

Applicants

Felice Kirsh, for the Respondent
Public Guardian and Trustee

- and -

THE OFFICE OF THE PUBLIC
GUARDIAN AND TRUSTEE ESTATE
TRUSTEE WITHOUT A WILL FOR THE
ESTATE OF FREDERICK RICHARD
MORPHY, A.K.A. FREDERICK RICHARD
MORFEY, DECEASED

Respondent

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HEARD: September 20 &
November 3, 2004 , and May 31
& June 7, 2005

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STINSON J.

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[1] This is an application to determine whether the applicants are the lawful heirs of the deceased Frederick Morphy (the "Deceased") who died in Toronto in 1955. The Deceased died without leaving a will and responsibility for the administration of his estate fell to the (then) Office of the Public Trustee. At the time, the Public Trustee was unable to locate any known heirs and the Deceased's assets became Crown property.

[2] The present application has been brought at the instance of Mondex Corporation whose business is locating missing heirs. By conducting genealogical research and assembling records of births, marriages and deaths, Mondex has purported to locate individuals and/or estates whom it contends are the lawful heirs of the Deceased. Mondex has contacted those individuals and/or estates, has made arrangements to represent them, and has commenced this application for a declaration that they are the proper heirs.

[3] As between the applicants and the respondent, it is agreed that the sole issue that I am called upon to decide is whether the Deceased, Frederick Morphy, who died in Toronto on June 27, 1955, was the same person as Frederick Richard MorfeY who was born in Brede, in the County of Sussex, England, on July 3, 1876. For ease of reference I will refer to the latter individual as "FRM". The

applicants are descendants of FRM's brothers and sisters. If I conclude that the Deceased and FRM were the same individual, counsel have informed me that there will be no issue as to the identity or proportional entitlements of the heirs.

[4] I should also note at the outset that the title of proceedings chosen by Mondex in this matter is incorrect insofar as it describes this application as being brought "In the matter of the Estate of Frederick Richard Morphy, a.k.a. Frederick Richard Morfey, deceased" and describes the respondent as "The Office of the Public Guardian and Trustee Estate Trustee without a Will for the Estate of Frederick Richard Morphy a.k.a. Frederick Richard Morfey, deceased." Properly speaking, at the time of his death in 1955 the Deceased was known only as "Frederick Morphy" or "Fred Morphy" and not by the names used by Mondex in the title of proceedings. It is the court's responsibility to decide whether that man's birth name was Frederick Richard Morfey.

Background Facts

[5] The amount of reliable, available information concerning the birth date and ancestors of the Deceased is relatively limited. The applicants place heavy reliance on a marriage certificate and related documentation concerning the Deceased's 1911 marriage to Emma Florence Jackson. Part of that material consists of an affidavit sworn by the Deceased in which he deposed, in October 1911, that he was 36 years of age. This equates to a birth date in 1875 or 1876.

[6] The certificate of marriage accompanying the affidavit was apparently prepared by the person who officiated at the marriage. It recited that the name of the father of the Deceased was Charles Morphy and his mother's maiden name was Hannah Frank. It also described the occupation of the father of the Deceased as "steel merchant". The accompanying Register of Marriages recited the place of birth of the Deceased as the Township of York.

[7] Subsequent to his 1911 marriage, the Deceased enlisted in the armed forces as veterinary surgeon. In his application for enlistment in February 1916 he stated that his age on his next birthday would be 36 years. This equates to a birth date in 1880 or 1881.

[8] Following his enlistment, the Deceased went overseas and served in the First World War. He was apparently seriously injured overseas, suffering severe mental shock. Indeed, the record before me suggests that for the remainder of his life the Deceased suffered from a serious mental illness. According to the medical records that were filed in evidence, he was certified as insane and described as having a very defective memory. He was prone to telling "fantastic stories" and according to one psychiatrist it was "impossible to tell when he is stating facts". In a census document he was described as suffering from "delusional insanity".

[9] Although the parents of the Deceased were listed by name in the 1911 marriage documents, subsequent to his war injury he told psychiatrists that he was illegitimate and did not know who his parents were. In a subsequent census document, he claimed that his parents had been born in France in Alsace-Lorraine and Normandy.

