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Mandatory Dues Check-off Reviewed in Light of the US Supreme Court's Decision in the *Janus* Case

Le précompte syndical obligatoire revu à la lumière de la décision de la Cour suprême américaine dans l'affaire *Janus*

Gilles Trudeau

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Résumé de l'article

La Cour suprême des États-Unis a récemment décidé, dans l'affaire *Janus*, que le précompte syndical imposé par la législation de l'Illinois aux employés de l'État viole les libertés d'expression et d'association que leur garantit la constitution américaine. Cette décision met en évidence le statut profondément différent dont bénéficie la Formule Rand au Canada, où elle est considérée comme un élément essentiel du régime de négociation collective de type *Wagner* qui prévaut à l'échelle national. Non seulement est-elle partout permise, mais la législation l'a rendue obligatoire, d'une façon ou d'une autre, dans une majorité de juridictions canadiennes, notamment au Québec. De plus, la Cour suprême du Canada a reconnu, il y a de cela près de 30 ans, que le précompte syndical obligatoire n'entravait ni la liberté d'association ni la liberté d'expression protégées par la *Charte canadienne des droits et libertés*.

ENJEUX / *ISSUES*

***Labour and Employment Policies*/Politiques du travail et de l'emploi**

Mandatory Dues Check-off Reviewed in Light of the US Supreme Court's Decision in the *Janus* Case

Gilles Trudeau

The United States Supreme Court has recently declared the agency shop (mandatory dues check-off) imposed on state employees under Illinois legislation to be unconstitutional.[1] Thus, by reversing the precedent it set 40 years ago, the Court has aligned itself with the strongly anti-union movement prevailing in the United States, which fiercely fights, both in the political arena and judicially, any contribution imposed on employees to fund the union certified to represent them.

While the decision in the *Janus* case is part of a primarily American debate, it nevertheless relates to a central component of the collective labour relations system prevailing in both Canada and the United States. Thus, it helps to understand the profound difference in the way the Rand Formula is perceived and judged, south and north of the 45th parallel. However, beyond this difference, could the US decision herald a constitutional challenge to Canadian legislation on mandatory dues check-off?

The *Janus* decision: a questioning of union presence in public sector workplaces in the United States

The US Supreme Court decision in the *Janus* case, and the context in which it was rendered, is the subject of Professor Herbert's article published in the preceding issue of this journal (Herbert, 2019). Its main conclusions will be reviewed here in order to highlight how this decision differs from the legal treatment of the same issue in Quebec and the rest of Canada.

The *Illinois Public Labor Relations Act* recognizes the right of employees of this state to unionize and gives them access to a *Wagner-type* collective bargain-

Gilles Trudeau, Professor, Faculty of Law, Université de Montréal (gilles.trudeau@umontreal.ca).

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1 *Janus v American Federation of State, County, and Municipal Employees, Council 31, et al.*, 138 S. Ct. 2448 (June 27, 2018).

ing system, similar to that generally prevailing in the United States and Canada. Mark Janus, a state employee, challenged before the courts the constitutionality of the provision of the *Act* requiring him to pay agency fees to the certified union representing him, which he refused to join. These fees represent a percentage of the dues paid by employees who are members of the same union. This percentage is equal to the portion of regular union dues that is allocated to funding the certified union's collective bargaining activities. Excluded from this amount are all union expenditures with a political or ideological connotation. The employer collected the amount in question directly from Mr. Janus' pay and remitted it to the certified union. The Illinois law thus established a system similar to the Rand Formula that is mandatory under section 47 of the Quebec *Labour Code,*[2] although the latter applies to full union dues rather than only the portion assigned to collective bargaining.

Mr. Janus based his challenge on the *First Amendment* to the United States Constitution which protects freedom of speech and, implicitly, freedom of association against unjustified state intrusion. He argued that, by compelling him to financially contribute to the union, the state was coercing him not only to endorse political speech with which he did not agree, but also to subsidize it.

The United States Supreme Court had already ruled in 1977 in the *Abood* case that this system of agency fees did not violate the *First Amendment*, since it required non-union employees to contribute only to the costs of negotiating and administering the collective agreement.[3] The Court had ruled that preventing labour disputes and the problem of free riders—employees who benefit from union representation and collective bargaining without bearing the costs—justified the state's establishing such a system.

