



# DISCIPLINE CASE *DIGEST*

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Case 19-08

<b>Member:</b>	<b>Subhash Chand Khandelwal</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	September 19, 2011
<b>Particulars of Charges:</b>	Professional Misconduct (16 Charges): <ul style="list-style-type: none"><li>▪ Breach of Rule 3.4-1 of the <i>Code</i> [conflict of interest] [x3]</li><li>▪ Breach of Rule 3.4-29 of the <i>Code</i> [transactions with clients] [x2]</li><li>▪ Breach of Rule 3.4-34 of the <i>Code</i> [guarantees by a lawyer]</li><li>▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity] [x5]</li><li>▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]</li><li>▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of trust condition]</li><li>▪ Breach of Rule 3.4-10 of the <i>Code</i> [acting against former client]</li><li>▪ Breach of Rule 3.4-6 of the <i>Code</i> [joint retainer]</li><li>▪ Breach of Rule 3.4-12 of the <i>Code</i> [acting for borrower and lender]</li></ul>
<b>Plea:</b>	Guilty
<b>Dates of Hearings:</b>	February 20, 2019 & October 28, 2019
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Jon van der Krabben (Chair)</li><li>▪ Victor Bellay</li><li>▪ Carmen Nedohin (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Rocky Kravetsky for The Law Society of Manitoba</li><li>▪ Member Self Represented (Motion – February 20, 2019)</li><li>▪ Charles R. Huband for the Member (Hearing – October 28, 2019)</li></ul>
<b>Dates of Decisions:</b>	February 27, 2019 (Motion) October 28, 2019 (Oral Decision) May 27, 2020 (Reasons for Decision)
<b>Consequences:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$7,500</li><li>▪ Costs of \$16,000</li><li>▪ Remedial Conditions and Practice Restrictions</li></ul>

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## **CONFLICT OF INTEREST / FAILURE TO ACT WITH INTEGRITY / BREACH OF UNDERTAKING / QUALITY OF SERVICE**

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### **Facts**

Mr. Khandelwal was charged in three separate Citations dated April 3, 2018, April 29, 2019 and October 10, 2019. The first arose from conduct in relation to a series of real estate joint ventures in which he and his wife were parties; the second in relation to a real estate transaction; and the third from a series of transactions where he provided legal services to a family member.

### Preliminary Motion

Mr. Khandelwal brought a preliminary motion for an order authorizing a suspended member to act on his behalf or alternatively, a stay of proceedings pending the outcome of that member's appeal from his suspension. The Discipline Committee dismissed the motion on the basis of s. 26 of *The Legal Profession Act* and Rule 6.1-4 of the *Code of Professional Conduct* that explicitly prohibit the engaging of a suspended lawyer to act on his behalf. They considered that a delay for an undetermined amount of time pending an uncertain result was not in the public interest.

### Citation #1 (April 3, 2018)

In a relatively short period of time beginning in 2012, Mr. Khandelwal and his wife entered into joint ventures with two other couples: a mortgage broker and his wife (RK & AB) and a realtor and his wife (RP & KS). The first mortgage lenders for these joint ventures were three credit unions. A private lender advanced funds secured by a second mortgage on the third property. Mr. Khandelwal acted for the lenders as mortgagees and for the co-venturers in preparing their co-venture agreement and as purchasers. Each of the three co-venturer couples contributed one third of the cash to the mortgage on the first two properties, however, the titles to those properties were only in the names RK & AB, who were also the only named mortgagors. Documents were prepared by Mr. Khandelwal describing the contribution of the Khandelwals and of RP & KS as loans to be secured by caveats, even though they were co-venturers. Their interests were never disclosed to the credit unions and those caveats were not registered until after reports were made to the credit union client in each case.

When Mr. Khandelwal and his co-venturers were not able to raise all of the money needed to finance the acquisition of the third property, Mr. Khandelwal introduced the co-venturers to his client, Mr. S, the principal of a corporation, SEI. He agreed to have SEI lend them the money. Mr. S required that the loan be secured by a charge on the first two properties and by pledges of personal property, and guarantees of each of the six co-venturers.

