



Submission No: 117

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Secretary

**Submission for Inquiry into Custody Arrangements in the
Event of Family Separation**

I have known my partner since 1981 when we were childhood sweethearts. I have always found him to be an honest and endearing person, and I chose to remain friends with him despite our relationship break-up. As things turned out, we fell in love again in 1998, after our respective marriages failed, and we now have one child together who is 22 months old.

My partner's marriage broke up in early 1996 as a result of his ex-wife having an affair with their boarder. When she told him of her affair he chose to leave the matrimonial home out of disgust at her behaviour, and because it was unbearable to live in the same house with his so-called 'wife' and her new 'boyfriend'. He considered taking his daughter with him, but as she was 3 years old and he had no appropriate place to take her, he thought the best thing was for her to stay 'home'. As a result she has resided with her mother ever since.

My partner has had the best interests of his child paramount at all times. He allowed his ex-wife and daughter to live with the boarder/lover in his matrimonial home while he continued to pay the mortgage. A month prior to his ex-wife's admission of the affair she had insisted that he purchase her mother's new car. My partner took out a personal loan to finance this, however he left the car with his ex-wife, as he preferred his daughter to be transported by car rather than public transport.

Eventually he asked his ex-wife to move out and when she did she took all the furniture, whitegoods, and expensive wedding presents given by his family. My partner sold the house at a loss, and a verbal agreement was reached with his ex-wife where he would pay off the debt and interest accrued and she would not seek child support. The monthly repayment for the debt was \$600 per month. The child support payments calculated by the CSA at that time was \$160 per month. On occasions his ex-wife asked him for money claiming she was broke and had no money to live on. He gave her money for the sake of his daughter. In the year 2000 he completed repaying the debt, and they reached an agreement for him to pay \$80 per fortnight into a bank account for child support.

His relationship with his ex-wife, and her new husband (she eventually married the boarder), since their separation was friendly. For the sake of his daughter my partner saw past adultery, deceit, lies, property loss and financial hardship, and always remained friendly and polite. She responded likewise, and their daughter was blossoming as a person. His ex-wife phoned him almost weekly to confirm arrangements for weekends, as well as to pass on gossip relating to old friends. She also offered me maternity clothes when I was pregnant.

Early in 2002, due to work commitments and his ex-wife taking their daughter out of state for the holidays, my partner was not seeing his daughter as often as he had before. His daughter frequently told him she was missing him and wanted to see him more. We also had our child and no doubt his daughter was sensing some lack of attention too. In

response to his daughters concerns we began to consider the possibility of her living with us.

Last year my partner discovered his ex-wife had been collecting the full family tax payment and had lied to the government that she had their daughter 100% of the time. When he asked for the relevant forms to be completed and signed by her, so that he could claim \$8 per fortnight, she retaliated and things have not been the same since.

His ex-wife contacted the CSA to collect payments. She justified that if he wanted things done properly then that was the way to do it. She also ignored their prior agreement where my partner had paid off their debt. My partner had never, ever missed or denied a payment for his daughter, and at no time had his ex-wife indicated the amount he was paying was inadequate. The CSA calculated child support payments to be \$487.92 per month. This new figure was based on the facts his ex-wife was no longer was working, that she altered the percentage of care my partner had their daughter, and includes overtime my partner had worked in order to prepare for the arrival of our daughter.

As my partner had also said to his ex-wife that he only thought it only fair that their daughter live some of the time with us, she promptly contacted a solicitor to draft parenting orders. What she proposed substantially reduced the number of visits their daughter had with us, and that my partner become solely responsible for transport for the child.

The relationship with his ex-wife deteriorated, and as a result their daughter became affected and now receives weekly counselling through her school. During one phone call about arrangements for a weekend, my partner asked his daughter if her mother would drop her off as she normally did. His daughter told him no, her mother was not going to drop her off, and neither was her step-father, and "Mom said she is not going to pick me up, and if you have a problem with that you can speak to her solicitor". She then began to cry.

It is heart wrenching to witness events like this. The child is entirely innocent to the issues and the father, who concerned about the child's wellbeing while in the care of the mother, is not empowered to protect the child, especially from irrational and immature behaviour as displayed above. For three consecutive weekends his daughter burst into tears at my home, but would not discuss her upset. Since she began counselling, at the request of my partner, she has been a happier child. She told me she enjoys speaking to some one who is not involved in the situation. She also told me she had to ask her mother and step-father to stop putting her father down in front of her, as this was upsetting to her.

My partner took a Voluntary Redundancy in order to pursue a business venture and accordingly informed the CSA. They advised in writing that his child support payments were \$0.00. My partner met with his ex-wife's husband, as his ex-wife was no longer talking to my partner, in an attempt to resolve issues and offer child support payments. This meeting resolved nothing, but we did learn that the husband was responsible for

dealing with the parenting orders through their solicitors, as my partner's ex-wife was stressed and pregnant.

My partner's ex-wife made an application for change of assessment through the CSA the day after the meeting. Her application included costs that maintained herself, her husband and her other children, not just my partner's daughter. These figures were included in the senior case officer's determination, and any costs to do with our daughter and myself were not taken into consideration on my partner's part. It appears that we are now supporting his ex-wife's new family, not just my partner's daughter.

