

R. Charles Furnivall: Summary, as Published in *CheckMark*

R. Charles Furnivall, of Bolton, was found guilty of four charges under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest. Mr. Furnivall borrowed approximately \$93,000 from four different clients over a number of years, without advising them to obtain independent professional advice, and without taking other adequate steps to ensure that their interests were protected. He was unable to repay the loans when they became due. Mr. Furnivall was fined \$2,000 and suspended for a minimum period of six months, such suspension to continue for up to two years until he repays with interest all outstanding loans received from his clients. Failure to repay the loans within the two-year period will result in Mr. Furnivall's expulsion from the Institute.

CHARGE(S) LAID re R. Charles Furnivall

The Professional Conduct Committee hereby makes the following charges against R. Charles Furnivall, CA, a member of the Institute:

1. THAT the said R. Charles Furnivall, in or about the period from September 6, 1994 to October 5, 1995, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$42,500.00 from his client Margaret Cheyne without advising her to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.
2. THAT the said R. Charles Furnivall, in or about the period from February 15, 1996 to February 28, 1996, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$25,000.00 from his client Rose Marie Buchmann without advising her to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.
3. THAT the said R. Charles Furnivall, on or about February 18, 1994, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$5,500.00 from his client Barbara Aikman without advising her to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.
4. THAT the said R. Charles Furnivall, on or about December 15, 1999, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$20,000.00 from his client Andrew Robinson without advising him to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.

Dated at Toronto, Ontario this 11th day of December, 2001.

G.W. MILLS, CA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Roderick Charles Furnivall

DECISION AND ORDER IN THE MATTER OF: Charges against **RODERICK CHARLES FURNIVALL, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE JUNE 13, 2002

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, the Discipline Committee finds R. Charles Furnivall guilty of charges Nos. 1, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Furnivall be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Furnivall be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Furnivall be suspended from the rights and privileges of membership in the Institute for a minimum period of six months from the date this Decision and Order becomes final under the bylaws, such suspension to continue thereafter until:
 - (a) Mr. Furnivall certifies in writing to the secretary of the discipline committee that he has repaid all loans received from his clients, together with any interest accrued thereon; and
 - (b) Ms. Barbara Aikman confirms that Mr. Furnivall has repaid the loan referred to in charge No. 3, together with any interest accrued thereon; and
 - (c) Mr. Andrew Robinson confirms that Mr. Furnivall has repaid the loan referred to in charge No. 4, together with any interest accrued thereon; and
 - (d) Ms. Margaret Cheyne confirms that Mr. Furnivall has reimbursed her for her court costs incurred in the amount of \$5,000; and
 - (e) the fine of \$2,000 required to be paid pursuant to paragraph 2 of this Order has been paid to the Institute.
4. THAT Mr. Furnivall surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Furnivall.

5. THAT notice of this Decision and Order, disclosing Mr. Furnivall's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT in the event Mr. Furnivall remains suspended two years from the date this Decision and Order becomes final under the bylaws pursuant to paragraph 3 of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*.

DATED AT TORONTO THIS 25TH DAY OF JUNE, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY – DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Roderick Charles Furnivall

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **RODERICK CHARLES FURNIVALL, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE JUNE 13, 2002

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario convened on June 13, 2002 to hear charges brought by the professional conduct committee against Mr. Roderick Charles Furnivall, a member of the Institute.
2. The professional conduct committee was represented by Ms. Barbara Glendinning, and she was accompanied by the investigator appointed by the professional conduct committee, Mr. Bruce Armstrong. Mr. Frank Bowman appeared for Mr. Furnivall, who attended the hearing.
3. The formal decision and order made June 13, 2002 was signed by the discipline committee secretary on June 25, 2002 and sent to Mr. Furnivall that day. These reasons, given in writing as required by Bylaw 574, set out the charges, and the decision and the order as well as the reasons of the committee.

DECISION ON THE CHARGES

4. The charges, laid by the professional conduct committee against Mr. Furnivall dated December 10, 2001 read as follows:
 1. THAT the said R. Charles Furnivall, in or about the period from September 6, 1994 to October 5, 1995, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$42,500.00 from his client Margaret Cheyne without advising her to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.
 2. THAT the said R. Charles Furnivall, in or about the period from February 15, 1996 to February 28, 1996, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$25,000.00 from his client Rose Marie Buchmann without advising her to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.
 3. THAT the said R. Charles Furnivall, on or about February 18, 1994, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$5,500.00 from his client Barbara Aikman without advising her to obtain independent professional advice and without taking other adequate

steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.

