

Equity Matters: Doing Fairness in the Context of Family Caregiving

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RÉSUMÉ

Bien que les spécialistes des études familiales voient la dispensation de soins familiaux sous l'angle de réseaux d'aidants, peu d'entre eux se sont penchés sur la question de l'équité au sein de ces groupes. La fratrie constitue un réseau de dispensation de soins formé de membres qui se sentent responsables de la prise en charge du parent, qui s'attendent à partager ces responsabilités entre eux et qui évaluent ensemble le caractère équitable de ce partage. L'article rend compte d'une démarche multidisciplinaire adoptée pour examiner le point de vue des membres de la fratrie sur l'équité dans les désaccords au sujet de la prestation des soins familiaux et la disposition de l'actif du parent. L'article prend une tournure littéraire en analysant les tensions entre frères et sœurs par alliance dans le roman *Family Matters*. Des différends réels entre frères et sœurs du même sang qui ont été portés devant les tribunaux sont également passés en revue. Puis, les questions soulevées sont analysées sous l'angle de la doctrine de l'équité. Les membres de la fratrie qui évaluent l'équité entreprennent de comparer rigoureusement leur propre relation avec les parents des points de vue du lien biologique avec eux et de la nature et du poids de leur influence dans l'interaction avec les parents.

ABSTRACT

Although family scholars conceptualize caregiving in terms of networks of carers, little attention has been given to equity within these groups. Siblings comprise a prevalent caregiving network of members who feel responsible for parent care, expect to share these responsibilities with each other, and look to each other to evaluate the fairness of their sharing. In this paper, a multidisciplinary approach is used to examine sibling views of equity in relation to disputes over giving parent care and receiving parent assets. A literary perspective is offered through analysis of stepsiblings tensions depicted in the novel *Family Matters*. Real life disputes among biological siblings that have been pursued through the courts are also examined. Issues arising from these examples are then analysed through the lens of legal doctrines of equity. Siblings evaluating fairness undertake careful comparisons of their respective relationships with parents in terms of biological links to parents and type and extent of influence in interactions with parents.

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Family scholars have entered the new millennium summoned toward an ever more inclusive family studies. Researchers and educators are urged to craft their efforts to include families that fall outside "the dominant discourse on 'The Family'"

(Allen, 2000, p. 900). This means focusing on families that are culturally and structurally diverse, such as ethnic minority, gay and lesbian, one parent, step, and adopted. While an inclusive focus has inspired a better understanding of diverse and

flexible families, this shift moves attention away from conventional kinship. Johnson contends that kinship, including collateral ties with siblings, offers powerful markers of identification (2000, p. 625). This paper is an examination of how collateral ties, and questions of equity that arise from those ties, mark the identities of siblings as caregivers to aging parents. Ties within caregiver groups are of particular interest in light of current family studies conceptualizations of caregiving as involving networks of carers in which members work together to perform diverse tasks.

Although images of caring family networks are pervasive, assistance within families cannot be assumed to be automatic or straightforward (Guberman, 2001). Silverstein, in providing a review of emerging models of intergenerational transfer, pointed out that transfers of assistance between generations are “nested in a complex network of related individuals that compose the family system” (2006, p. 166). The history of the relationships among these individuals provides context for giving and receiving assistance (Keefe & Fancey, 1999), and this context may include conflict (Guberman). While studies have offered detailed accounts of the difficulties experienced by individual caregivers, such as stress, burden, and social isolation (e.g., Abel, 1991; Hequembourg & Brallier, 2005), far less work has been done to examine difficulties that may be experienced by family members as they attempt to work through the sharing of care responsibilities.

Adult children are a major caregiving group (Johnson, 2000; Keating, Fast, Frederick, Cranswick, & Perrier, 1999) motivated to care by some combination of love, duty, and desire to reciprocate for their upbringing (Aronson, 1990). While caregiving studies have tended to focus on one main caregiver, variously termed focal (Lee & Netzer, 1994), principal (Brody, 1990), or primary, some studies have called attention to adult children as occupying positions of equal status in families and expecting to share parent care responsibilities with each other (Globerman, 1995; Merrill, 1997).

In the late 1980s, Finch and Mason found that family members believed that the burden of parent care “should be shared equitably, if not equally, between all those in an equivalent genealogical position” (1990, p. 169). Today, this idea of “genealogical equivalence” commands interest, given the prevalence of adult children as caregivers. Yet aside from a broad expectation for fair sharing, little is known about the meaning of sharing an equivalent place in relationship to a parent for siblings faced with the need to care for a frail parent. Further, the notion

of equitable sharing of caregiving responsibilities raises questions about the types of sharing arrangements that might be perceived as fair among sibling caregivers. Surprisingly, little attention has been given to issues of equity among siblings caring for aging parents.

