

學校社工／學生輔導教師／學生輔導主任／
學生輔導人員
2019/20年度第三次聯網會議

與學校個案相關的法律知識分享



Questions Raised

- Matrimonial
- Negligence
- Criminal
- Privacy

To Assist or Not Assist

(Justice)

To Report or Not Report

(Privacy)

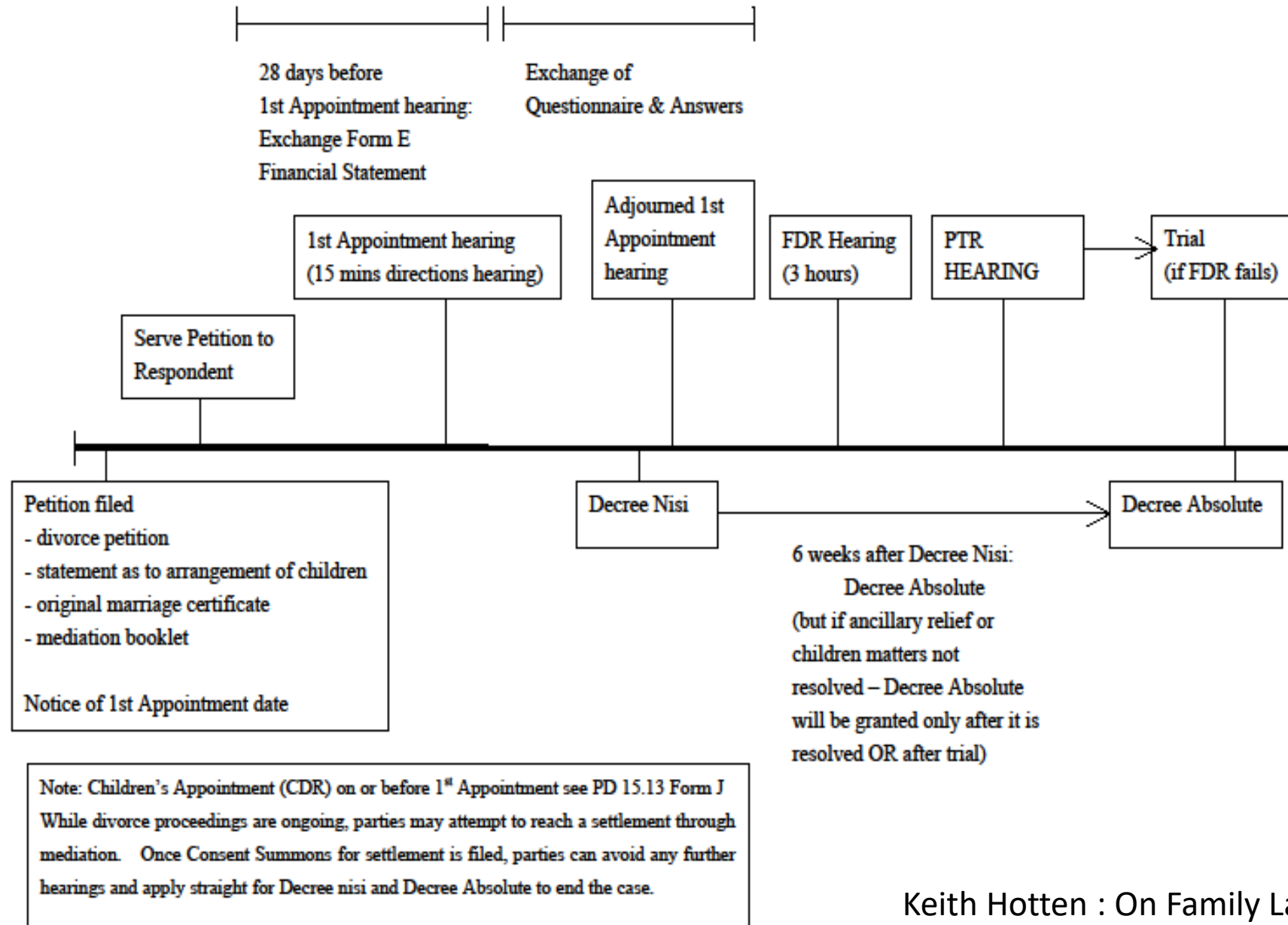
To Be or Not To Be...