4. THAT the said R. Charles Furnivall, on or about December 15, 1999, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he borrowed approximately \$20,000.00 from his client Andrew Robinson without advising him to obtain independent professional advice and without taking other adequate steps to ensure that his client's interests were protected, contrary to Rule 201.1 of the rules of professional conduct.
5. Mr. Furnivall entered a plea of guilty to the four charges and confirmed he understood that on the basis of his plea, and that basis alone, he could be found guilty of professional misconduct.
6. Ms. Glendinning gave a brief overview of the case and filed an agreed statement of facts and document brief. The agreed statement of facts was signed by Mr. Furnivall on his own behalf and by Ms. Glendinning on behalf of the professional conduct committee. It referred to the document brief which contained relevant documents. Ms. Glendinning concluded the case for the professional conduct committee after reviewing the agreed statement of facts and document brief.
7. Mr. Bowman did not call evidence on behalf of the member. He confirmed the accuracy of the agreed statement of facts, and commented briefly on the submissions made by Ms. Glendinning.
8. Upon deliberation, the panel concluded that the uncontradicted evidence proved the allegations set out in the charges.
9. The essence of the misconduct was that Mr. Furnivall borrowed money from clients without advising them to obtain independent professional advice and without taking other adequate steps to ensure that their interests were protected. Mr. Furnivall did not intend to steal money from his clients. He was not motivated by greed. He found himself in situations in which he needed money either to invest in certain ventures, or to continue his practice until these ventures matured. When the loans became due, however, the clients were left with unpaid promissory notes and Mr. Furnivall's promises to repay in the future. His clients' interests were not protected.
10. The panel concluded that the departure from the required standard constituted professional misconduct and found Mr. Furnivall guilty of the charges laid. Upon the resumption of the hearing, the chair read the following decision into the record:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, the Discipline Committee finds R. Charles Furnivall guilty of charges Nos. 1, 2, 3 and 4.

ORDER AS TO SANCTION

11. Ms. Glendinning did not call evidence with respect to sanction.

12. Mr. Bowman called Mr. Furnivall; Ms. Aikman, one of the clients who loaned Mr. Furnivall money; and Mr. David Quick, the senior partner of Quick, Greenspan & Radvany LLP.

13. Mr. Furnivall made a statement in which he accepted responsibility for his actions and apologized. He acknowledged that while his actions were well-intended, he had in fact been reckless. He also confirmed his intention to pay back all of the money which he had borrowed.

14. In his evidence, Mr. Furnivall referred briefly to the history of the loans from the clients as well as to his current situation.

15. Mrs. Margaret Cheyne retained lawyers and brought an action against Mr. Furnivall. She has been repaid except for \$5,000 in legal costs which she incurred.

16. The loan to Rosemary Buckman has been paid in full, but at the date of the hearing Mr. Robinson was still owed more than \$16,600 plus overdue interest.

17. Barbara Aikman testified on behalf of Mr. Furnivall, and expressed confidence in his professional ability as well as confidence that she would ultimately receive the \$7,000 she said would repay her loan.

18. Mr. Quick is a former partner of Mr. Furnivall, and is also the source of the money loaned to Mr. Furnivall to pay off most of the debts to his clients. Mr. Quick testified that he would continue to support Mr. Furnivall so long as Mr. Furnivall continues to take steps to straighten out his affairs.

19. It was Mr. Quick's evidence that Mr. Furnivall is hardworking and conscientious, and that he and the other partners have been supportive of Mr. Furnivall and hope to see him through these difficulties. Their plan is to get Mr. Furnivall's client debts repaid, and then sort out the question of how they in turn will be repaid by Mr. Furnivall.

20. Mr. Quick testified that when he and Mr. Furnivall merged their practices in 1998 he was fully aware of Mr. Furnivall's difficulties with the Insitute. He also acknowledged that depending on the decision of the discipline committee, Mr. Furnivall's arrangements with the firm might change.

21. In her submissions, Ms. Glendinning asked that Mr. Furnivall be reprimanded, fined between \$2,000 and \$3,000, and suspended for 2 years with a condition that he not be reinstated until full restitution had been made. She also requested that there be full publicity.

22. Ms. Glendinning emphasized two points:

- that while the degree of moral turpitude in this case was limited, as Mr. Furnivall never intended to misappropriate money from his clients, he nevertheless took advantage of and breached the trust his clients had placed in him; and
- that while there were a number of mitigating circumstances, there were also aggravating circumstances which, in her submission, outweighed the mitigating circumstances.