Mr. Khandelwal did not disclose or advise as to the nature of the conflict between SEI as lender and the co-venturers as borrowers in relation to third property. He did not require or advise his

client, SEI to obtain independent legal advice. He also failed to disclose or advise his co-venturer clients as to the potential conflicts between them as a result of the manner in which titles were taken and security given. He did not disclose material facts to his mortgagee clients.

In a separate transaction, Mr. Khandelwal acted on a purchase at auction of a fourth property. Title was taken in the name of a corporation controlled by Mr. S, but in which Mrs. Khandelwal also had an interest. Mr. Khandelwal then acted for the corporation on the sale of the property and for the subsequent purchaser. He did not obtain the informed consent of the purchaser to the conflict, did not recommend that the purchaser seek independent legal advice and did not inform the purchaser that the interests of his wife were engaged.

Citation #2 (April 29, 2019 (amended October 28, 2019))

In November of 2016, Mr. Khandelwal acted on a real estate transaction for the vendor (CR), the purchaser (AS), the purchaser's first mortgage lender, a credit union and a private lender, JB as the second mortgage lender. It was agreed that CR would sell the property to AS for the purchase price or \$270,000. It was also agreed that the price would be paid by a \$5,000 deposit; a new mortgage of \$256,500 and a payment at closing in cash or equivalent of \$8,500. The credit union agreed to lend the \$256,500 contemplated by the purchase and sale agreement on the basis of the terms set out in that agreement, including that the purchaser had paid the deposit and would pay the specified additional cash amount on closing.

Mr. Khandelwal knew that AS had not paid the \$5,000 and did not have the cash to pay for the deposit or the cash to close. Mr. Khandelwal suggested that AS take a loan from JB in the amount of \$20,000 that was to be secured by a second mortgage. Mr. Khandelwal did not disclose to the credit union that AS had not paid the deposit, that he would not be paying the stated deposit amount or the cash to close out of his own funds, but from proceeds of a mortgage loan from JB; or that the second mortgage loan would exceed the expected equity in the property. Mr. Khandelwal prepared and provided to the credit union, the Declaration as to Possession of AS by which AS declared that he knew of no charge, encumbrance, or other agreement affecting the property.

Citation #3 (October 10, 2019)

On January 17, 2018, the Complaints Investigation Committee (CIC) imposed a restriction on Mr. Khandelwal's practice that he not act in any matter in which he, his wife, or child have a personal interest. Thereafter, Mr. Khandelwal acted in thirteen real estate transactions in which he or his wife had a beneficial interest. In each case, his staff prepared documents such that it appeared that another lawyer was representing his own and his wife's interests.

On February 15, 2019, Mrs. Khandelwal was served with a 30 day notice under The Real Property Act requiring her to take proceedings on certain Caveats registered against co-venture properties in which title was held in the names of RK and AB. Mr. Khandelwal proceeded to act for Mrs. Khandelwal in responding to the notice and acted in settlement negotiations.

## **Plea**

Mr. Khandelwal entered guilty pleas to all charges of professional misconduct.

## **Decision and Comments**

The Panel was presented with a joint submission as to the consequences of Mr. Khandelwal's misconduct. The Panel considered the case law regarding joint recommendations and decided that it had no reasons to reject it. It was noted that Mr. Khandelwal has no prior discipline history with Law Society of Manitoba.

## **Consequences**

The Panel accepted the joint submission that Mr. Khandelwal be fined \$7,500 and pay \$16,000 towards costs, that he practise under supervision and that he comply with Restrictions previously ordered by the Complaints Investigation Committee, as varied by the Panel. The Panel ordered that Mr. Khandelwal's subsisting Undertakings to the Society shall continue in effect.

### Supervision

1. Mr. Khandelwal is required to work under the supervision of lawyer acceptable to the Society, which requirement shall continue for a minimum period ending one year from the date on which he has completed the educational requirements set out below.
2. After one year from the completion of those educational requirements, Mr. Khandelwal may apply to the Chief Executive Officer of the Society ("CEO") to have the supervision discontinued or its terms varied, and the CEO may vary or discontinue the supervision upon a report from the Supervisor recommending discontinuance or variance, if satisfied that it is appropriate to accept the recommendation.
3. Mr. Khandelwal shall, so long as he is practising under supervision:
  - a. fully cooperate with the Supervisor;
  - b. make himself available to meet with the Supervisor whenever the Supervisor shall require it;
  - c. instruct his assistants and other staff to report to the Supervisor any aspect of any matter that is perceived to be a possible breach of any of any Undertaking, Restriction or Condition and to meet or communicate with the Supervisor as the Supervisor may require; and
  - d. if the Supervisor is not a member of his firm, advise each client in writing that he is practising under supervision of the Supervisor and that the Supervisor will have access to their confidential information on the same basis as Mr. Khandelwal.
4. The Supervisor shall be required to give and comply with Undertakings to the Society to supervise Mr. Khandelwal's practice, including to:
  - a. Meet with Mr. Khandelwal no less frequently than once every two weeks;