The goal of this paper is to explore equity among siblings in caregiving families. A social exchange theoretical perspective is used to examine how caregiving siblings calculate and compare costs (related to giving parent care) and rewards (related to receiving parent assets). The study of parent assets is relevant to the shared experience of siblings, given that siblings usually expect to share equally in parent assets (Finch, Hayes, Mason, Masson, & Wallis, 1996). At the same time, parent assets have sometimes been used to correct for imbalances in how caregiving is shared among siblings. Siblings perceived by the care-recipient parents as making greater care contributions receive greater shares of parental assets (Hall, 2002). Sibling perceptions of equity are examined here in relation to tensions or disputes over giving parent care and receiving parent assets. Disputes over care and assets reveal assumptions about fairness, since beliefs about fairness tend to be clearly delineated in disputes. This paper addresses questions about how care and assets are shared among siblings, what siblings believe about the fairness of their sharing, and what standards they use to evaluate the fairness of their sharing. Thus we take a family perspective on how caregivers evaluate the costs and rewards of caregiving, setting their evaluations within comparisons to the caregiving costs and rewards of “equivalent” family members – their siblings.

In addressing these questions, we use a multidisciplinary approach to bring together understandings of what equity means from different perspectives. These perspectives are compared and commonalities and differences identified and evaluated in order to achieve a fuller understanding of equity among caregiving siblings. First, we offer a literary point of view, analysing a fictional work that portrays tensions among siblings over giving parent care and receiving parent assets. This examination reveals strong beliefs among stepsiblings about who should be doing and receiving what. Second, we analyse tensions among biological siblings that have been pursued through the courts, as represented in court documents. These portrayals, in the form of legal cases, reflect sibling disputes surrounding receiving parent property in exchange for providing parent care. They illustrate some expectations held by siblings for involvement in decisions related to parent assets and care. Literary and legal perspectives offer stories told in two distinct

styles to two distinct audiences. One perspective is richly detailed, the second concise and formal; together these yield a more complete picture of issues of equity among caregiving siblings than either source alone would provide. Finally, the issues of equity among siblings in relation to giving parent care and receiving parent assets are analysed through the lens of the legal doctrines or rules of equity that are applied by the courts to resolve formal disputes among siblings over parent property.

A Literary Perspective on Caregiving Equity

In his third novel, *Family Matters* (2002), Rohinton Mistry joins many other writers of fiction who have explored human frailty in old age, intergenerational tensions that accompany questions of caregiving, economic (and emotional) costs and benefits of caregiving, and the moral and spiritual implications of all of these. Although its specific geographical and cultural setting is India (with its focus on the minority Parsi community of Mistry's own upbringing), *Family Matters* illustrates universal issues of equity in caregiving family relationships. In particular, the meaning of genealogical equivalence is brought into focus as relationships among step-siblings form the basis for considerable tension over costs (who should provide care) and benefits (who received what portion of the parent's assets) in relation to their aging father.

In *Family Matters*, the competing interests of family members and the testing of their personal morality in the situation provoked by the injury and incapacitation of the family's elderly patriarch, Professor Nariman Vakeel, permit Mistry to examine, on a very local level, matters of corruption and ethno/religious squabbling that are part of his larger concerns about his homeland and home city of Bombay (now Mumbai), concerns that are not entirely foreign to his adopted country of Canada. All of his novels reflect interest in the importance of identity (personal and cultural), the role of memory in personal and national development, and multiculturalism in its multiple significances. These topics play their parts in the drama of family response to Nariman's sudden need for care. More crucial for our purposes is the novel's portrayal of a number of cross-currents in sibling relationships, including financial greed/sacrifice, selfishness/self-sacrifice, and class/gender comparisons.

Family Matters provides an intimate and compelling depiction of what matters to families in the universal situation of a frail elderly parent's need for home care. Mistry's thoughtful text also leads the reader to consider the various ways in which family *does* matter.

He unfolds a story of religious, ethnic, and cultural specificity that resonates with all who have experienced or can imagine the complexities of intergenerational differences, sibling rivalry, the haunting of the present by the past, and the tyrannies of selfishness and pride. From the imagined world of Shakespeare's *King Lear* and its sibling rivalry, which Mistry consciously invokes, to the experiences of all of us, family matters tremendously – both positively and negatively – in the lives of individuals. Moreover, family matters most when there is a sudden shift in the dynamics of a family resulting from illness or disability.

Nariman Vakeel's situation is common enough in some respects. The 79-year-old former professor, despite advancing Parkinson's disease, enjoys a reasonably independent life in his own apartment, which he shares with his two stepchildren until he falls and becomes bedridden. This crisis provokes behaviour among his stepchildren that is motivated partly by their own selfishness and partly as a result of a much earlier family crisis in which he also was the central player. Mistry reveals gradually in the novel (through passages of narrative life-review by Nariman) that the young professor had wanted to marry outside his Parsi culture and religion, but was forced through family pressure to marry a Parsi widow with two children, Jal and Coomy, the two stepchildren who in the present cause such havoc in the caregiving situation.

In the present crisis, Nariman generously forgives their behaviour, as they prepare to send him to his daughter's small flat: "Poor children, thought Nariman, it was difficult for them to disguise their eagerness. And he couldn't blame them. The blame lay with the ones thirty-six years ago, the marriage arrangers, the willful manufacturers of misery" (Mistry, 2002, p. 80). To understand further their unsympathetic response to Nariman's plight, we learn that the past has even more secrets when it is revealed that Nariman's first love had been unable to accept his rejection of her, had constantly appeared around his family home, and ultimately had provoked a jealous encounter with his wife Yasmin that led to both their deaths in a fall from the roof. This tragic outcome to a long story of religious and ethnic strain has produced an irrational sense of blame in Jal and Coomy, and festering guilt in Nariman.