The *Janus* ruling overturned this precedent, with the Court finding it ill-founded in law. The Court argued that enjoining an individual to support a point of view that he or she considers objectionable would violate his or her right to free speech and that the arguments retained by the Court in 1977 to justify this violation were no longer valid today. Thus, the Court could not see how it was necessary to force all employees in the bargaining unit to financially contribute to the union in order to preserve labour peace in a system of exclusive representation. In the Court's view, it is wrong to consider the designation of a union as the exclusive representative of all the employees in a given bargaining unit, whether or not they are union members, as being inseparable from the obligation that all employees contribute to it financially. Similarly, the Court peremptorily rejected the argument regarding preventing free-riders, remaining impervious to the inequity they represented.

2 RSQ c C-27.

3 *Abood v Detroit Bd. of Ed.*, 431 US 209 (1977).

The Supreme Court's decision in the *Janus* case was, however, not unanimous, representing the opinion of only five of the nine judges on the bench, including Justice Gorsuch, appointed by President Trump in April 2017. The other four judges expressed their dissent in a vitriolic opinion, exposing the deep ideological division that reigns today in the Court.

The dissenting opinion describes the immediate impact of the *Janus* decision. The agency fees, which the legislation of 22 states imposed on their public sector employees based on the 1977 precedent, no longer hold. Each of these states will have to restructure its labour relations system and adopt a new law accordingly. Thousands of collective agreements will have to be renegotiated in a climate of legal uncertainty, and the financial survival of several trade unions will be at stake. The stability of public sector labour relations in these states will be profoundly affected.

The *Janus* decision does not directly affect the labour relations system applicable to the private sector of the US economy, which generally falls under federal legislation. A look at how the *National Labor Relations Act*[4] regulates union security[5] today, however, reveals that the *Janus* decision was not entirely unexpected (Eidlin and Smith, 2018). Rather, it reflects a long-standing ideology across the country that has led a majority of US states to pass a «*Right-to-Work*» law.

In the aftermath of the Second World War, Congress substantially amended the *Wagner Act* of 1935, as employers considered it overly favourable to trade union interests. Thus, the *Labor Management Relations Act,*[6] better known as the *Taft-Hartley Act,* adopted in 1947 with the express purpose of «balancing» labour relations in the United States, introduced a much more restrictive regulation of union security clauses, which had previously been widely permitted. Nevertheless, agency fees continued to be accepted, although the US Supreme Court, in 1988, restricted this mandatory contribution to only the portion of union dues allocated to the activities of negotiating and administering the collective agreement (Weiler, 1980: 142, Paré and Trudeau, 2015: 12).

By adopting the *Taft-Hartley Act*, Congress thus gave the American Right the possibility to assert much more effectively its visceral opposition to all union restrictions on access to employment. It henceforth gave any US states wishing to do so the power to prohibit union security clauses within their territory. A dozen states had already done so before this was even expressly allowed, and several

4 29 USC §§ 151-169 [*Wagner Act*].

5 A union security clause is a provision in a union contract requiring employees, as a condition of employment, to maintain union membership or pay union dues or requiring an employer to check off dues from employees' wages.

6 29 USC §§ 141 s [*Taft-Hartley Act*].

other states quickly followed suit now that they were authorized to do so. Following a pause at the turn of the new millennium, the expansion of *Right-to-Work* laws resumed, with such laws covering 28 states today. Their popularity can be explained by the ideas of free choice, freedom and economic *laissez-faire* that they promote and that widely prevail in the United States (Paré and Trudeau, 2015: 12-16). The decision just rendered by the US Supreme Court in the *Janus* case pertains to the same ideology, as clearly expressed by the majority judges.

In Canada, the legal regulation of union security clauses moved in a different direction. Before expounding on this difference, it is worth mentioning the crucial importance of these clauses in a collective bargaining system based on the monopoly of representation held by the majority union over a given bargaining unit, such as that which prevails in the United States and Canada. In fact, these clauses are often essential for union durability within the unit, since they require the workers belonging to the unit to join and maintain their membership in the certified union or support it financially, failing which they will lose their job. The effectiveness of these clauses is thus due to the fact that they force the employer to keep only those workers who respect their terms and conditions. This is why trade unions have always been keen to include a union security clause in their collective agreements, and why employers often object to such a clause just as firmly, knowing that union power largely depends on it. The negotiation of security clauses has thus given rise to a number of particularly difficult labour disputes, especially in Canada where the law has never prohibited them.

