

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 203  
EMPC 181/2023**

IN THE MATTER OF a challenge to a determination of the  
Employment Relations Authority

AND IN THE MATTER OF an application for leave to appear as  
intervener

BETWEEN MICHAEL LANIGAN AND THE  
OTHER PLAINTIFFS LISTED IN  
APPENDIX A  
First Plaintiffs

AND E TŪ INCORPORATED  
Second Plaintiff

AND FONTERRA BRANDS (NEW  
ZEALAND) LIMITED  
Defendant

Hearing: On the papers

Appearances: T Oldfield, counsel for first plaintiffs  
P Cranney, counsel for second plaintiff  
R Rendle, counsel for defendant  
C Stewart and C Pendleton, counsel for The Law Association of  
New Zealand Incorporated as applicant intervener

Judgment: 11 September 2025

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**INTERLOCUTORY JUDGMENT (NO 5)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for leave to appear as intervener)**

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[1] The Law Association of New Zealand Incorporated (The Law Association) has sought leave to intervene in these proceedings.

[2] The application arises in the context of a challenge to a determination of the Employment Relations Authority finding that the defendant may lawfully and reasonably instruct an employee, Mr Lanigan, to use fingerprint technology for time recording purposes.<sup>1</sup> The 16 other plaintiffs have been joined in the Court proceedings by way of a Court minute dated 21 November 2023. Because of the nature of the issues involved I directed that a full Court would hear the challenge. The Registrar was also directed to draw the proceedings to the attention of a number of organisations. E Tū Incorporated, the New Zealand Council of Trade Unions and the Privacy Foundation subsequently applied for leave to intervene/join. E Tū Incorporated was joined as a party; the Council of Trade Unions and the Privacy Foundation were granted intervener status.<sup>2</sup>

[3] Applications for leave to intervene fall to be considered under cl 2(2) of sch 3 of the Employment Relations Act 2000. The test is whether, in the opinion of the Court, the applicant is “justly entitled to be heard”. The test is broad and is determined having regard to the particular circumstances of the case.<sup>3</sup>

[4] This proceeding raises important issues in respect of the use of biometric timekeeping technology in the workplace. These issues are not novel, in the sense that the Court has previously considered them. However, and as the first plaintiff has made clear, the Court will be invited to depart from its earlier judgment.<sup>4</sup>

[5] I accept that The Law Association has a legitimate interest in this rapidly developing area of the law. As Mr Lloyd, who has sworn an affidavit in support of the application, points out, the development of the law with respect to biometric timekeeping (as it is raised on the pleadings in this case) touches on emergent issues in the development and intersection of employment law, privacy law and technology. The Law Association says, and I accept, that drawing on its extensive membership, expertise and experience, it is well placed to bring a useful perspective to bear on the

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<sup>1</sup> *Fonterra Brands (New Zealand) Ltd v Lanigan* [2023] NZERA 197 at [92].

<sup>2</sup> *Lanigan v Fonterra Brands (New Zealand) Ltd* [2024] NZEmpC 15.]

<sup>3</sup> *Zhou v Chief Executive of the Department of Labour* [2010] NZEmpC 162, [2010] ERNZ 400 at [3], [5], [7] and [14]; and *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 24 at [6]. See too *Leota v Parcel Express Ltd* [2019] NZEmpC 152 at [6]–[10] summarising some of the principles that apply.

<sup>4</sup> *OCS Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2006] ERNZ 762 (EmpC).

issues that will fall for consideration. The Court is likely to be assisted by The Law Association's presence at the hearing.<sup>5</sup>

[6] For completeness I have considered whether there are any countervailing considerations which might tell against the grant of leave. I have been unable to identify any.

[7] None of the parties are opposed to the application and are content to abide the decision of the Court.

[8] Having considered the application and material filed in support, I am satisfied that the applicant is justly entitled to be heard and leave is granted accordingly.

[9] Leave is granted on the following basis:

- The Registrar is to provide The Law Association (as third intervener) with a copy of all documents that have been filed to date, and the third intervener is to be included in all future communications with the Court.
- All documents from now on are to be served on the third intervener.
- The third intervener may file and serve written submissions no later than two days before the date set for hearing.
- The third intervener may appear by counsel and make oral submissions at the hearing. If the third intervener wishes to call evidence, the Court's special leave to do so will be required. Any such application should be filed and served promptly.
- The third intervener may not apply for costs against any party.

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<sup>5</sup> See *Wellington City Council v Woolworths New Zealand Ltd* [1996] 2 NZLR 436 (CA); *Drew v Attorney-General* [2001] 2 NZLR 428 (CA) at [17]; and *Leota*, above n 3, at [10].

[10] No issue of costs arises.

Christina Inglis  
Chief Judge

Judgment signed at 3.30 pm on 11 September 2025

## **APPENDIX A**

PETER ARMSTRONG

JAN BOSMA

MARTIN BROCK

ANTHONY CROPP

SHANNON FARLEY

DION HUBERS

BRIAN HUGHES

ANDREW JAMES

BRADLEY JESSON

CLIFF MCNEIL

WILLIAM MARR

BRUCE MUNRO

JASON POWRIE

DARREL ROBERTS

PAUL TAU

JEREMY WRIGHT