Mistry depicts Coomy, and to a lesser extent Jal, as increasingly selfish and stingy people, living in the larger of the two apartments that Nariman owned, while Roxana lives with her husband Yezad Chenoy and their two children in a very small apartment that is the other part of what Nariman has bequeathed

to the two sides of his family. So the stage is set for some ironic and emotionally wrenching events that involve the reader in a story of caregiving equity with a backdrop of cultural, religious, and even political ramifications. While beyond the scope of this paper's commentary, the novel's portrayal of Bombay's diverse and corrupt world is a significant part of the text's meaning. We should also note, however, that Mistry is above all a storyteller whose fictions resonate well beyond their local settings and politics. As Peter Morey states, "Mistry is a writer for whom morality is politics and politics is morality" (Morey, 2004, p. 151). The moral dimensions of caregiving transcend national and cultural boundaries.

Coomy's short-sighted moral view originates in the resentment that she carries through the years, resentment that derives in part from the tragedy of her mother's death and her uncritical reading of the situation that led to it. She also, however, emphasizes the biological difference between herself and Jal as Nariman's stepchildren, and Roxana, his daughter. Early in the novel she tells Nariman, biting, "If you don't like what we're saying, ask your daughter's opinion when she comes tomorrow.... Your own flesh and blood, not like Jal and me, second class" (Mistry, 2002, p. 7). In conversation with her brother, Coomy is more explicit about the meaning of the genealogical difference between herself and her stepsister in relation to caregiving, as she declares her resentment over caring for Nariman: "I don't owe Pappa anything. He didn't change my diaper..." (Mistry, p. 77). In a calmer tone Coomy adds, "I just don't think I should be the one having to do all this for him" (p. 77). In Coomy's mind, Nariman's own flesh and blood daughter should be providing his care.

Tensions over who should be doing the tasks of daily caregiving are intertwined with tensions over the economics of caregiving responsibilities. Coomy and Jal, who have no dependents, yet have the larger of the two apartments bequeathed by Nariman, also control Nariman's resources. Coomy in particular resists any role in caregiving and schemes to move Nariman to Roxana's small apartment, remarking bitterly about Nariman having provided the apartment for Roxana, "We let Pappa spend all his savings on Roxana." By focusing on the financial support given to Roxana rather than on what she and Jal received, Coomy rationalizes that Roxana should now be the one to provide Nariman's care. In Mistry's detailed treatment of Coomy's response to the family crisis, we see how fiction raises ethical questions that complicate and enrich the reading experience. Peter Morey explains this well in his analysis of Mistry's general approach to narrative: "He is not a writer who often digresses into extended social or

political critiques in his work. Instead, he allows paradoxes and injustices to emerge in character and situation" (Morey, 2004, p. 175). Mistry's skill in portraying ethical issues through character and situation requires readers to seek resolution through their own imaginative responses, and often to accept ironies and contradictions in the process. In *Family Matters*, ethical ambiguities develop in virtually every relationship and situation – not just the primary one involving Coomy, Roxana, and caregiving – resulting in a complex reading experience that springs from a range of topics and concerns.

The caregiving costs to Roxana's family are dramatic. There are the everyday additional expenses: "When the medication ran out and Roxana went to purchase the next lot, she discovered that what Coomy had given her as her father's pension did not cover even the cost of the pills" (Mistry, 2002, p. 171). Perhaps Coomy is retaining a portion of the pension as a way of exacting compensation for her own brief period of caregiving; perhaps she is exacting compensation for the more distant past. Moreover, the reader sees the corruption of the larger culture of Bombay seep even into the sympathetically portrayed family of the Chenoy, as Yezad inexorably becomes ensnarled in a scheme to increase his salary – with its own tragic outcome – and Nariman's grandson, in order to contribute to the family's resources and his grandfather's care, becomes involved in bribery and cheating at school. These corrupt entanglements demonstrate the lengths to which members of Roxana's family go to contend with the financial pressures in their caregiving family.

Only Roxana, among the adults, displays the patience and commitment to accept what fate has delivered and to manage both the caregiving and family disarray with strength and love. Her husband reacts angrily to Jal and Coomy's scheming: "If they play this game, so will we. They kick him into our house, we find a way to kick him back into theirs." But Roxana responds, "Pappa is not a football. I won't behave like them" (Mistry, 2002, p. 179). Ultimately, the costs of this situation are deadly for her half-sister Coomy, whose attempts to prevent her stepfather's return reach melodramatic heights. Coomy's purposeful damaging of the plaster ceiling in her apartment (an idea that emerges from the other plaster repair in the novel, Nariman's broken leg) results in an outburst from her brother: "Family does not matter to you! You keep nursing your bitterness instead of nursing Pappa. I've begged you for thirty years to let it go, to forgive, to look for peace" (Mistry, 2002, p. 177). In the ensuing accident that takes Coomy's life, there is poetic justice, though Mistry overreaches a little perhaps in this

novel in drawing overt connections between the crumbling social and political landscape and the family situation.