It was in this context that the Rand Formula appeared in Canada in 1946, following a strike lasting more than three months at the Ford Motor Company plant in Windsor, Ontario, in which trade union security was one of the main issues. Justice Rand of the Supreme Court of Canada was appointed as an arbitrator to settle the dispute, with the parties agreeing to be bound by his decision. He opted for a middle-ground solution that he considered fair: employees would not be required to join or maintain their membership in the certified union as a condition of employment, but all employees should financially contribute to it, through a wage deduction, a sum equal to union dues. The freedom of each employee to choose their employment without compulsory union membership was thus preserved, but all employees, including those who did not join the union, had to support it financially (Hébert, 1992: 106-107). What became known as the Rand Formula quickly snowballed and was subsequently negotiated in several collective agreements across Canada. In 1959, the Supreme Court of Canada confirmed that it constituted a condition of employment that could legally be included in a collective agreement.[7]

7 *Syndicat catholique des employés de magasins de Québec Inc v Paquet Ltée* [1959] SCR 206.

Although it was considered a compromise, the Rand Formula was not unanimously accepted, and union security continued to fuel many labour disputes. Weiler (1980: 142) reported a vigorous employer campaign in the late 1970s, particularly in British Columbia, demanding that the legislation be amended to recognize the *open shop*[8] principle. However, this position did not prevail and, contrary to the US philosophy behind *Right-to-Work* laws, several Canadian lawmakers forced employers to accept the Rand Formula. Moreover, this is what was proposed by the Woods Commission in 1968 (Task Force on Labour Relations, 1968: 149). Quebec was the first to do so in 1977 after long strikes over this issue—some of which were punctuated by violence—had contributed to the deterioration of the social climate in the province. In return, the Quebec law imposed some rules of internal governance on the certified union, as Justice Rand also did in his decision (Hébert, 1992: 107), and above all, confirmed the union's obligation to represent all employees in the bargaining unit fairly and in good faith, whether or not they are union members. Other Canadian provinces followed suit (Hébert, 1992: 111-113) such that today, the legislation of Saskatchewan, Manitoba, Ontario and Newfoundland, in addition to that of Quebec and the federal government, contains a provision for the inclusion of the Rand Formula in collective agreements, automatically or upon the request of the certified union (Doorey, 2017: 508).

The Rand Formula has remained so widely accepted in Canadian law because it is considered to be an essential element of the collective bargaining system promoted by legislation across Canada. The latter recognizes the union chosen by the majority of employees in a bargaining unit as the sole representative of all the employees in this unit for the purposes of collective bargaining. This recognition is based on the majority principle, as is the constitutional system of political representation in Canada. The choice of the majority binds the whole group, and no one can withdraw from it even if they do not agree with this choice. Since everyone benefits from collective representation and its fruits, all must also bear the costs. There cannot be one without the other, and to deny this last element of the system is to deny it entirely (Weiler, 1980: 143-145; Langille and Mandryk, 2013; Eidlin and Smith, 2018).

The compulsory Rand Formula is now a well-integrated component of Canada's model of collective bargaining which, unlike others, has been spared by the Conservative governments elected in several provinces and at the federal level in recent decades. Indeed, the certification procedure has frequently been changed, with right-wing governments preferring the secret ballot vote over the count of union memberships advocated by the traditional model in establishing

8 Open shop refers to a system in an organization whereby union membership is not required as a condition of hiring or continued employment (Dion, 1986: 40; trans.).

the majority nature of a union seeking certification (Doorey, 2017: 534-537). The same is true of the anti-scab measures adopted in Quebec and British Columbia as well as in Ontario by the New Democrat government of Bob Rae in the early 1990s but which the very conservative Mike Harris government hastened to withdraw from Ontario legislation (The Labour Law Case Book Group, 2018: 675). However, such changes have never been applied to the Rand Formula, and none of the legislation that made it compulsory in one way or another in Canada has since been amended to remove its binding nature. Although occasionally criticized (Boyer 2009; Langille and Mandryk, 2013: 475-476), it remains an integral and essential part of the Canadian collective bargaining system.

The constitutional validity of mandatory dues check-off

Soon after the *Canadian Charter of Rights and Freedoms*[9] came into force, Mervyn Lavigne challenged the constitutional validity of the dues check-off required by his collective agreement. He claimed that by forcing him to financially contribute to causes of which he disapproved, such as support for a political party and a campaign for disarmament, the collective agreement violated the freedoms of expression and association protected by the *Canadian Charter*. The Supreme Court of Canada rejected Mr. Lavigne's claims and, in a unanimous decision on this point, declared the Rand Formula constitutionally valid.[10] This decision, which has since been confirmed several times, is completely opposed to that of the United States Supreme Court in the *Janus* case, especially given that, in the *Lavigne* case, the amount involved is equivalent to full union dues. The gap between the two decisions is the same as that which exists between how the Canadian legislation and the US *Right-to-Work* laws deal with agency shop or mandatory dues check-off. An examination of the various reasons put forward by the seven judges participating in the *Lavigne* decision helps to understand it.

