

A curious cocktail – the mixed application of the law of contracts and administrative law to universities

By Alice Woolley

Cases Considered:

[*Rittenhouse-Carlson v. Portage College*](#) 2009 ABQB 342

Jane Rittenhouse-Carlson brought an action against Portage College alleging breach of contract and tortious conduct by the College. The alleged misconduct centered on the College's decision to withdraw Ms. Rittenhouse-Carlson from the Health Care Aide program after she failed a practicum. Ms. Rittenhouse-Carlson alleged that she had been treated unfairly in the handling of the practicum, the assessment of it and as a result of the College's failure to arrange an appropriate second practicum opportunity.

Following a trial in front of Mr. Justice Gill, he dismissed her action with costs. The reasons for judgment are clear and straightforward. Based on the evidence Mr. Justice Gill found that there were no wrongs committed by the College with respect to its handling and assessment of Ms. Rittenhouse-Carlson's first practicum. He also found that the attempts of the College to arrange a second practicum were "made in good faith" and "involved a considerable expenditure of time and effort" (para. 97). He found that Ms. Rittenhouse-Carlson "inappropriately refused or neglected" to follow up on the options provided to her (*ibid.*).

What is interesting about this case is that it provides an important reminder that quasi-public institutions like universities have a variety of legal responsibilities to meet. Universities must comply with the norms of administrative law – both procedurally and substantively. They cannot act in an arbitrary and capricious manner in exercising the authority granted to them by statute. They must also, however, comply with the private law duties sounding in contract and tort. They must comply with the applicable standards of care. They cannot breach contractual promises into which they have entered, including contractual promises made to students.

What is less clear from this case – not because the case is unclear, but because it did not arise – is the extent to which these different obligations intersect with each other. At what point is the relevant frame of analysis for a court administrative law, and at what point is it contractual obligations? Is it simply a matter of what is pled? In this case Ms. Rittenhouse-Carlson brought her action in contract. However, the question of how her practicum was handled and how she was assessed seem more in the nature of public acts by the university required to comply with the procedural and substantive norms of administrative action than as contractual promises allegedly breached. A court considering these questions must, I would argue, consider which realm is applicable. The way the case is pled is important, but not determinative.