Family Matters disappointed some early reviewers in its narrow domestic focus and tilt towards a melodramatic development of character and plot (Morey, 2004). Yet it illustrates with the dramatic power that fiction possesses a significant range of material about caregiving and families, and homes in on sibling relationships in a striking way. The portrayal of Roxana's care of her father, as she raises her own children on a limited budget in a small apartment, provides a vivid illustration of the costs of care. Comparably vivid are the fairness implications in the contrast between Roxana's selfless willingness to care for her father under strained conditions and Coomy's self-preserving avoidance of caregiving despite living in more comfortable surroundings, having received the greater part of the care recipient's assets.

Further, despite its emphasis on the obvious challenges and conflicts that frequently accompany an elderly person's loss of independence, this novel reminds us also of the benefits that accrue from a family's adjustment to change. Nariman reflects on caring: "Either it resides in the heart or nowhere" (Mistry, 2002, p. 110). Yezad learns about the importance of the old phrase *memento mori* – remember you must die: "Roxana was right," he acknowledges, "helping your elder through it – that was the only way to learn about it. And the trick was to remember it when your own time came" (Mistry, 2002, p. 334). And Jehangir, thinking back, interestingly imagines that it was likely very lonely for his grandfather ultimately to be moved back to the more spacious apartment at Chateau Felicity where he had his own room again, even though the family moved there with him. In the crowded conditions of Pleasant Villa (what wonderful ironies in the names of these apartments), "in the front room, there was always someone near his settee" (p. 439). After all the squabbling about who should do the caring and whose money should pay, and who is to blame for past events, the novel brings some reconciliation but leaves the reader fully aware of the ironies and contradictions in these difficult matters of care.

A Family Perspective on Caregiving Equity

Complexities and inequities in caregiving, especially regarding the diversity of sibling contributions to parent care, like those so dramatically depicted in *Family Matters*, are becoming the focus of some family research (Ingersoll-Dayton, Neal, Ha, & Hammer, 2003; Merrill, 1997). In light of diversity and

unevenness of care contributions, empirical work has been done to examine sibling perceptions of the fairness of their caregiving. Findings reveal equity concerns in cases where siblings are perceived as providing insufficient amounts of care (Ingersoll-Dayton et al.) or having a limited willingness to help (Strawbridge, Wallhagen, Shema, & Kaplan, 1997). Other findings raise issues of equity by illustrating sibling views of the appropriateness of other siblings' limited contributions. Siblings have been found to approve of others' limited contributions in light of legitimate excuses (Finch & Mason, 1993) or to disapprove in light of flimsy excuses (Merrill).

We address siblings' beliefs about equity in relation to aging parents by presenting a critical analysis of two legal cases portraying disputes among siblings over the use of parental assets to compensate or reward caregiving. These cases illustrate a broader analysis of all Canadian legal cases of sibling disputes over the fairness of parental assets being exchanged for care between 1995 and 2003. The siblings portrayed in this set of legal cases share two biological parents, and sibling groups vary in size from two to nine. The extent and duration of parent care provided by siblings range from siblings simply overseeing paid caregivers from a distance for 1 year, to siblings providing live-in care for up to 7 years. The parent estates under dispute range in value from under \$70,000 to multi-millions. Equity is clearly an issue in these disputes as siblings' claims include contentions that other siblings did not contribute sufficiently to the parent's care to warrant receiving a greater portion of the estate. Siblings also claim that other siblings exerted undue influence over their parents in determining how assets would be distributed and care provided. Siblings making these claims believed their own involvement in decisions related to parent care and assets was impeded by their siblings' over-involvement.

The cases presented here were chosen from the broader analysis because they provide evidence of key themes across cases. Together, they illustrate sibling distress resulting from the over-involvement of other siblings in care and asset decisions as well as from the perceived inadequacy of care given by other siblings.

In the case of *Simpson v. Simpson* (1997), three siblings contested another sibling's receipt of the family home in exchange for caring for their mother as outlined in a maintenance agreement. The protest of these three siblings – Alberta, Raymond, and Gordon – follows a history of relationship conflict and was based partly on their claims that the other sibling, Lloyd, had exerted undue influence over their mother and that

the maintenance agreement was not what their mother wanted. The maintenance agreement stipulated that Lloyd and his wife Marilyn were to assume ownership of the mother's home and "The Son will pay to the Mother for her maintenance and support the sum of FOUR HUNDRED DOLLARS (\$400.00) per month." Further, "the home on the Lands contains a basement suite and the Son will provide this suite for the personal use of the Mother without any charge or compensation therefore payable by the Mother" (*Simpson v. Simpson*).

