

## Short Minutes Transcript: Who is your client?

In the Supreme Court decision of *Tara Communications and Simons Ravden*, a solicitor took unauthorised steps in a litigated matter. The solicitor had previously acted for the company on the instructions of the sole director and also on behalf of that director in his personal bankruptcy proceedings. The solicitor received instructions to commence litigation from a person who purported to be a new director of the company and acted on those instructions.

Unfortunately, the new director's appointment was invalid because it had been made by the original director, whom the solicitor knew to be an undischarged bankrupt.

A personal costs order was made against the solicitor who acted for the corporate plaintiff without valid and binding instructions.

The court found the solicitor erred:

- When he failed to make enquiries as to the basis of the appointment of the replacement director;
- When he claimed that he was not required to look behind his instructions; and
- When he continued to act for the company when the other party drew the issues to his attention.

When taking instructions to commence or defend litigation on behalf of a company, solicitors should:

- Obtain an up-to-date ASIC search of the company to confirm the current directorships and check the identity of instructing directors
- Request copies of any other authorisations for employees who are purporting to instruct the solicitor

I'm Renee Stevens

[\*Tara Communications Group Pty Limited v Simons Ravden Pty Limited\* \[2012\] NSWSC 500](#)