

**THE HIGH COURT**

**[2009 No. 56 S.A.]**

**IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2002 AND IN THE MATTER OF AN APPEAL OF A DETERMINATION OF THE  
SOLICITORS DISCIPLINARY TRIBUNAL**

**BETWEEN**

**DERMOT TIGHE**

**APPELLANT**

**AND**

**JOSEPH BURKE**

**RESPONDENT**

**JUDGMENT of Kearns P. delivered the 17th day of January, 2011**

This is an appeal brought against the findings of the Solicitors Disciplinary Tribunal on the 9th day of April, 2009, which found that there had been no misconduct on the part of the respondent solicitor in respect of the matters complained of.

Notwithstanding the multiple complaints raised by the appellant in relation to the decision of the Tribunal, I am satisfied that the Tribunal gave the fullest consideration to the appellant's complaints. In that context, the Tribunal considered a great volume of documentary evidence and also heard oral evidence from the main protagonists over a period of several days in February and March, 2009.

In its decision, the Tribunal carefully distinguished between the burden of proof which arises in the case of an allegation of professional misconduct and that which arises in the case of an allegation of negligence. The Tribunal concluded, for the reasons stated in its decision, that the allegations raised against the respondent solicitor fell short of the threshold which would be required to establish a case of misconduct. The Tribunal specifically resiled from any determination with regard to any civil liability for negligence which the respondent solicitor might have had.

That issue was dealt with separately in full plenary proceedings heard and determined by me in the High Court and in respect of which I delivered judgment on 16th July, 2010. At the conclusion of a lengthy judgment, I concluded that the multiple complaints advanced by the appellant fell short of establishing a case in negligence and I dismissed his claim.

It follows from that decision, as I made clear in Court to Mr. Tighe, that a failure to establish a case in negligence would be determinative of his case on appeal from the finding of the Tribunal that there had been no misconduct on the part of his solicitor, given that an even higher standard of proof was required to make out that latter case.

All of the complaints derive from the same set of facts and circumstances, and I therefore dismiss the appeal herein.