

Till death us do part:

Widows and Widowers in Charlotte County, New Brunswick, 1845-1875

### **Summary Overview**

Studies of the experience of widowhood in 19th-century Canada tend to focus on widows, paying scant attention to the parallel or contrasting experience of widowers. And it has been the most disadvantaged among the widows who have attracted the most attention. In recent years, scholars have called for a broader examination of the experience of widowhood, and this paper offers a preliminary foray into the field. Charlotte County, New Brunswick, provides an ideal setting for a study of both widows and widowers. The second most populous county in the province, it included lumbering, trading, fishing and farming communities within its boundaries. And it included significant towns as well as rural regions. Based largely on an analysis of wills, manuscript censuses and almshouse records, my paper address three main questions. How different was widows' experience from that of widowers? To what extent and in what ways did inheritance law exacerbate differences? Did wills serve to reinforce, mitigate or subvert the letter of the law?

Today's popular custom of a father giving a daughter in marriage is rooted in the traditional assumption that women were, from the cradle to the grave, dependent creatures. Yet the reality has always been infinitely more complex. Like women elsewhere, 19th-century New Brunswick women lived in a society in which patriarchal norms had the full weight of legal sanction. At the beginning of the 19th century, marital property laws vested control of a couple's real property in the husband and inheritance laws guaranteed the wife no more than a life interest in one-third of that property should she survive her spouse. Such laws not only made married women legally dependent on their husbands but also placed widows at a legal disadvantage in

comparison to their male counterparts. That neither men nor women entirely accepted the implications of these laws is evidenced by the provisions of some wills, written even before the introduction of the first Married Women's Property Act. Writing in 1845, for example, after bequeathing two "houses and premises" in St Andrews, including one "occupied by James W. Street, merchant," to her three sisters, two of whom were widows like herself, Harriet Clarke added: "after the death of my sister Charlotte, I give and devise her undivided...share... unto her daughter Mrs Street, wife of the said James W. Street, to have and to hold the same in fee simple in common with my said two sisters, but independently for her sole use and benefit and not subject to the debts or control of her said husband."<sup>1</sup> In New Brunswick, this kind of subversion of the law, while by no means a universal practice, occurred often enough to suggest that the letter of the law did not define women's experience.

Determining the nature and extent of widows' dependence or independence in 19th century society poses significant challenges for the historian. While widows who wrote wills were clearly independent women, the majority of widows did not write wills. Thus, while women accounted for 31 per cent of the widowed testators during the three decades covered in the analysis of wills, women accounted for 67 per cent of those reported as widowed in the 1871 census. Moreover, like Harriet Clarke, widows who wrote wills tended to follow a pattern common to male testators, limiting their bequests to women to the length of their legatees' natural lives, rather than giving them full and free control, in their turn, to choose their own legatees. While the majority of bequests to widows included such limitations, some did not. In his will, St Andrews merchant Thomas Turner bequeathed "to my dearly beloved wife Eliza all my Estate Real and personal for her support and maintenance and for the support and education

of my Infant son John Alexander whom I commit to her care with the utmost confidence, that she will bring him up and educate him in a manner suitable to his situation and prospects in life.”<sup>2</sup>

When the 1851 census was taken less than a year later, the recently widowed Eliza, at 36, was listed as a shopkeeper, heading a household that included her two-year-old son John, her younger sister Fanny, three boarders and a servant.

Some measure of the nature and extent of independence widows might hope to achieve can thus be gleaned through an examination of the terms of individual wills. An analysis of Charlotte County wills written and probated over the three decades between 1845 and 1875, in conjunction with manuscript census data on testators and their families traced over the same period, suggests that, far from restricting women’s rights and independence, men’s wills provided their widows and minor children a security they would have been denied under the letter of the law.<sup>3</sup> During this period, 37 per cent (50) of the 135 husbands who left wills named their wives as a sole or co-executrix.<sup>4</sup> Clearly a man who named his wife executrix had confidence in her abilities and business acumen. Yet even those women appointed as sole executrix were not necessarily granted full control of the estate. Only one third of all testators bequeathed their entire estates to their wives, with no conditions. These included 19 of the 22 men who mentioned no children in their wills.<sup>5</sup> Still, such cases account for only half of the women awarded full control of their husband’s estate. More unusual were the 15 widows whose husbands not only gave them full control of their property during their lifetime, but also gave them the power to devise the estate to their “heirs and assigns” as they saw fit. At the opposite end of the spectrum were 16 widows (12 per cent of the total) whose husbands awarded them full or partial control of their estates so long as they did not remarry. In 12 of the wills in which this

clause appeared, the couples' children were minors at the time of their father's death. In considering the intent of these wills, it is significant to note that two of the women in question were appointed as an executrix of their husbands' wills.<sup>6</sup> While we cannot know the degree to which women participated in framing the contents of their husbands' wills, this and other evidence strongly suggests that wives, as well as husbands, understood the significance of the laws of coverture, and the risks to their children's legacy, should they remarry.<sup>7</sup> By stipulating that a widow would forfeit control of that legacy should she remarry, such wills ensured that her future husband would not gain control of property accumulated during her previous marriage. More significantly, the majority of widows who were named as an executrix of their husband's will retained only a life interest, and that often in only a portion of the estate. Women were no more anxious than their husbands to alienate their children's inheritance.<sup>8</sup>

