalf the Plaintiffs act.
73. The Second Defendants, in allocating or distributing CFRT funds to Te Arawa and the Crown, without a recommendation from the Waitangi Tribunal, will be acting in breach of their fiduciary duties owed to the Plaintiffs and the claimant beneficiaries, present or future, of the CFR Trust.

WHEREFORE the Plaintiffs claim:

- A. A declaration that the Crown has acted in breach of its undertaking in the Deed Poll of 17 October 1989, in entering into Part 12 of the KEC Deed.
- B. A declaration that Clauses 12.22-12.25.3 be struck from the KEC Deed forthwith.
- C. A declaration that the Crown is restrained from acting upon the transfer of Settlement Licensed Land and the Agreement for Sale and Purchase of the Deferred Licensed Land, contained in Part 12 of the KEC Deed.
- D. A declaration that Clause 12.25.1 of the KEC Deed is void.
- E. An order restraining the Second Defendants from treating Te Arawa as a “ *Confirmed Beneficiary*” under Clause 11.1 of the CFRT Deed and allocating or distributing any rental proceeds or trust funds to Te Arawa in respect of the Settlement Licensed Land referred to in part 12 of the KEC Deed.
- F. An order restraining the Second Defendants from treating the Crown as a “ *Confirmed Beneficiary*” under Clause 11.2 of the CFRT Deed and allocating or distributing any rental proceeds or trust funds to the Crown in respect of the Deferred Licensed Land referred to in Part 12 of the KEC Deed.
- G. Full indemnity solicitor/client costs against the First and Second Defendants.

THIS STATEMENT OF CLAIM is filed by KATHY LEE-ANNE ERTEL; Solicitor for the Plaintiff, whose address for service is at the offices of Kathy Ertel & Co, 26 Bidwill Street, Mount Cook telephone 0-384-1148, facsimile 04-384-1199, PO Box 27042, Wellington.