[10] The post-World War I documents reflect a variety of birth dates for the Deceased. In hospital records from 1935, he is recorded as having told the doctors that he was born in Hoggs Hollow (a village north of Toronto, then located in the Township of York) "about 55 years ago" which would equate to a birth date in approximately 1880. On the same page his age is listed as 44 years, which equates to a birth date in 1891. In a census extract from 1940 he is recorded as stating his birth date as

July 4, 1893, his place of birth is "Hogs Hollow (sic.), Ontario, Canada". The 1951 census records show the Deceased's age as 55 years (which equates to a birth date in 1896 or 1897) and his birthplace as the Province of Ontario. In his death certificate, which recites information purportedly supplied by a friend, J. Marney, the birth date of the Deceased is recited as July 4, 1885. In newspaper stories published at the time of his death, the same friend is quoted as stating that the Deceased's age at death was "closer to 80", which would equate to a birth date in the mid-1870s.

The Applicants' Position

[11] Relying principally on the accuracy of most of the information contained in the marriage documents, the applicants point to the following in support of their contention that the Deceased and FRM were the same person:

- (1) FRM was born July 3, 1876. In 1911, he would have been 35 years old or in his 36th year. The Deceased described himself as 36 in the marriage affidavit sworn in October 1911.
- (2) According to the birth records of FRM, his parents were Charles Edward Morfey and Hannah Francis Morfey. In the marriage documents, the parents of the Deceased are named as Charles Morphy and Hannah Frank.
- (3) The occupation of FRM's father, Charles, is listed on his birth document as "Blacksmith". On the birth certificates of FRM's siblings, Charles is described as "Blacksmith" or "Blacksmith (master)". In the marriage documents, the occupation of the father of the Deceased is listed as "steel merchant", which is (arguably) a variation or embellishment of the occupation of FRM's father.
- (4) Although the surname of FRM on his birth certificate is spelled Morfey, the family surname on the birth certificates of his siblings is variously spelled as Morphey and Morphy. The signature of FRM's father on FRM's birth certificate is given by way of a simple X, suggesting that he may have been illiterate, with the result that the various spellings may have been the product of the official who prepared the record, rather than the parents of FRM.
- (5) A search of the 1881 United Kingdom census records revealed a "Frederick R. Morphy" age 4, as the son of Charles E. and Hannah F. Morphy. At that stage, having been born in 1876, FRM would have been four or five years old. No other records were found in the UK census for a Frederick Morphy, born around this period, as the son of a Charles and Hannah Morphy. This suggests that it is unlikely that there were any other Frederick Morphys whose parents' names were Charles and Hannah who were born in the United Kingdom around this timeframe.
- (6) A search of the Ontario census records found only one Frederick Morphy who was born around the relevant time, in 1878, as the son of John and Mary Morphy. The applicants submit that this cannot be the Deceased because of the names of the parents, which are inconsistent with the names recited on the marriage documents.
- (7) According to the U.K. census records, by 1891 FRM appears to have moved out of his parents' residence and was living nearby, employed as a "Farm Boy". This may serve to explain why he subsequently had little contact with his family.
- (8) The applicants also rely on the fact that in late 1955, within six months after the Deceased died, an enquiry concerning his estate was received on behalf of Mrs. Mary Higgins of Ashford, Kent,

England. At the time, through her solicitors, she asserted that she was a second cousin of the Deceased. She was unable, however, to come up with documentation to support her claim and to disprove that there were no other heirs who ranked ahead of her. She died in 1959 and her claim was not pursued. Recent research by Mondex, however, confirmed that she was a first cousin, once removed, of FRM: Mrs. Higgins' grandparents and FRM's great-grandparents were the same individuals. The applicants submit that the fact that she made her claim while she was living, soon after the death of the Deceased, suggests that she somehow had knowledge of having a relative in Ontario named Fred Morphy, who had recently died.

(9) Finally, the applicants rely on the affidavit of Raymond Morphy, a nephew of FRM. By his own admission, his knowledge of his father's family is limited, as throughout his life he has had almost no contact with his father's siblings or their families. His affidavit indicates that, in the early 1950s, following his father's death, his mother told him that his father had a brother who lived in Canada. No name was mentioned.

[12] The submission of the applicants is that, taken in the aggregate, the foregoing information should satisfy the court on a balance of probabilities that the Deceased, Frederick Morphy, was born Frederick Richard Morfey, in Brede, County of Sussex, England on July 3, 1876 and thus the applicants are his legal heirs.

The Respondent's Position

[13] The basic position of the respondent, the Public Guardian and Trustee, is that there is insufficient reliable and accurate information to establish that the Deceased and FRM were the same person. The respondent points to a variety of inconsistencies and gaps in the available information, and submits that we are left with "a puzzle with many pieces missing". As a consequence, the court should decline the applicants' request for a declaration that they are the Deceased's lawful heirs.

[14] In support of its position, the respondent points to the following:

(1) The materials contain a variety of birth dates for the Deceased, most of which are inconsistent with the date of birth for FRM.