23. Ms. Glendinning pointed out that among the aggravating circumstances was the fact that the misconduct involved four clients over a lengthy period of time. Further, Mr. Furnivall took advantage of vulnerable clients, and his breach of trust in the case of Mrs. Cheyne, a recent widow whose husband had always looked after the couple's financial affairs, was particularly egregious.

24. Mr. Bowman emphasized a number of mitigating factors, including that Mr. Furnivall did not apply pressure on his clients to loan him money, and that he had offered his full cooperation throughout the investigation and the prosecution. He had not opposed the action brought against him by Mrs. Cheyne, had pled guilty to the charges brought against him in these proceedings, and had either already made restitution to his clients or given them his commitment to do so.

25. In his submissions, Mr. Bowman emphasized that Mr. Furnivall did not need a two year suspension to specifically deter him from similar conduct in the future. He submitted that rehabilitation should be the priority in this case, and that a suspension of three to six months would be appropriate for that purpose.

26. After deliberation, the committee reconvened the hearing and the chair set out for the record the essence of the order. The formal order signed by the secretary and sent to Mr. Furnivall reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Furnivall be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Furnivall be and he is hereby fined the sum of \$2,000, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Furnivall be suspended from the rights and privileges of membership in the Institute for a minimum period of six months from the date this Decision and Order becomes final under the bylaws, such suspension to continue thereafter until:
 - (a) Mr. Furnivall certifies in writing to the secretary of the discipline committee that he has repaid all loans received from his clients, together with any interest accrued thereon; and
 - (b) Ms. Barbara Aikman confirms that Mr. Furnivall has repaid the loan referred to in charge No. 3, together with any interest accrued thereon; and
 - (c) Mr. Andrew Robinson confirms that Mr. Furnivall has repaid the loan referred to in charge No. 4, together with any interest accrued thereon; and
 - (d) Ms. Margaret Cheyne confirms that Mr. Furnivall has reimbursed her for her court costs incurred in the amount of \$5,000; and
 - (e) the fine of \$2,000 required to be paid pursuant to paragraph 2 of this Order has been paid to the Institute.

4. THAT Mr. Furnivall surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws, to be held during the period of suspension and thereafter returned to Mr. Furnivall.
5. THAT notice of this Decision and Order, disclosing Mr. Furnivall's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT in the event Mr. Furnivall remains suspended two years from the date this Decision and Order becomes final under the bylaws pursuant to paragraph 3 of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Globe and Mail*.

Reprimand

27. The panel ordered that Mr. Furnivall be reprimanded in writing by the chair of the hearing, to stress to him the unacceptability of his conduct and to act as a specific deterrent.

Fine

28. The panel concluded that a fine of \$2,000 would be appropriate as a specific deterrent to Mr. Furnivall in this case. This was at the lower end of the range recommended by the professional conduct committee. As well, the fine serves as a general deterrent to others in the profession not to take advantage of a client's trust. In setting the amount of the fine, the panel recognized that Mr. Furnivall has accepted a significant responsibility by promising to repay all client loans, and did not wish to add to what is already a difficult financial burden.

Suspension

29. The panel agreed with Ms. Glendenning's characterization of Mr. Furnivall's misconduct. While a two year outright suspension would not be inappropriate for such misconduct, in order to help facilitate the repayment of the loans to the clients the panel imposed a minimum suspension of six months with a provision that the suspension continue for up to two years until the loans have been repaid.

30. The panel was satisfied that Mr. Furnivall was genuinely remorseful for his actions, and had no intention to harm his clients. The panel was persuaded that Mr. Furnivall is intent on rehabilitating himself, and that he has made a start in that direction.

31. Mr. Furnivall's rehabilitation and the repayment of the debts are both priorities in this case. The panel concluded that a minimum suspension of six months was necessary as both a specific deterrent to Mr. Furnivall and as a general deterrent, and expects that the continuing suspension until the debts are repaid will help the clients to receive their money and Mr. Furnivall to rehabilitate himself.

Notice

32. Notice disclosing Mr. Furnivall's name is necessary as a general deterrent. It is important that members know their names will be published in notices of discipline proceedings given to the profession.

Surrender of Certificate

33. It is important that Mr. Funivall not purport to enjoy the privileges of membership while he is suspended, and accordingly he is to surrender his membership certificate to the discipline committee secretary.

DATED AT TORONTO THIS 26TH DAY OF SEPTEMBER, 2002
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

D.W. DAFOE, FCA
D.M. FORTNUM, FCA
R.D. WHEELER, FCA
B.A. YOUNG (Public representative)