(Negligence)

Conscience doth Cowards of us All.

Hamlet, Shakespear

Brief Timeline of Divorce Procedure



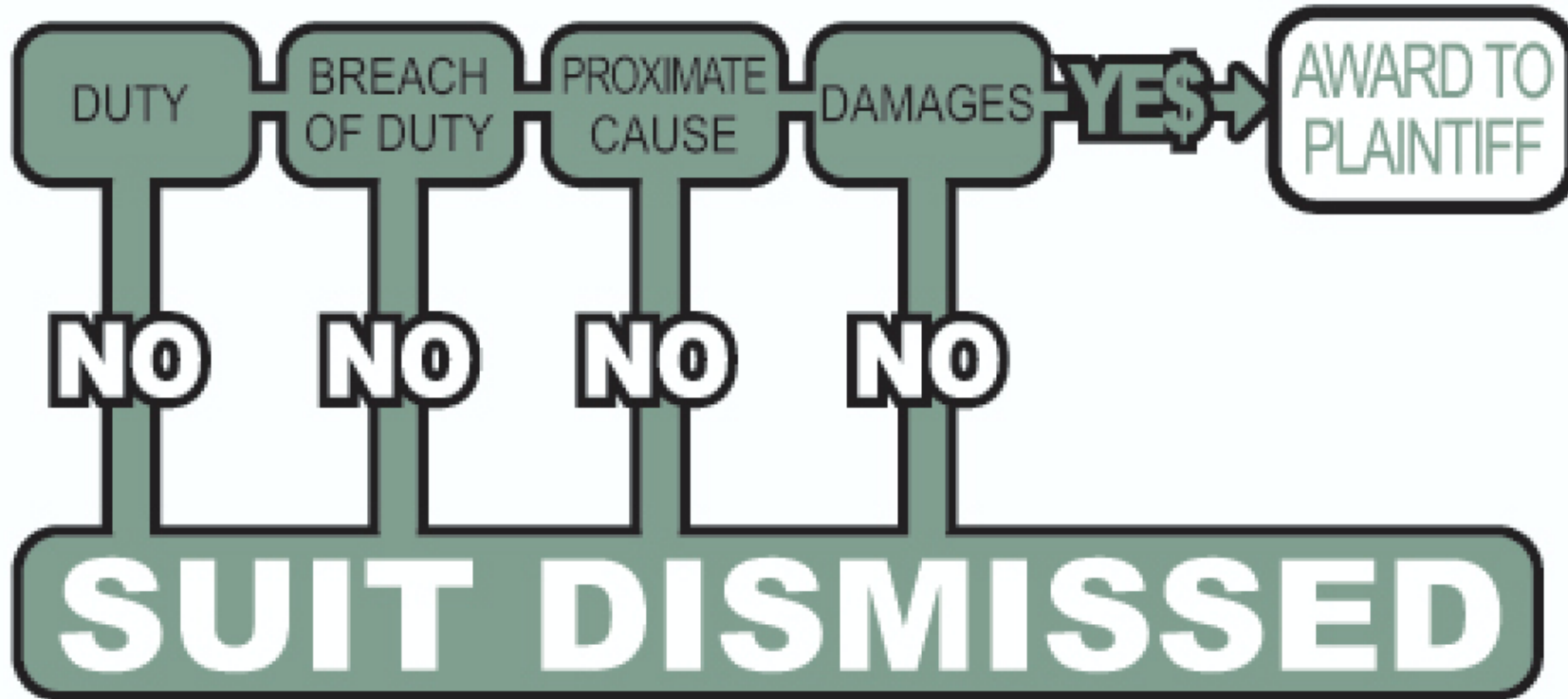
一對夫妻準備離婚，各自請律師向學校社工要求上庭幫忙或提供學生在校資料，學校社工是不是必須提供協助？

- Over Custody (Joint or Sole Custody), Care and Control vs Access
- Child Dispute Resolution (CDR)
- Social Investigation Report (SIR) prepared by Caseworker from SWD
- Lawyers from both sides (Petitioner vs Respondent)
- Court appoint lawyer for the Child
- Only factual information needed (Daily escort, homework signature, payment of fees, school report, parents day, emergency, etc.)
- Verbal information suffice, copies of documents ???