In what ways did the terms of their husbands' wills render widows more dependent than their male counterparts? If independence could be defined, provisionally at least, as achieving the status of household head, close to half (48 per cent) of the 694 widows resident in Charlotte County when the census was taken in 1871 qualify as independent. Widows comprised eight per cent of the county's household heads in that year. While over half (58 per cent) of their male counterparts were household heads, they were far fewer in number, comprising less than five per cent of the county's household heads. The majority of widows in the age cohorts 40-49 and 50-59 headed their own households, as did the majority of widowers in those age cohorts. But the majority of widowers between the ages of 60 and 79 (63%) also headed their own households, while widows of the same age were less likely to do so (45%). Among widows of all ages, those who headed households were more likely to be located in the county's towns and villages than in

the rural areas, but the same pattern did not hold true for widowers. Whether located in town or country, the majority of widows and widowers who did not head their own households resided in the households of other family members, usually with one of their children. Finally, women, although statistically less likely to be heading their own households, were also less likely to find themselves forced to take refuge in one of the county's three official alms houses, which accommodated thirteen widowers and just four widows in 1871.<sup>9</sup>

In comparing the experience of widows and widowers, it is clear that, whatever their age, widows were more vulnerable than widowers, not only because of the dower law, which guaranteed a woman a life interest in only one-third of her husband's real estate upon his death, but also because women's skills, vital as they were to the maintenance of the family economy, were worth less than a man's in the marketplace. Unless they controlled a significant amount of real and moveable property, women did not have the earning power to support a family. But it is equally important to note that while working-class widows, whose husbands had no property to bequeath, struggled to make ends meet, so too did working-class widowers. The experience of middle-class and wealthy widows depended on the nature of their husbands' wills. Thus, while some men, in their wills, expressed their entire confidence in their wives, naming them as both sole legatee and sole executrix, others used the same medium to exercise what one scholar has characterised as "patriarchy from the grave." Yet, as this paper suggests, the meaning of such bequests is more complex than either the statistics or the language of the wills suggest.<sup>10</sup> Of course, wills, however interpreted, tell only part of the story. A significant majority of both men and women died intestate. But whether their husbands left a will or died intestate, wealthy widows, like wealthy widowers, had more options than their poorer counterparts. Poor widows

and widowers who had many dependent children to support, or who were aged or infirm, often faced destitution. Some turned to their extended family for support. Those without such a support network sometimes managed to create one, blending two or more families to help make ends meet. Women proved more likely than men to join forces in this way. Turning to community officials for relief was a last resort, reserved for the most desperate.<sup>11</sup> Aging widows proved more successful than their male counterparts at avoiding such a fate, and were less likely than their male counterparts to become almshouse inmates.

#### Endnotes

1. Will of Harriet Clarke, probated 1849, Charlotte County Probate Court Records. RG 7, RS 63, PANB.
2. Will of Thomas Turner, probated 1850, Charlotte County Probate Court Records. RG 7, RS 63, PANB.
3. Charlotte County Probate Court Records. RG 7, RS 63, Provincial Archives of New Brunswick [PANB]. Testators included 135 husbands, 38 widowers and 16 widows. I am grateful to Michele Stairs who transcribed over half the wills examined for the purposes of this analysis. Wherever possible, decedents and their families were traced to the 1851, 1861 and 1871 manuscript censuses.
4. Significantly, no other group of testators – widowers, bachelors, widows or spinsters – appointed a higher percentage of women as executrix.
5. The failure to mention children did not necessarily mean that the couples were childless. Some had adult children who were already well established. The one exception was a man who wished to ensure that the farm would remain in the family and thus instructed that it should go to a nephew after the death of his wife, who was awarded full control for the duration of her life.
6. In 1864, John Campbell of St Stephen named his wife Eliza Ann as his sole executrix, while in 1874, William Boyd of St Patrick named his wife Ellen as a co-executrix.
7. Although this underlying issue is not made explicit in such wills, it surfaces elsewhere. See, for example, the 1869 will of Neville Parker. Parker left £500 or \$2000 each to his daughters Jane, Julia, Mary and Florence, along with an equal share with his four sons of the residue of his

estate, but further stipulated that “the bequest to and share of the residue of any married daughter whose coverture may continue at the time of such distribution is to be invested in good securities...to pay interest or dividends to such married daughter,” but if she outlived her husband, she was to gain control of the whole and the right to dispose of the residue in her will.

8. For a similar view of the issue, though one which does not speculate on the wife’s view, see Peter Baskerville, *A Silent Revolution? Gender and Wealth in English Canada, 1860-1930* (Montreal & Kingston: McGill-Queen’s University Press, 2008), 60-61.

9. Given the small numbers, it is significant to note that this preponderance of widowers over widows in alms houses holds true for both Saint John and Fredericton as well.

10. As Bettina Bradbury has pointed out, only a focus on the experience of widows can reveal the variety of their experiences: Bettina Bradbury, “Widowhood and Canadian Family History,” in Margaret Conrad, ed., *Intimate Relations: Family and Community in Planter Nova Scotia, 1759-1800* (Fredericton: Acadiensis Press, 1995), 19-41.

11. Reports of overseers of the poor do, however, sometimes offer insight into the plight of the most destitute widows. See, for example, the report of the overseer of the poor for the lower district of St George Parish in Charlotte County for 1858, Court of General Sessions Records, RG18, RS148/B/1/36c, PANB.