

Regulating Unequal Work Relationships for Fairness and Efficiency: A Study of Business Format Franchising

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“Vertical Disintegration” and Labour Market Regulation

Some 15 years ago, Hugh Collins wrote of the “vertical disintegration” of industrial organisation and the challenge that phenomenon presented for labour law.¹ Collins observed that many of the corporate monoliths of the mid-20th century that had engaged armies of employees were now outsourcing many of their functions. Big business was being replaced by networks of small businesses. Collins’ question was: what does this mean for labour law, which has hitherto assumed an employment relationship between the corporate enterprise and the worker? Collins observed that workers in these new contract relationships often continued to exhibit the “social subordination and economic dependence” typical of ordinary employees and so were equally “in need of those employment protection rights from which they are often excluded by virtue of having ceased to qualify as employees”.²

This chapter focuses on a particular type of business network which operates precisely as Collins has described: the business format franchise. Through this type of business structure, capital owners can develop and market a product or service, retain ownership and control over the essential assets of the business, preserve for themselves any goodwill arising from the success of the business, exert tight control over the performance of work in the business – and yet engage no employees. Instead the capital owner contracts with the working proprietors of myriad small businesses who have elected to operate as franchisees. Despite their apparently independent status, however, the typical franchisee is vulnerable to the same risks as the typical employee. Arbitrary

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1 Collins H, “Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Laws” (1990) 10 *Oxford Journal of Legal Studies* 353.

2 *Ibid.*, at 354.

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