學生父母正在辦理離婚，母親通知校方不容許父親接觸學生（但沒有法院命令），但父親堅持要接走學生，學校可如何處理？

- Which Stage? Petition, Interlocutory or Order obtained?
- Injunction Order during Interlocutory Stage (Ouster, Non-transfer...)
- Emergency situation ? Still husband and wife? Need Confirmation
- International Convention on Protection of Children

ACCIDENT



Negligence

Elements of Negligence

- A **Duty** of Care (neighbourhood principal in Donogue v Stevenson 1932)
- In **Breach** of that duty (reasonable man standard) (by **omission** or **commission**)
- **Caused Damages** (but-for test, causation), and
- Is reasonably **Foreseen** (remoteness, thin-skull rule)

Defences

- Part of Duties
- In Good Faith ? 真誠行事
- Consent
- Contributory negligence (Both are responsible)
- Inevitable accident
- Act of God
- Necessity (i.e. minimum force)

社工在學校舉辦小組活動，其中是一些低風險歷奇活動，學生因此受傷了，社工會否被控訴？

- Risk Assessment
- Insurance Coverage
- Policy, Professional Qualifications, Place, Equipment, Pupil's, Physical conditions, Parents' consent, PPE (Personal Protection Equipment)
- Health conditions, Warm up, Cool down
- Criminal or Civil
- ABCD -> Defences -> Judgement
- Tortious liability 轉承責任 in during working conditions
- Beware of Independent Contractor,
- Voluntary Helpers?
- Waivers?
- Vicarious Liability
- 香港學校體育學習領域 安全指引 教育局 2018 彈網 拔河

若學生穿著**不適合**的服飾參與活動（如穿著**皮鞋**參與行山活動），社工致電家長要求更換服飾但被**拒絕**（家長認為問題不大）。結果學生因此而**受傷**，社工需要負法律責任嗎？