(2) The Register of Marriages referable to the Deceased's 1911 marriage lists his place of birth as the Township of York, not the United Kingdom.

(3) The records of the Ontario Veterinary College (which pre-date the marriage) suggest that the Deceased had some connection with Rochelle, France (although, admittedly, these records do not indicate a birthplace of Rochelle, France).

(4) On the 1911 marriage certificate the maiden name of the mother of the Deceased is listed as "Hannah Frank". The maiden name of the mother of FRM was "Hannah Francis Brockhurst" not Hannah Frank.

(5) There is no mention of a middle name or middle initial in any of the records relating to the Deceased. In the records of the Ontario Veterinary College, in the 1911 marriage records, in the military records, in the medical records and in the newspaper reports following his death, the Deceased is referred to simply as "Fred Morphy" or "F. Morphy" or "Frederick Morphy". The middle initial "R" is nowhere mentioned.

(6) The respondent also points to the various errors in the applicant's materials with respect to the family and relatives of FRM. Although these have now (apparently) been corrected through additional research and clarification, those errors are indicative of the frailty of the information relied upon by the applicants generally.

(7) The respondent also emphasizes the fact that the applicants' materials contain very limited evidence of any contact between the Deceased and the family of FRM. In the respondent's submission, given the number of FRM's siblings, it is unlikely that all of them would have lost contact with him.

[15] The respondent therefore submits that the applicants have failed to satisfy the onus of establishing that the Deceased and FRM were the same person.

Analysis

[16] On an application such as this the task of the court is to determine whether the applicants have discharged the onus of proving, on a balance of probabilities, that they are the lawful heirs of the deceased. In the present case, the question becomes whether, based upon the evidence before me, I am satisfied that it is more likely than not that the Deceased and FRM were the same person.

[17] I have concluded that, on a balance of probabilities, the evidence does satisfy me that Frederick Morphy who died in Toronto in 1955 was the same person as Frederick Richard Morfey who was born in England on July 3, 1876. My reasons for reaching the conclusion are as follows:

1. In his marriage affidavit the Deceased recited his age as 36, which roughly corresponds with FRM's birth date of July 1876. This was a statement made by the Deceased, under oath, on a significant occasion in his life. By contrast, there is good reason to question the reliability of much of the information concerning the birth history of the Deceased that was provided by him subsequent to World War I. Not only was his memory admittedly very defective due to his war injury, but he provided varying accounts of his background and birth date, was prone to telling "fantastic stories" and was found by medical professionals to be suffering from delusional insanity. By contrast, the 1911 marriage documents do not suffer from the same limitations. Thus the estimate of birth date provided by extrapolation of the age contained in the marriage documents is consistent with the Deceased being FRM.

2. The birthday most frequently listed for the Deceased is July 4, while FRM's birthday was July 3. While not identical, these two dates are only one day apart.

3. The absence of any Ontario census records of a Frederick Morphy born around the relevant time to a Charles and Hanna Morphy suggests that the Deceased was not born in Ontario.

4. I acknowledge that the marriage documents referred to the Deceased's place of birth of the Township of York. That statement is inconsistent, however, with the lack of a census record of his birth in Ontario. I also note that not all of the information provided by the Deceased on the marriage documents is accurate. For example, he described his occupation as "physician" and signed his affidavit "Fred Morphy M.D.". In truth, the Deceased was a veterinary surgeon and not a medical doctor.

5. I further acknowledge that in his enlistment application in 1916 (almost 5 years after his marriage) the Deceased again stated that his age was 36. This contradicts the sworn information

contained in his marriage affidavit. Plainly, at least one (or both) of the statements of his age was inaccurate. It may be that, in order to be accepted for overseas service, the Deceased intentionally understated his age. His description on the marriage register of his occupation as "physician" is some indication that he did not always provide accurate information.

6. The marriage records recite that the parents of the Deceased were Charles Morphy and Hannah Frank. "Frank" is a common contraction of the name "Francis". FRM's father was Charles Morphy. His mother was Hanna Francis Morphy, nee Brockhurst. While the description of the Deceased's mother's name on the marriage document is admittedly different from the full birth name of FRM's mother (reciting "Frank" instead of "Francis" and omitting "Brockhurst"), the similarity between "Hannah Francis" and "Hannah Frank", coupled with the father's first and last name being the same, suggest more than mere coincidence.

7. FRM's father was a blacksmith or a master blacksmith. On the marriage documents, the Deceased listed his father as a "steel merchant". These two occupations are not unrelated and the use of the latter term may well be a reflection of the Deceased's propensity for embellishment (as further reflected by his description of his own occupation as "physician" instead of veterinarian).