Alberta, Raymond, and Gordon all claimed that their mother was neither happy nor able to consult with her other children, as they charged that Lloyd had "tried to isolate his mother from the rest of the family" and thus had prevented their involvement in how care was to be given and assets distributed. Alberta, Raymond, and Gordon submitted that their efforts to discuss the particulars of the maintenance agreement with their mother were impeded by their mother's refusal to speak about the agreement when Lloyd or Marilyn was in the home. Alberta noted that when she had asked her mother "what she was doing in the downstairs section of the house, Mrs. Simpson cried and pointed to the upstairs". Gordon claimed, "My mother was quite apprehensive to talk about it, she was pointing up to the sundeck where Marilyn was hanging clothes, and she wouldn't discuss anything personal about the house" (*Simpson v. Simpson*, 1997). The judge in this case ruled that the mother had done as she wished in creating the maintenance agreement that entailed leaving her house to Lloyd.

A further example of siblings claiming inequity because another had unduly influenced decisions about assets and caregiving occurred in the case of *Tracy v. Boles* (1996) among three siblings who had had quite harmonious relationships leading up to the legal dispute. Two siblings who lived at a distance, Katherine and Arthur, disputed the distribution of their father's estate. The large majority of the father's multi-property estate was left to the local caregiving sister, Doris. Katherine and Arthur contended that Doris had exerted undue influence over their father in his decisions about his care and how his property would be distributed. Upon her husband's retirement, Doris had moved from Ontario to Nova Scotia to be near her father. Doris had lived next door to her father and provided approximately 6 years of care to him including laundry, some meals, and transportation twice daily to visit their mother in long-term care. Katherine and Arthur advanced their claims that Doris had dominated their father, pointing out, for example, that while Doris lived in the apartment suite adjacent to the father's suite, she "had connected his

doorbell to a bell in her suite". Katherine also pointed to her own interaction with her father as being restricted as she noted that Doris insisted on being present during Katherine's visits with their father.

Katherine and Arthur described what they considered a specific outcome of Doris's over-involvement in their father's life as they pointed out that some property given to each of them by their father officially came from Doris rather than their father. During her caregiving, Doris had made plans with her father for him to join her and her husband in moving from Nova Scotia to British Columbia. Planning for this move had involved the father transferring his assets to Doris to be used for the relocation. However, Katherine and Arthur were surprised that the property they eventually received came under Doris's name. Further, Katherine and Arthur expressed distress in not having been told the property was in Doris's name, even though they had been together as a family at their mother's funeral 1 month after the father's property had been transferred to Doris. Emphasizing her claim that Doris had dominated their father, Katherine pointed to her father's ambivalence about Katherine's limited involvement in decisions. Katherine claimed that "her father did not provide an explanation to his loving older daughter about why he had conveyed the long time family home to his youngest child". According to Katherine, when she found out and questioned her father about the estate distribution, "his response was to lower his head and he was reluctant to discuss it". The ruling from the judge in this case did not support the claims of undue influence advanced by Katherine and Arthur, but rather upheld the father's decision to pass the majority of his estate to Doris.

Sibling distress with the over-involvement of other siblings, captured in this analysis of legal cases, departs from most of the work that has been done on fairness among siblings in caregiving families. Previous studies have mainly identified sibling distress as arising from perceptions, such as those in *Family Matters*, that the involvement of some siblings was lacking or limited. Only a few researchers have touched on equity problems that stem from some siblings' over-involvement or reluctance to give up control of caregiving by sharing care tasks and decisions (Cicirelli, 1995; Merrill, 1997). By illustrating fairness concerns when some siblings were perceived as being over-involved, this analysis leaves us sensitized to a broader range of perceived involvement that may pose equity problems for siblings in caregiving families. Indeed, fairness concerns arise not only because siblings perceive other siblings to be shirking

their share of the caregiving burden, but also because siblings perceive their own caregiving opportunities to have been hindered by other siblings over-involvement.

Equity as Legal Construct: Unjust Enrichment and Undue Influence

Cases such as *Simpson v. Simpson* and *Tracy v. Boles* illustrate sibling tension around caregiving (including both over- and under-involvement) through the stories they tell. The narratives are as compelling as fiction, although necessarily more limited. There is no omniscient author to take us inside the mind of the father in *Tracy v. Boles*, for example, and the decision-maker must instead discriminate between the alternative realities described by the adult children in that case. This task is carried out through the application of consistent rules; courts do not simply hear stories and then find in favour of the more appealing or sympathetic (although these factors may well influence the decision-making). Courts discriminate between narratives, and effect fair outcomes, through the application of legal doctrines and principles, including the principles of equity.

Equity in caregiving families, as applied by the courts, entails understanding the content of these rules in addition to reading the cases as narrative. To what extent, if any, are these rules compatible with the understandings of “equity” described in the preceding sections? What do the hopes, expectations, and resentments of Nariman and his family look like through the law’s lens? How does the law define entitlement in this context, and what “fair” outcome does this process produce? The *Family Matters* narrative is, in a sense, a perfect laboratory in which to address this last question, in that Mistry has given us direct access to Nariman’s mind and his intentions (to the extent that any individual can be fully aware of his own motivations).