The judges all agreed that the Rand Formula is an essential element of the collective bargaining system established by Canadian law. Thus, Justice McLachlin noted that the Rand Formula has been part of Canadian labour relations for many years, and is necessary in a collective bargaining system based on the monopoly of union representation. It represents a delicate balance between the interests of the majority of workers who belong to the union and those of others who, like Mr. Lavigne, do not wish to join the union. Moreover, it eliminates the problem of free-riders.[11] Justices La Forest, Sopinka and

9 Part 1 of the *Constitution Act*, 1982, constituting Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Canadian Charter*].

10 *Lavigne v Ontario Public Service Employees Union*, [1991] 2 SCR 211 [Lavigne].

11 *Ibid*, pp 345-346.

Gonthier, for their part, considered that invalidating the Rand Formula would undermine both the financial base of unionism and the spirit of solidarity which are so important to the emotional and symbolic underpinnings of unionism.[12] Justice Wilson, supported by Justice Corey, considered the Rand Formula as a fair means to achieve the balance between the interests of capital and labour without which collective bargaining cannot succeed. Moreover, by stipulating that no member of the bargaining unit is required to join the certified union, the Rand Formula provides for dissent.[13]

The reasoning that led the judges to declare the Rand Formula valid, however, varies considerably from judge to judge, especially with respect to the violation of freedom of association alleged by Mr. Lavigne. Justices Wilson, L'Heureux-Dubé and Corey rejected this argument because, in their view, the *Canadian Charter* does not recognize a negative side to freedom of association. On the contrary, Justices La Forest, Sopinka and Gonthie argued that freedom of association includes that of refraining from association and that requiring Mr. Lavigne to financially support the union necessarily requires him to associate with the union. However, they asserted that the freedom not to associate has its limits, and the Charter cannot be cited against the association with others that is a necessary and inevitable part of life in society. This is the case of association with the union, which allows workers in the same workplace to negotiate their working conditions collectively. Being committed to pursuing a common goal of collective well-being, such an association stems from the necessities of working life and does not in itself infringe freedom of association. The situation is different, however, when the compulsory dues are used to fund causes other than collective bargaining activities, a violation that the judges nevertheless considered justified in light of section 1 of the Charter. Lastly, Justice McLachlin considered that the constitutional right not to associate is only compromised when compelled association also imposes ideological conformity. This is certainly not the case with the Rand Formula because it does not associate Mr. Lavigne with ideas and values to which he does not voluntarily subscribe.

Moreover, no judges saw a violation of Mr. Lavigne's freedom of expression in the Rand Formula. Financially contributing to the certified union does not associate Mr. Lavigne with its ideas, and nothing prevents him from speaking out freely to contradict them.

Furthermore, no judges agreed with the solution retained by the United States Supreme Court in the *Abood*[14] case, to which Mr. Lavigne referred in support of

12 *Ibid*, pp 336-337.

13 *Ibid*, p 272.

14 *Supra* note 3.

his claims. In their view, excluding from dues check-off all expenditures on ideological causes unrelated to those necessary for the immediate representation of employees' occupational interests in the context of collective bargaining would unduly weaken the labour movement. Promoting and defending workers' interests require that the union be able to intervene in social and political debates in society. The political activities of the labour movement are just as essential to its mission as collective bargaining activities. The judges also stressed the difficulty of distinguishing between a union's expenditures related to ideological causes and those related to the immediate promotion of its members' occupational interests, and that requiring the union to do so would lead to an excessive number of disputes. All the judges were also careful not to import a US solution into Canada's labour relations system, given that the values and attitudes prevailing in the United States regarding trade unionism are far removed from those prevailing in Canada, which are much more favourable.

