

Update on Public Service Alliance of *Canada V. Attorney General of Canada and Econosult*

In a previous issue of FORUM, the Legal Perspectives section featured an article on the Federal Court of Appeal decision in the Econosult case. The Supreme Court of Canada rendered its decision on that case shortly after the article was sent to print. The following provides an update on the Supreme Court's judgment.

The facts in *Econosult* were not in dispute. The Correctional Service of Canada had entered into a contract with Econosult Inc., a private corporation, to hire and provide teachers for the Correctional Service of Canada's inmate education program. These services had previously been performed by employees of the Correctional Service of Canada. The issue before the Court was whether the Econosult teachers were employees within the meaning of the *Public Service Staff Relations Act*.

The decision of the Federal Court of Appeal held that an employer/ employee relationship did not exist between the Correctional Service of Canada and the contract teachers. The Public Service Alliance of Canada then appealed this decision to the Supreme Court of Canada.

The Supreme Court of Canada dismissed the appeal and agreed that the Econosult teachers were not public servants. In his judgment, Mr. Justice Sopinka analysed the meaning of the word "employee" within the *Public Service Staff Relations Act*. He held that the Econosult teachers did not fit within the definition of "employees" because they were not hired through standard public service channels. The creation of a category of de facto public servants was not in keeping with the purposes of the legislation.

It can be concluded from the judgment that employees of a corporation which has entered into a service contract with a government department for legitimate business reasons do not become employees of the department for collective bargaining purposes. An employer/employee relationship is not created even if the contractor's employees work on government premises, use tools or resources of the government, or are under the control of departmental officials.

The judgment does not change the status quo with respect to personal service contracts with contractors. Departments are still required to avoid creating employer/employee relationships in these circumstances since the Supreme Court of Canada decision only dealt with the issue of the creation of an employer/employee relationship within the context of the *Public Service Staff Relations Act*. The tests of standard common law to determine whether or not an employer/ employee relationship exists (see the original article in the Legal Perspectives section of FORUM, Vol.3, No.1) must be applied to cases which do not have exactly the same elements as the Econosult case.

Departments must also be aware that the decision of the Federal Court of Appeal in *Attorney General of Canada v. Public Service Staff Relations Board* respecting the Workforce Adjustment Policy (which has been incorporated into most collective agreements) considerably restricts the right of the federal government to contract out when this involves the laying off of employees. The Attorney General's appeal on this matter is before the Supreme Court of Canada.