Law may be understood as the formalization of social norms. Cultural beliefs and ideas about fairness find explicit expression in legal doctrine – rules about enforcing and breaking contracts, for example, or about compensating individuals harmed by the negligence of others. These rules, as formal embodiments of widely held and agreed upon conceptualizations of fairness, exist in the background for most people, most of the time. Legal rules become relevant for most people only if and when personal notions of fairness (i.e., personal identification of a single fair outcome in a particular situation) come into conflict with each other. When this occurs, the law’s function is to impose an external and objective fairness through application of the rule.

The “common law” is the body of legal principles and rules (or “doctrines”) that have developed over centuries through interpretation by judges in the case law. Traditionally, the court of (common) Law and the court of Equity were separate entities. The court of Equity was the “court of the King’s conscience” and worked to impose fairness (“equity”) if the outcome of the law was unduly harsh or unfair. Over time, equitable doctrines or principles developed. The courts of Law and Equity have long been unified, but we still speak of “equity” and the “equitable doctrines” to refer to the principles developed in the courts of Equity. Where there is a conflict between legal rules and equitable principles, equity will trump. All references to “equity” in the following discussion refer to these principles rather than “equity” as pertaining to fairness generally.

Legislation is another source of legal rules. Legislation is law written in the Legislature or Parliament, in the form of a discrete document (or “statute”) that usually deals with a single subject matter. Where there is a conflict between legislation and the common law (including principles of equity), legislation will govern. Legislation is often written specifically to deal with a lack of clarity in the common law, or where the common law rules are perceived to be inadequate.

Neither equity nor the common law imposes a positive duty to care for one’s parents. Legislation in each Canadian province does impose a duty to provide for one’s parent. These statutory provisions are known collectively as filial responsibility legislation (Snell, 1990). In BC, for example, the applicable provision is section 96 of the Family Relations Act, which reads, “A child is liable to maintain and support a parent having regard to other responsibilities and liabilities.” For the purposes of the section, *child* is defined as “adult child of a parent” and *parent* as a “father or mother dependent on a child because of age, illness, infirmity or economic circumstances”. This legislation originated in the early twentieth century during a period of economic depression, and was intended to relieve the state of responsibility for the indigent aged (an example of legislation being used to remedy perceived inadequacies in the common law).

Filial responsibility legislation has seldom been acted on. Parents have proved willing to sue their children for support only in extraordinary circumstances. It is significant also that the child’s responsibilities to his or her nuclear family are taken into account to the extent that the child’s filial responsibility begins only after the immediate needs of the child’s nuclear family have been met. The (limited)

case law also suggests that financial support only is contemplated and not caregiving in the broader sense of performing tasks to help parents in their day-to-day activities.

Equity does not require adult children to care for their parents, but the courts have frequently applied equitable principles to effect fair outcomes in the family caregiving context. The doctrine of undue influence in particular has been considered by the courts in many cases involving caregiving and older parents, although this is not a special rule about caregiving and may be relevant to many different factual situations (an important and still frequently cited undue influence case decided in the nineteenth century concerned a woman who entered a convent and transferred money to the convent's mother superior). Courts will not enforce transactions (gifts, property transfers, sales, bequests) where one party to the transaction "unduly influenced" the other, because it would be inequitable to do so. A person who has been "unduly influenced", according to the equitable doctrine of undue influence, has not truly consented to the transaction. For this reason the purported gift or transfer is void. Undue influence has particular relevance to caregiving situations because of the factors and dynamics that commonly arise in these situations, and not because of any presumptions about older people as unable to think for themselves. Indeed, the English House of Lords has suggested that courts approach the question of undue influence in certain categories of relationships, including the relationship between adult children and older parents, with a "special tenderness" (*Barclay's Bank v. O'Brien*, 1994). Certain categories of relationship (lawyer-client, doctor-patient) will always give rise to a presumption of undue influence; in other cases, the individual circumstances of the relationship may give rise to the presumption. The "special tenderness" doctrine stops short of creating additional categories in which the presumption of undue influence will always arise, but recognizes that certain kinds of relationships are more likely than others to be relationships of inherent dependence giving rise to the presumption. The doctrine of undue influence is fundamentally about the state of mind of the individual (the person who was allegedly unduly influenced); the focus is on that person's motivations for making the transfer. The doctrine exists to protect the vulnerable individual from being held to arrangements to which he or she did not truly consent. The behaviour of the person who would benefit from the arrangement is relevant only as evidence that the other person experienced undue influence. Manipulation and coercion are obvious examples of undue influence. In other factual situations, a person

may, however, exercise undue influence over another without even being aware of it. In relationships of dependence, for example, the weaker person may feel influenced by the stronger to act for the benefit of the stronger by reason of the relationship dynamic, even where the stronger person in no way intends to exert such influence. The intentions of the stronger party are not relevant in this kind of situation; the experience of the weaker person is the focus. In the case of *Gammon v. Steeves* (1987), for example, a married couple had provided significant caregiving to the wife's aunt and uncle. During this period, the aunt and uncle transferred property to the caregiving niece. After the death of his wife, the uncle sought to have the transfer set aside on the basis of undue influence. The court accepted that there was no evidence that the niece and her husband had ever intentionally pressured the uncle and aunt to make the transaction; nevertheless, a relationship of dependence had been created, giving rise to a presumption of undue influence which was not rebutted: "I come to this conclusion . . . reluctantly, as I am sure the trial judge did [the judgment was given by the Court of Appeal] because it is clear that Mr. and Mrs. Steeves spent considerable time and energy caring for Mr. and Mrs. Gammon at a time when no other relative was willing to do so. But this only points to the caution with which people must act when they accept gifts in these circumstances."