The Supreme Court of Canada upheld its decision in the *Lavigne* case when asked to rule on the constitutionality of compulsory union membership. An entrepreneur had cited freedom of association as recognized by the *Canadian Charter* in challenging the obligation imposed on him by the *Act Respecting Labour Relations* [...] *in the Construction Industry*[15] to hire only employees who were members of one of the trade unions listed as representative in the construction industry. Although the opinion of the judges participating in this decision was deeply divided, the constitutional validity of union membership, as required in this very specific context, prevailed.[16] Three of the judges participating in the majority decision referred to the *Lavigne* ruling, pointing out that the very nature of the workplace had led to the creation of associations that had become unavoidable or necessary and that, as a result, the obligation to join a union did not *per se* breach the constitutional right not to associate. Thus, they found compulsory union membership in Quebec's construction industry to be valid, given the goals the union pursued and the democratic guarantees it provided. Justice L'Heureux-Dubé also participated in the majority ruling, maintaining the position she had previously expressed in the *Lavigne* case, according to which no negative right not to associate is included in the *Canadian Charter*. Based on section 1 of the *Canadian Charter,* Justice Iacobucci justified the violation of freedom of association that compulsory union membership represents in this case. On the other hand, according to the minority opinion of the four other judges of the Court, association with a union as required by law constitutes a clear violation of the freedom not to associate. In their view, a union

15 *Act Respecting Labour Relations, Vocational Training and Workforce Management in the Construction Industry*, RSQ c R-20.

16 *R v Advance Cutting & Coring Ltd*, [2001] 3 SCR 209.

could never represent a necessary association and, even if it were considered as such, the government could not validly compel union membership given its strong ideological connotation.

The Supreme Court of Canada's later decision in the *Advance Cutting and Coring* case, despite significant dissent, differed even more than the *Lavigne* case from the US Supreme Court decision in the *Janus* case and even the much less radical decision rendered in the *Abood* case in 1977. Indeed, compulsory union membership, which is much more prejudicial than mandatory dues check-off to the wish of a minority of workers in the bargaining unit not to join the certified union, was found to be consistent with the *Canadian Charter*, at least in certain circumstances. Moreover, the Supreme Court has more recently reiterated that freedom of association does not protect from all forms of involuntary association, and cannot be invoked to avoid union representation for which the majority of employees in a workplace have opted.[17]

The favourable attitude toward unionism and collective bargaining demonstrated by the Supreme Court in its decisions on union security has today become even more explicit. In fact, in a 2007 decision, the Court affirmed that collective bargaining is an essential condition for freedom of association at work and, in this sense, must be given similar constitutional guarantee.[18] Pointing to the evolution of the labour movement and the prominent role it played in rebalancing the employment relationship, the Court emphasized the fundamental value of collective bargaining in Canada. It is a factor of social progress and well-being for all. By allowing workers to exercise some control over their workplace and the content of the rules applying to it, collective bargaining fosters human dignity, freedom, equality and worker autonomy. Moreover, in order for collective bargaining to fully play its role, it must include the possibility of resorting to strike action. This was recognized by the Supreme Court in granting this possibility constitutional protection as an essential part and indispensable component of collective bargaining.[19]

While the United States Supreme Court, in the *Janus* case, interpreted the constitutional freedoms recognized in the *First Amendment* in such a way that jeopardizes the common will of workers to unionize and resort to collective bargaining, the jurisprudence of the Supreme Court of Canada interpreted the individual freedoms protected by the *Canadian Charter* in the opposite way. Not only were mandatory dues check-off and even, depending on the context, compul-

17 *Bernard v Canada (Attorney General),* [2014] 1 SCR 227.

18 *Health Services and Support – Facilities Subsector Bargaining Assn. v British Columbia*, [2007] 2 SCR 391.

19 *Saskatchewan Federation of Labour v Saskatchewan*, [2015] 1 SCR 245.

sory union membership deemed to be compatible with these freedoms, but the Court also extended constitutional protection to collective bargaining and strike action. In this context, it is difficult to imagine that the *Janus* decision could, at least in the short term, lead to a change in the courts' attitude in Canada toward compulsory dues check-off and, more broadly, collective bargaining.

Conclusion

The anti-union ideology expressed in the *Janus* decision of the United States Supreme Court, like that behind the proliferation of *Right-to-Work* laws across the US, is not new. In fact, it has always been present in American society, whose liberal and highly individualistic basic values promote the right to property and free markets and mistrust of all constituted political power and the state. Moreover, the latter must not interfere with the authority granted by ownership. The wage earner operates in a free labour market whereas the working class has traditionally been weak and conservative (Bok, 1971; Godard, 2013: 394-395). As soon as the *Wagner Act* was adopted in 1935, aiming to give workers the right to organize collectively in order to negotiate their working conditions with their employer, it grappled with the prevailing ideology according to which the worker is a free individual, on an equal footing with his or her employer, who does not wish to be collectively represented. The adoption of the *Taft-Hartley Act* in 1947, mentioned above, solidified this systematic opposition, which never weakened, despite a dramatic and steady decline in the union density rate starting in the late 1950s (Card and Freeman, 1994: 199). This ideology was already reflected in the *Abood* decision, rendered in 1977 and overturned by the *Janus* decision in 2018, which validated compulsory agency shop in the US public sector, but at the cost of cutting off all union expenditures other than those allocated to collective bargaining. Indeed, the *Janus* ruling is in line with this same ideology, exacerbated by the prevailing neo-liberalism and the rise of the Right, which today controls almost all state apparatus, including the Supreme Court (Herbert, 2019).

