



Justin Smith

Barrister

2 June 2010

Bennion Law
Solicitors
PO Box 25433
Wellington, 6011

Attention: Tom Bennion

**Re: SC 38/2010: AgResearch Limited v GE Free NZ and Environmental Risk
Management Authority**

Please find enclosed by way of service submissions of first respondent opposing leave in the above matter.

Yours faithfully

Justin Smith.

UNDER the Hazardous Substances and New Organisms Act 1996 and under the Judicature Amendment Act 1972

AND

IN THE MATTER of an appeal of the decision of the Court of Appeal in proceeding CA 380/2009

BETWEEN **G E Free NZ In Food And The Environment Incorporated**

Appellant

AND

AgResearch Limited

First Respondent

AND

Environmental Risk Management Authority

Second Respondent

**SUBMISSIONS OF FIRST RESPONDENT OPPOSING LEAVE
2 June 2010**

Solicitor Acting; Scott Mataga
Group Manager Legal Solicitor
Private Bag 3115
Hamilton
Tel: 64 7 8346646
Fax: 64 7 8346640
Scott.Mataga@agresearch.co.nz

Counsel Acting: J B M Smith
Stout Street Chambers
PO Box 117
Wellington
Tel: 64 4 9171080
Fax: 64 4 9171081
Justin.Smith@stoutstreet.co.nz

The matters in respect of which leave is sought

1. There are two matters in respect of which leave is sought:
 - (a) whether the first respondent's applications for approvals under the Hazardous Substances and New Organisms Act 1996 ("Act") complied with section 40 of the Act, and
 - (b) if not what, if any, are the consequences ^{1,2}.

The criteria for leave

2. The criteria relied upon are those in section 13(2)(a) and (b) of the Supreme Court Act 2003: general or public importance and general commercial significance.

General or public importance

Introduction

3. The first respondent addresses general or public importance in two ways.
4. First, it is contended that the issue in this case is only one of forum and timing for the airing of the appellant's concerns. Was judicial review appropriate or should the matter have been left to the specialist statutory body established under the Act to deal with such issues? That question, it is submitted, does not carry general or public importance.
5. Secondly, even if the substantive issue of compliance with the Act should have been addressed by the Court, that issue, in the circumstances, is still not one of general or public importance.
 - (a) *First point: Judicial Review appropriate?*
6. Viewed properly, this case only indirectly concerned statutory compliance. The matter directly in contention was when and by whom an issue of statutory compliance should be determined. That is, should an issue of whether the contents of applications for approvals complied with the Act be determined by way of judicial review in the High Court? Or

¹ However these matters are expressed differently as between the application for leave and the submissions; see paragraph [6] and [29] of the application and submissions respectively

² The appellant presumably accepts that non-compliance does not as a matter of law amount to invalidity in all cases: *London & Clydeside Estates Ltd v Aberdeen District Council* [1979] 3 All ER 876 (HL).