Both of the cases discussed in the preceding family perspective concern alleged undue influence where a parent made a gift or disproportionately large bequest to a caregiving child. In these cases, the parent appears to have recognized the efforts of the caregiver (above and beyond those of siblings) through money or property. At first blush, this seems fair; our expectation that parents will be equally generous to their children is connected to our belief that children should share caregiving equally. If one element becomes unequal, fairness seems to require the other to follow proportionately. Yet among siblings, this connection of bequests proportionate to caregiving may not be straightforward. Cases interpreting the doctrine of undue influence recognize that caregiving provides a context in which the care-receiver is extremely vulnerable to the influence of the caregiver, whether or not that influence is exercised intentionally (Birks & Chin, 1995). In cases such as *Simpson v. Simpson* and *Tracy v. Boles*, caregiving by one sibling was alleged to have conferred an unfair advantage in the form of sway or influence over the parent, who departed from the norm of equal benefit to children by reason of this sway (and not from the impulse to recognize fairly the caregiver's efforts). For this reason, as dramatized through the case law

narratives, the connection between caregiving and “compensation” may be tenuous at best, with extremely minimal caregiving resulting in disproportionately large recompense (as alleged by the siblings in the Simpson case).

The case law narratives also dramatize the often-elusive nature of caregiving itself. The line dividing (normatively positive) caregiving from over-involvement to the point of control, or even bullying, is not always clear. Daughter Katherine in *Tracy v. Boles*, for example, interpreted her sister Doris’s behaviour – moving next door to their father and connecting his doorbell to a bell in her own home, providing meals, transportation, and laundry, involving herself in his property and financial dealings – as a form of domination and control. These same behaviours may instead be interpreted as incidents of caregiving welcomed or even initiated by the father. Perhaps he “lowered his head” and seemed reluctant to talk about his conveyance of the family home to Doris (without an explanation for cutting Katherine out of her expected inheritance) because he was ashamed of his subservience to Doris. Perhaps it embarrassed the father to have to explain to Katherine that he wished to reward Doris for doing so much when she, Katherine, had done so little (an imbalance the conveyance was intended to redress). In these cases, to a certain extent, the narrative is decisive (whose storyline or view of equity is more compelling – Doris’s or Katherine’s?).

In the *Family Matters* narrative, Nariman, the father, transfers ownership of his flat (Chateau Felicity) to his stepchildren Coomy and Jal at the same time as his purchase of an apartment for his daughter Roxana (both events happen prior to the novel’s opening scene). As the novel begins, Nariman, Coomy, and Jal are living together in Chateau Felicity. Nariman has Parkinson’s disease; although his caregiving needs are minimal, Coomy meets them in the course of running the household generally. Was this relationship, as it existed at the time of the transfer, a relationship of dependence giving rise to a presumption of undue influence? Should Coomy and Jal have therefore been obliged to ensure that Nariman’s decision was fully and freely chosen before accepting the benefit? The answer is, arguably, yes, although the relationship between Nariman, Coomy, and Jal that existed at this time was much less dependent than the relationship that subsequently develops between Nariman and Roxana following the deterioration of Nariman’s health. At the point when Nariman’s dependence is, however, most intense, however, he has nothing left to give.

Fiction has, of course, the privilege of omniscient explanation – unlike the court that must determine the individual’s past state of mind (whether he “truly” consented) with reference to presently accessible signifiers and presumptions about what most people are most likely to do. The fictional narrative is also able to describe the individual’s position in relation to wider family and social networks over an extended period of time, before, after, and during the transfer event. As we read the novel we understand the significance of these elements to our “everyday” notions of fairness.

Nariman, it seems, did not consider himself dependent on Coomy and Jal but appears to have made the gift *in spite of* his emotional relationship with his stepchildren. Nariman’s guilt about the history of that relationship seems to have motivated the transfer, together with an impulse towards even-handedness, given his contemporaneous gift to Roxana. There is no suggestion that Nariman expected Coomy and Jal to look after him, should he become infirm, as a consequence of the gift of Chateau Felicity. Indeed, the reader understands that Nariman, at the novel’s opening, did not believe in the possibility of his own infirmity. Undue influence is concerned with the relationship that exists between the parties at the moment of transfer; equity of process is focal, not equity of outcome. At the relevant moment, Nariman chose freely, it seems, if unwisely and unrealistically. As the novel progresses, it becomes apparent that the ultimate outcome of Nariman’s choice has been to reward those children who do not take on a disproportionate share of caregiving at the expense of those who do.