- b. on each such meeting review all of Mr. Khandelwal's real estate files and all commercial transaction files that are active, or have been closed since the previous review;
- c. review a representative sample of all other files no less frequently than on every second such meeting;
- d. monitor compliance with the Restrictions and Conditions imposed by this Panel, including those continued, or continued with variations, and of any and all Undertakings given by Mr. Khandelwal to the Society;
- e. meet with Mr. Khandelwal's staff independently of Mr. Khandelwal no less frequently than once every two months to review their roles and manner of discharging their duties and to invite discussion of any concerns;
- f. advise all of Mr. Khandelwal's legal assistants and accounting personnel that they may contact the Supervisor at any time to express any concerns or address any questions;
- g. report to the Society immediately upon becoming aware of any breach of any Undertaking, Restriction or Condition or any serious concerns about Mr. Khandelwal's conduct or competence;
- h. report to the Society no less frequently than every three months as to the discharge of the supervisory responsibilities including as to issues that have arisen and been resolved, or still need to be resolved; and
- i. not withdraw from their Undertaking except upon thirty days' notice in writing to the Society and to Mr. Khandelwal, or as may be required by the Society.

#### Education

1. Mr. Khandelwal must successfully complete a course of study in ethics and conflicts no later than June 30, 2020.
2. Mr. Khandelwal must successfully complete 18 hours of real estate education by June 30, 2020.

#### Practice Restrictions and Requirements

1. Mr. Khandelwal must not act in any matter in which he, his wife, or his child has a personal interest, except with the prior consent of the Chief Executive Officer of the Society.
2. Mr. Khandelwal must not act for opposing parties to a transaction, including, but not limited to, acting for both the purchaser and vendor on real estate or business transactions.
3. Mr. Khandelwal must not act for both purchaser and private lender (which is to say a lender other than one who meets the definition of "lending client" as set out in Rule 3.4-13 of the *Code of Professional Conduct*) on any transaction, including but not limited to, a real estate transaction.
4. Mr. Khandelwal must not directly or indirectly refer clients for loans except for where the lender is a "lending client" as defined by Rule 3.4-13 of the *Code of Professional Conduct*.

5. On every file on which he acts for both the purchaser and a lender on a transaction, Mr. Khandelwal must:
  - a. inquire about the source of all funds advanced by the purchaser for the transaction;
  - b. obtain a declaration from the purchaser about the source of those funds; and
  - c. advise the lender about the source of all funds for the transaction that the purchaser obtained from a source other than the lender, the purchaser's own savings, or a gift approved in advance by the lender.
6. Mr. Khandelwal shall maintain proper records for the receipt of cash payments. This includes keeping a book of duplicate receipts, with each receipt identifying the date on which the cash is received, the person from whom the cash is received, the amount received, the client and file number for whom the cash is received, and the signature of his authorized staff person and of the person from whom the case is received, in accordance with Law Society Rule 5-53.1(2).
7. Mr. Khandelwal shall first review a client ledger to ensure sufficient funds are in place prior to disbursing any funds and to ensure that he does not overdraw any individual client's trust ledger account, in accordance with Law Society Rule 5-43(1)(f).
8. Mr. Khandelwal shall not issue a cheque or transfer money on account of legal fees or disbursements unless he has first prepared a formal statement of account and has provided the statement of account to the client, in accordance with Law Society Rule 5-43(1)(c).
9. Mr. Khandelwal shall require that each of his employees or contractors who assist with the provision of legal services or provide accounting services read and acknowledge in writing having read the restrictions that are imposed as conditions by this Discipline Panel, including the ones that are continued or continued with variations.