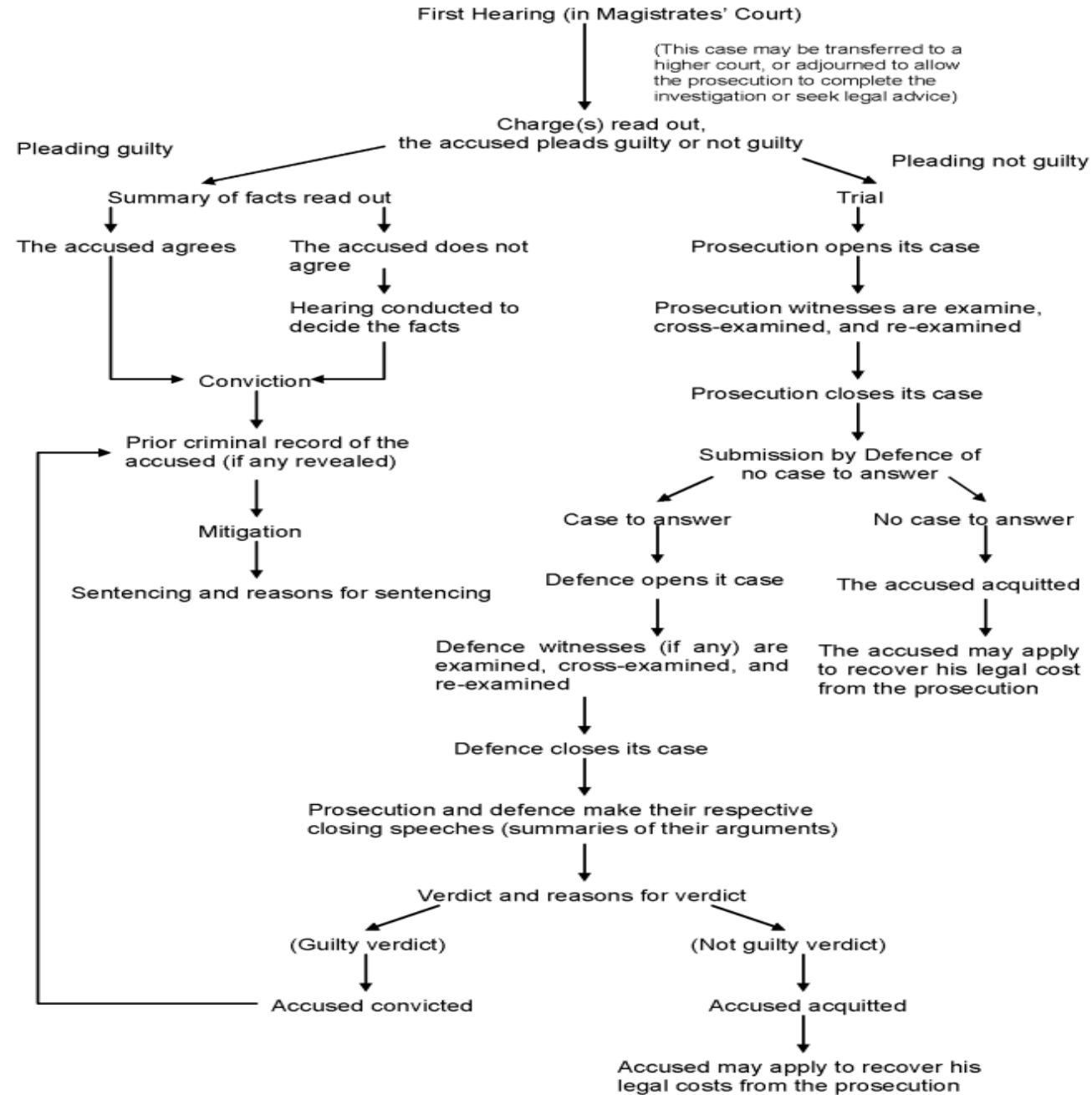
- Seriousness of Injuries and nature
- Relationship between wear and injuries
- Defences
- Contributory Negligence (But! Written or oral consent?)
- Weather Conditions
- Level of Mountaineering
- Physical condition of student and Qualifications of **Leader**
- Role of **teacher/ic**
- Warm up & Cool down

學校社工的個案受助人因盜竊被拘捕，學校社工在法律程序上可如何協助該生？

- Investigation stage (accompany, adult/parents, emotional support)
- Mention 提訊 Plea 控罪 Trial 審訊 Conviction 定罪
- Sentencing 報告/判刑 Follow up 跟進
- 警司警誡/守行為/感化
- Period waiting for a Report (must be favourable)
- Remorse, Promise, Regret, support letter from self, principal, teachers, SW

The Legal Process – Criminal Case

- An offence/illegal act
- Investigation/Caution
- Arrest/Bail/Charge/Detention (CABD)
- The Trial/Conviction/Verdict/Mitigation/Reports/ Sentence



涉及訴訟程序的學校角色

- 法庭文件（原告/被告/證人傳票）
- 通知保險公司/法團校董會/教育局）
- 保留所有相關/原始資料，更要留意私隱
- 可以是原告或被告（轉承責任）
- 各被告亦可能會分割
- 查詢要求（警方、對方律師、法援處、代表律師、教育局、政府部門）
- 必須保持中立及避免批判
- 可嘗試第三方調解

有學生跟學校社工說，他下課後要跟“大佬”出去“劈友”，然後準備要離家出走，基於保密與穩私權的重視，學校社工沒跟她爸媽說，如果出事了，如學生被殺，學校社工會否因知情不報而受到刑責？

- Risk Assessment and Professional Judgment (e.g. attempt to suicide or attempt to commit a criminal act??)
- Falls under exemptions to privacy?
- Defences

Six Data Protection Principles 私隱權

DPP1 - Data **Collection** Principle

Assessment, Alternatives & Accountability

Security -> School Rules?