8. I ascribe no significance to the varying spellings of the family surname. I note that the family surname on the birth certificate of FRM and his siblings was variously spelled "Morfey", "Morphey" and "Morphy". In later census records, FRM's surname was consistently spelled "Morphy".

9. I acknowledge that none of the records reflect the use of a middle name or initial by the Deceased. This does not, however, mean that he never had one, but merely suggests that he did not use one regularly. I note that the 1881 census material in England (when FRM was 4 years old) recorded FRM as Frederick R. Morphy, while the 1891 census material (when FRM was 14 years old) recorded him as merely "Frederick Morphy" with no initial. It may be that FRM was unaware that he had a middle name or initial or that he had ceased using it by then.

10. The 1891 English census material also reflects the fact that, by age 14, FRM had moved out of his parents' house and was living nearby, employed as a farm boy. This suggests that he began to live independent of his parents at a relatively young age. This is consistent with him having limited contact with his immediate family as he grew older.

11. Significantly, there is no record of a death for FRM in the death records in England for the period 1881 through 1975. This suggests that FRM did not die in England. This is consistent with him having left England and immigrated to Canada.

12. The inquiry made by Mrs. Higgins in 1955 also supports the conclusion that the Deceased and FRM were the same person. Although they were from different generations (she was a first cousin of FRM's father) Mrs. Higgins was born in 1872 while FRM was born in 1876 and thus they were close in age. The fact that she made the enquiries she did within six months of the Deceased's death suggests that she may have had some ongoing contact with him, such that she somehow learned of his death. Given that Mrs. Higgins was in her mid-80s at the time, it is not surprising that she was unable to pursue her claim. Nevertheless, the fact that she made the enquiries she did soon after the death of the Deceased and the fact that she was related to FRM, suggest a link between the two. That link is further supported by the evidence of Raymond Morphy to the effect that he was told by his late mother that he had an uncle living in Canada.

[18] In my opinion, taken collectively, the foregoing information is sufficient to establish on a

balance of probabilities that the Deceased and FRM were the same person. The combination of the various pieces of information, including names, birth dates, parental names, father's occupations and details from census records suggest that the numerous commonalities between the Deceased and FRM are unlikely to be the product of mere coincidence. A more logical explanation is that the various bits of data relate to the same individual.

[19] I acknowledge that not all pieces of the puzzle are available and that some of the pieces do not necessarily fit perfectly. I attribute the latter to a combination of inaccuracies in the manner in which information was recorded or inaccuracies in the information supplied by the Deceased at various times. Notwithstanding those apparent incongruities, on balance I am satisfied that the applicants have established that they are the lawful heirs of the Deceased.

[20] A declaratory order will issue accordingly.

Stinson J.

DATE: June 16, 2005

COURT FILE NO.: 2691/55

DATE: 20050616

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

FREDERICK CHARLES MORPHY, A.K.A.
FREDERICK CHARLES MORPHEY, A.K.A.
FREDERICK CHARLES MORFEY AND RAYMOND
GEORGE MORPHY BY THEIR ATTORNEY
JONATHAN JAMES PALMER, THE ESTATES OF THE
FOLLOWING DECEASED PERSONS: MARGARET
ANNIE MORPHY, FRANCES MARY MORPHY,

CHARLES EDWARD MORPHY, PERCY CHARLES
MARSH, MARIE ELIZABETH WALKER, ALBERT
EDWARD MARSH, ROBERT WILLIAM MORPHY,
THOMAS DANIEL MORPHY, FRANCES ANNIE
BEER, DORIS EVELYN MORPHY AND ALBERT
CYRIL MORPHY BY THE ATTORNEY FOR THE
ESTATES, JONATHAN JAMES PALMER

Applicants

- and -

THE OFFICE OF THE PUBLIC GUARDIAN AND
TRUSTEE ESTATE TRUSTEE WITHOUT A WILL FOR
THE ESTATE OF FREDERICK RICHARD MORPHY,
A.K.A. FREDERICK RICHARD MORFEY, DECEASED

Respondent

REASONS FOR JUDGMENT

Stinson J.

Released: June 16, 2005

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- [Teamsters Local Union No. 938 v. Patrolman Security Services Inc., 2005 38038 \(ON LRB\)](#)
 - [Bullock v. Bullock, 2004 16949 \(ON SC\)](#)
 - [Craig v Aluminum, Brick and Glass Workers International Union, Local 203, 1992 6798 \(ON LRB\)](#)

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