The principles of equity also redress this kind and quality of unfairness, through the doctrine of *unjust enrichment*. Three necessary conditions will bring the doctrine of unjust enrichment into play: an enrichment, a corresponding deprivation, and the absence of a juristic reason for the enrichment (a legally recognized reason for one person enriching another, such as a contract). Where these conditions are met, the court may order payment for the services rendered or find a “constructive trust”, which gives the plaintiff an equitable interest in property legally owned by the defendant where monetary damages would be inadequate and where there is a link between the enrichment and the property. The Supreme Court has stated that there is “no logical reason” to exclude domestic services carried out by a family member from the application of the doctrine, so long as the person conferring those services did so in expectation of compensation (including a reasonable expectation of a bequest

reflecting services provided) and not as a gift (which would comprise a juristic reason for the enrichment).

In the *Family Matters* narrative, Nariman has been “enriched” by the caregiving provided by his daughter and son-in-law at their own expense (“corresponding deprivation”). If Roxana and her family acted in expectation of eventual compensation, and were not motivated solely by affection and filial obligation, that enrichment is “unjust” and therefore inequitable. As the story reveals, the threads of motivation, however, are virtually impossible to untangle, possibly even for the family members themselves.

This legal reading of the dynamics of enrichment in *Family Matters* strikes the reader as inadequate; however, surely the stepchildren have been enriched at the expense of both Nariman and his caregivers, for no “juristic” reason but through Nariman’s personal crisis of guilt. Equity, however, is concerned with what transpires between Nariman and his caregivers and Nariman and his stepchildren as separate transactions, in both cases, the dyadic relationship.

The preceding sections have shown family theory and narrative conceptualizations of caregiving as a family enterprise that changes in character and relative contribution over time. Law’s focus on dyadic relationships, even within the relatively flexible principles of equity, frames family caregiving in a fundamentally different way. The law has yet to explore what it might mean to “do equity” within a family (as opposed to equity between individual members of that family) with regard to caregiving issues.

Summary

The literature on family caregiving identifies the need for further understanding of whether and how families arrive at fair caregiving arrangements (Ingersoll-Dayton et al., 2003; Jecker, 2002; Pyke, 1999). The set of perspectives presented here illuminate how siblings evaluate the equity of their sharing in relation to their aging parents. Theoretically, equity is about social comparison wherein people judge how well they are doing compared to others (White & Klein, 2002). The analysis in this paper reveals some aspects of relationships with parents and with each other that siblings compare as they evaluate the fairness of giving care and receiving assets.

In the fictional work, siblings compared their respective relationships with parents in terms of genetics, with the adopted daughter describing herself and

her brother as second class in comparison to their stepsister. Consistent with findings that children are motivated to care by a desire to reciprocate (Aronson, 1990), the adopted daughter used their biological difference to rationalize that her stepsister, who, in early life, had received more care from their father, should now assume all tasks toward his care – especially the intimate, personal ones – without any corresponding monetary allowance.

The legal cases of *Simpson v. Simpson* and *Tracy v. Boles*, on the other hand, depicted siblings who shared two biological parents, where some siblings contended that others had dominated one of the parents. These cases highlight interactional rather than biological aspects of parent–child relationships for scrutiny and judgement in accordance with the law’s doctrines of equity. In the process of one sibling legally presenting another’s relationship with the parent as required by the law’s doctrine, comparisons of their respective sibling–parent relationships were evident as siblings described their own interactions with their parent as being restricted by the undue influence of another sibling. These findings of over-involvement in the form of undue influence add to the caregiving research on fairness that has called attention to concerns with under-involvement in caregiving responsibilities. Findings of over-involvement also further our understanding of how people of equal family status might evaluate their costs and rewards in comparison to others of similar status. Clearly in these families adult children calculate fairness by comparing their inputs and rewards to those of siblings.

Examining the perspectives of the fictional siblings and legal case siblings together brings into focus the importance and meaning of genealogical equivalence. Equivalence was highly valued in assessments of both the biological and interactional aspects of relationships as siblings evaluated the fairness of giving parent care and receiving parent assets. The importance of biological equivalence related to caregiving responsibility was pronounced in the novel through Coomy’s dramatic distinction between herself as stepdaughter and Roxana as biological daughter. Alternatively, biological equivalence was foundational in the legal cases but was presented in more subdued fashion as part of the family background information. Yet its importance is evident in sibling expectations for comparable levels of input into parent care and asset decisions.

Equivalence in interactions among parents and siblings was an important contributor to sibling expectations about equity and influence in parents’ affairs. Undue influence was a key to the sense of inequity

portrayed in the legal cases as siblings protested other siblings' influence over parents. In the novel, undue influence seemed less an issue because Mistry presented, along with the biological differences, some twists on the reader's expectations of equity, including some poetic justice in the plot development that renders any legal or even moral retribution unnecessary by the end of the story. Aligning with findings about the importance of relationship history (Keefe & Fancey, 1999), the reader of the novel is left with a strong sense of how the history of family relationships influences evaluations of fairness. In family literature, much existing understanding of fairness among siblings has been derived from findings based on how siblings perceive each other in relation to amounts of parent care provided, specifically problems arising from some siblings shirking responsibility. The novel and the legal cases targeted in this analysis broaden this understanding of problematic areas of sibling equity to include the history of relationships and the largely unstudied phenomenon of over-involvement in parent care.

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