DPP2- Accuracy & **Retention** Principle

Not excessive, Contractors

DPP3 - **Data Use** Principle

DPP4 - **Data Security** Principle

DPP5 - **Openness** Principle

DPP6 - **Data Access** & Correction Principle



Exemptions

59. 健康

(1) 與有關的資料當事人的**身體健康或精神健康**有關的個人資料，獲**豁免**而不受以下任何或所有條文所管限 —— （由2012年第18號第32條修訂）

(a) 第**6保障**資料原則及第18(1)(b)條的條文；

(b) 第**3保障**資料原則的條文，

但上述豁免僅在以下情況適用 ——

(i) 該等條文適用於該資料便相當可能會對該資料**當事人**的身體健康或精神健康造成**嚴重損害**；或（由2012年第18號第2條修訂）

(ii) 該等條文適用於該資料便相當可能會對任何**其他個人**的身體健康或精神健康造成**嚴重損害**。（由2012年第18號第2條修訂）

(2) 如**第3保障**資料原則的條文適用於關乎某資料當事人的身分或所在的個人資料，便相當可能會對 ——

(a) 該資料當事人的身體或精神健康造成嚴重損害；或

(b) 任何其他個人的身體或精神健康造成嚴重損害，

則該**資料獲豁免**而不受該等條文所管限。（由2012年第18號第32條增補）

若家長要求面談時錄音，社工或輔導人員有甚麼需要注意呢？

- Recording sounds =/ Video, unless identification
- Purpose of meeting : Counseling, Interviewing, Disciplinary action?
- Meeting notes suffices?
- May involves privacies of different parties
- Privileges?

甚麼是個人資料？

1. 與在世人士有關
2. 可直接或間接確定身份
3. 必須有文件紀錄（以便查閱及處理）

錄音？錄影？雲端儲存？辨識系統？

侵犯私隱

違反私隱條例

學校中哪些持分者有權查看學校的CCTV片段呢？

Not intend for Stakeholders, but for **the purpose** of Collection only DPP(1)

DPP(4) requires all data users to take all reasonably practicable steps to ensure that the personal data held by them is **protected** against unauthorized or accidental access, processing, erasure, loss or use

Security measures must be in place to prevent unauthorized access, including defining **who** can access the recorded images and under what circumstances.

Prevention of wireless transmission systems

Proper and **updated logs** of which staff members in custody, including transfers and movements.

Deletion once no valid reason to retain

- **DPP3** stipulates that personal data shall only be used for the purposes for which it was collected or a directly related purpose, unless express consent or under any applicable exemptions under the Ordinance e.g. under S58(2) police's request
- But the data user, is under **no general obligation** to supply the personal data as requested

告前同事誹謗 小學前主任敗訴

- 中華基督教會何XX小學一名前女主任，4年前興訟控告同校男主任誹謗，並指對方於校內以電郵等方式，向校長及其他教師指摘她的工作表現。高院昨頒下判辭，裁定前女主任敗訴。法官寄語說「學海無涯，學習並不局限在學校」，希望與訟雙方能夠從訴訟中學習，為學生作更好榜樣。

法官於判辭指出，被告部分言論屬**有理可據**，故不屬誹謗。至於被告非屬有理可據的言論，法官認為他當時只是向學校的管理**委員會投訴**，故擁有法律上的「**受制約特權**」(Qualified Privilege)，亦不屬誹謗。 明報 (2015/09/25)

WYM v WHM 23/9/2016 HCA 352/2011

- **Purpose** of Collection -> Fair or Unfair? Legal or Illegal? Appropriate or Inappropriate?
- Mode of Collection -> **Inappropriate** or Illegal?
- S55 **Relevant Process** with **Appeal** procedure (Exemption to P6)
- S56 **Appraisal** (Exemption to P6)
- Record/Minutes of Meeting as a double-edge sword, (**Malice** against **Qualified Privilege**)
- **Qualified Privilege** : *an occasion where the person who makes the communication has an interest or a duty, **legal, social or moral**, to make it to the person to whom it is made*“.

參考書目

林壽康 余惠萍 香港教育法 疏忽侵權篇(增訂版)印象文字出版社 2017年11月

黃繼兒 注意！這是我的個人私隱 2017 香港城市大學出版社