An attempt to receive mediation through Relationships Australia was made. My partner preferred to meet with his ex-wife only, and not have her husband present in the room at the mediation. He made this explicit in his meeting with the counsellor. Communication between my partner and his ex-wife's husband had now deteriorated as her husband stated to my partner that he did not care if my partner saw his daughter. The husband also made no effort to assist in arrangements, despite having taken on that responsibility on the mother's behalf. It eventuated the counsellor coordinated a meeting between my partner, his ex-wife and her husband. My partner, and I in his support, did not consider the husband's presence appropriate given the circumstances. The counsellor had ignored my partner's concerns.

In a final attempt to create peace, my partner telephoned his ex-wife and managed to have a conversation with her. They sorted out several issues, and they both agreed that mediation was not going to be of any use. She agreed to speak with him again, and this news uplifted their daughter's spirit to no end. However, as yet there are still no parenting orders in place.

From the beginning my partner's ex-wife has been irresponsible and selfish. She invited a man into their home and had an affair with him. With this action she chose to break up her marriage in a devious and immature manner, and had no regard as to the future of her own child. With this intention she continued to abuse my partner by manipulating him to buy her mother's car. At no time did she show remorse or apologise for her behaviour. She never offered any jointly owned household belongings or gifts to my partner, and kept everything, including my partner's childhood photographs. She did not take any responsibility for the debt that was incurred, which was a joint debt, and justified this by not asking for child support despite knowing the amounts did not equate.

Her inability to be responsible for her daughter's wellbeing extended to not handling her own matter with her solicitor. She brazenly refused to transport her daughter, and remained ignorant of her daughter's feelings and psychological development. She chose not to understand her own child wanted and needed to see her father. She manipulated my partner for her own financial gain and involved the CSA in an act of vengeance and spite rather than out of necessity. She appears to believe that her daughter has no right to live with her father, but she has no sound reason for this.

My partner's ex-wife's husband stated to my partner that he did not care whether he saw his daughter. His motives from the beginning have never been in the best interests of the child. He blatantly had an agenda when he moved into my partner's home many years ago, and had no problem in taking a child's father away from the child. It is apparent he has been ineffective and irresponsible in handling the child's arrangements with my partner too. It is clear he attempted to minimise the child's visits with her father through his handling of the matter. He appears to believe that my partner has no right to have his daughter, and yet he does not have any sound reason for this.

Our dealings with solicitors, the CSA and the family law resulted in nothing when it came to the rights of a father. There is a wealth of resources available for women, especially if domestic violence is a key issue, but otherwise there is no recourse for men who have been shut out by their partners because they simply do not like their partners any more. Despite all my partner has done since leaving his ex-wife he and his daughter have still been the victims of his marriage breakdown. The family law, as it currently stands, has encouraged and supported his ex-wife in every way and she is the winner in this situation. She has the child a majority of the time, she has the financial support from my partner, the property settlement worked to her advantage, she was allowed to claim child support and the family tax benefit at her convenience, and she has the law on her side to maintain this. My partner and his daughter lose by not being allowed to see each other as much as they would like, by enduring financial hardship when they do see each other, and by being subject to emotional blackmail and irrational behaviour, and by not having any legal recourse or government support.

It is with regard to the above that I submit to the committee the following:

- That it is in the best interest of the child that equal time is spent with both parents, and that this is to be the assumption by law. The child has the right to have the opportunity to live with both parents for a period of time, and the onus should not be placed upon the father to bring this issue to court. My partner's ex-wife's attempt to minimise the child's visits with her father clearly distressed the child. A parent's personal agenda to prevent contact should have no influence unless one or more of the following circumstances applied:
 - if either parent forfeits willingly their time with the child;
 - if there is evidence of violence in the history of either parent;
 - if there is a history of drug abuse in either parent; and
 - if there is a recent history of serious crime with either parent.

If such circumstance apply then the onus is on the parent to prove that such circumstances exist and then each case should be considered contextually.

- That it is in the best interest of the child that if either parent has been violent or abusive the police take the complaint seriously and in a non-discriminatory, specifically non-sexist, manner.
- That it is in the best interest of the child that the child support formula is adjusted to lower the amounts fathers pay. It is imperative that a father be able to provide a good

standard of living for the child while the child is in his care, especially if the child is to be in his care 50% of the time. The current formula needs to include in its calculation the cost of having the child in the father's home, not just the mother's. It should be based on the father's capacity to pay and not earn, so figures are based in reality and not on assumption. It should take into consideration the mothers capacity to pay for her own child too, as in our case the child's mother has not paid a cent for her in three years. Any change of assessment application should specifically only take into account support of the child, and not the mother and her new family.

- That it is in the best interest of the child that the CSA not be involved in cases where father's are, or have been, willing payers. The CSA's involvement inevitably deteriorates relationships and in some cases their involvement is not warranted. Their ability to exacerbate a situation can have irreversible affects on a child.
 - That it is in the best interest of the child that the CSA be empowered with the right to ask for proof that child support collected is actually spent on the child. The production of receipts and a budget, and other supporting documentation should be mandatory if requested. What is the sense of paying child support if it is not guaranteed that this money is spent on the child? Father's would not be so outraged to pay for their child if they could be guaranteed their child would benefit.
 - That it is in the best interest of the child that the CSA become responsible for ensuring that Family Tax Allowance cannot be claimed by one parent exclusively. If both parents can benefit from this allowance then the child benefits on both sides.
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