In contrast with the US situation, the *Wagner Act* model adopted in Canada at the end of the Second World War has since been continuously improved. This system of collective representation of employees is much more in line with the fundamental values and attitudes espoused in Canada, which, given its more collectivist and social-democratic orientation, has always accepted state regulation of the economy and labour market to a greater extent. A stronger and more assertive labour movement, supported by labour-leaning political parties, both federally and provincially, has always sought to improve the content of labour law (Fudge and Glasbeek, 1995: 358; Godard, 2013). Thus, the inclusion of the Rand Formula principle in most of the labour laws in force in

Canada appears normal, as it is perceived as an essential element of the collective bargaining system, based on the prevailing system of majority and exclusive union representation.

The Supreme Court of Canada adopted the same attitude, regarding both the Rand Formula and collective bargaining in general. Faced with the fundamental freedoms recognized by the *Canadian Charter*, the Rand Formula has prevailed as an integral part of a collective bargaining system that is viewed as a common good of general interest. Moreover, by referring to the fundamental values of Canadian society, which the *Canadian Charter* is supposed to promote, the Court extended constitutional protection to collective bargaining.

The *Janus* decision and *Right-to-Work* laws are unlikely to prevail in Canada in the short term. The values to which they respond are not those that predominantly govern Canadian society. Even the most conservative governments elected in Canada over recent decades have not dared to touch the mandatory dues check-off widely recognized in the labour laws currently in force in Canada.

This does not mean that Canada is immune to all political or judicial challenges. Right-wing political parties, and some think tanks of the same persuasion, have already criticized mandatory dues check-off. A Supreme Court composed of more conservative judges might wish to overturn the precedents that are currently authoritative on the issue. However, if it were to do so, the Court would jeopardize the existence of unionism as it is practised today, and that of the *Wagner-type* collective bargaining that is generally adopted by Canadian legislation. The American experience leaves no doubt in this regard.

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SUMMARY

Mandatory Dues Check-off Reviewed in Light of the US Supreme Court's Decision in the *Janus* Case

The United States Supreme Court has recently ruled in the *Janus* Case that the agency shop (mandatory dues check-off) imposed by Illinois law on state employees violates the freedom of expression and association guaranteed by the US Constitution. This decision underscores the profoundly different status enjoyed by the Rand Formula in Canada, where it is considered an essential element of the nation-wide *Wagner-type* collective bargaining system. Not only is it permitted everywhere, legislation has made it mandatory, in one way or another, in a majority of Canadian jurisdictions, including Quebec. Furthermore, almost 30 years ago, the Supreme Court of Canada recognized that mandatory dues check-off did not interfere with the freedom of association or expression protected by the *Canadian Charter of Rights and Freedoms*.

KEYWORDS: *Janus* Case, United States, agency shop, rights and freedoms, Rand Formula, Canada.

RÉSUMÉ

Le précompte syndical obligatoire revu à la lumière de la décision de la Cour suprême américaine dans l'affaire *Janus*

La Cour suprême des États-Unis a récemment décidé, dans l'affaire *Janus*, que le précompte syndical imposé par la législation de l'Illinois aux employés de l'État viole les libertés d'expression et d'association que leur garantit la constitution américaine. Cette décision met en évidence le statut profondément différent dont

bénéficie la Formule Rand au Canada, où elle est considérée comme un élément essentiel du régime de négociation collective de type *Wagner* qui prévaut à l'échelle national. Non seulement est-elle partout permise, mais la législation l'a rendue obligatoire, d'une façon ou d'une autre, dans une majorité de juridictions canadiennes, notamment au Québec. De plus, la Cour suprême du Canada a reconnu, il y a de cela près de 30 ans, que le précompte syndical obligatoire n'entravait ni la liberté d'association ni la liberté d'expression protégées par la *Charte canadienne des droits et libertés*.

MOTS-CLÉS : affaire *Janus*, États-Unis, précompte syndical obligatoire, droits et libertés, Formule Rand, Canada.