LEGAL PATHWAYS FOR ADULT SURVIVORS OF CHILD SEXUAL ABUSE

12 OCT 2025

This paper examines the civil, criminal and anti-discrimination avenues available to adults in Hong Kong who survived child sexual abuse. It is tailored for survivors, frontline workers, legal practitioners, and policymakers, presenting a formal yet accessible overview.

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PREFACE

We commissioned this research bundle to examine the civil, criminal, anti-discrimination avenues available to adults in Hong Kong who survived child sexual abuse. After many years of working with CSA survivors, we find that the rate of reporting and/or pursuing any form of justice is extremely rare. Reasons for this may be that currently the justice system is hard to navigate, it often requires years and is likely to cause secondary trauma for survivors. Another reason may be that many survivors are not aware of the options at their disposal. Indeed, we hope all professionals working with child sexual abuse cases could benefit from a trauma informed and resource rich document like this!

It is tailored for survivors, frontline workers, legal practitioners, and policymakers, presenting a formal yet accessible overview.

Topics include time limitations, procedural steps, available remedies, and special protections.

Taura Edgar
Founder + Chair of TALK Hong Kong

This document will grow and change along with use and changes to Hong Kong's legislation. If you have expertise to offer and content / corrections to share, please do get in touch at info@talkhongkong.org

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Reviewers included solicitors, barristers and law professors.

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ABOUT TALK

We exist to prevent child sexual abuse and support survivors in Hong Kong. We believe that protecting children from sexual abuse is a responsibility that rests with adults. By providing education and training, we aim to empower adults with the knowledge and confidence they need to take action and create a safer world for children. TALK Hong Kong began in 2019 as a peer support group, built on the belief that no one should face the trauma of Child Sexual Abuse (CSA) alone. In 2023, we became an official charity, dedicated to creating a safer future for children.

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CIVIL RECOURSE OPTIONS

Adult survivors of child sexual abuse can pursue **civil claims** primarily to seek compensation or injunctive relief against perpetrators (and potentially institutions). Civil claims are usually founded in tort law (such as assault, battery, or negligence leading to personal injury) or under specific statutes.

Here, we outline key considerations for civil actions: limitation periods and exceptions, types of claims (damages and injunctions), litigation procedures, evidence issues, and measures to facilitate access to justice (vicarious liability, legal aid, anonymity, disability accommodations).

Limitation Periods and Exceptions

Ordinary limitation rule

Under Hong Kong's **Limitation Ordinance (Cap. 347)**[1], most personal injury actions must be commenced within *three years* from the date the cause of action accrued or the date of the plaintiff's knowledge of the injury, whichever is later.

For example, if a survivor realised in 2020 that their psychiatric injury was attributable to childhood abuse, time may run from 2020 rather than the date of abuse decades earlier. Non-personal injury tort claims (e.g. trespass to person without clear "personal injury") have a six-year limitation from accrual. Contract claims (less relevant here) also have six years (or 12 if under seal).

Infancy (childhood) and mental incapacity

If the survivor was under a "disability" (which includes being a minor under 18, or mentally incapacitated) at the time of the incident, the limitation clock is paused. For a child victim, the three-year period **does not start until age 18** (majority).[2] Thus, a child abuse survivor typically has until at least age 21 to sue. If the person was mentally incapacitated (e.g. due to psychological trauma) such that they could not manage their affairs, the clock is tolled until they cease to be incapacitated.

Note: *Even after the standard period lapses, the court retains discretion to allow late claims in certain cases.*

Delayed discovery of injury

Many survivors of child sexual abuse delay disclosure or may not recognise the harm until much later in adulthood (due to repression, trauma, or delayed onset of psychological injury). Hong Kong law recognises a *"date of knowledge"*[3] concept: the limitation period can run from when the plaintiff knew (or ought reasonably to have known) the material facts about the injury and its causation.

Under Section 27(6) of Cap. 347, "knowledge" includes knowing that the injury is significant, attributable to the defendant's conduct, and the identity of the defendant.[4] Constructive knowledge also counts, meaning if a survivor could reasonably have learned of the causal link or identity earlier with diligence. For example, a survivor who only later links adult depression or post-traumatic stress disorder (PTSD) to childhood abuse might invoke the later knowledge date. Psychological expert evidence (e.g. a therapist's diagnosis of repressed trauma) can be crucial to establish when the survivor *reasonably* made the connection between abuse and injury. Courts will scrutinise what the survivor knew or could have known, and when, to decide if the case is within time.

Court's discretion under Section 30

Critically, even if the suit is filed outside the above time frames, the court has a wide discretion to extend or ignore the limitation period where it is fair to do so. Section 30 of the Limitation Ordinance empowers the court to allow a time-barred personal injury action to proceed if it would be equitable having regard to all the circumstances.[5] The plaintiff must show substantial reasons, and the court undertakes a balancing exercise.

[1] https://www.elegislation.gov.hk/hk/cap347

[2] https://www.clic.org.hk/en/topics/civilCase/start_civil_action/q6

[3] https://oln-law.com/limitation-of-action/

[4] https://www.elegislation.gov.hk/hk/cap347!en/s27?_lang=en

[5] https://www.elegislation.gov.hk/hk/cap347!en

Key factors (from Section 30(3) and case law) include:

- **Length of and reasons for delay**

  How many years have passed since the expiration of the limitation period and why.

  - Genuine reasons like the psychological inability to confront the abuse, fear, or ongoing domination by the abuser can be persuasive. Courts understand child sexual abuse often entails unique delays in reporting (e.g. victims may suppress the trauma or fear not being believed).

- **Evidence cogency**

  Whether the delay has so impaired evidence (memories faded, documents lost, witnesses unavailable) that a fair trial is no longer possible.

  - Some degradation of evidence is expected in historical abuse cases, but courts consider whether defendant is substantially prejudiced in defending due to missing evidence.

- **Defendant's conduct**

  If the abuser concealed the abuse or intimidated the victim into silence (fraud or concealment can postpone limitation), equity tilts toward allowing the claim. Conversely, if the defendant had no knowledge and has innocent prejudice due to passage of time, that is considered.

- **Plaintiff's conduct and diligence**

  The survivor's own actions in seeking advice or pursuing the claim once they felt able to do so.

  - Did they come forward as soon as reasonably practicable given their circumstances? Also, the extent to which the survivor was ignorant of their legal rights can be taken into account.

- **Prospects of a fair trial**

  An overarching consideration is whether a fair trial can still occur despite the delay.

  - If the case rests largely on the survivor's and abuser's testimony, courts may still proceed, leaving credibility to be assessed at trial. In some other jurisdictions, there is a reluctance to strike out child abuse claims purely for delay, given the strong public interest in accountability, but Hong Kong judges will carefully assess fairness to both sides.

In sum, Hong Kong law provides multiple safety valves for delayed claims. Childhood sexual abuse survivors have until adulthood plus a potential court discretion beyond that. There is no absolute statute of repose cutting off claims after a fixed number of years in these cases (unlike some jurisdictions), Hong Kong has not imposed a strict long-stop for personal injuries, and the common law discretion is "wide and unfettered".[6]

Notably, other common law regions (e.g. some Australian states, certain U.S. states) have entirely abolished limitation periods for child sexual abuse civil claims in recent reforms, reflecting recognition of trauma-delayed reporting.[7] In Hong Kong, while no such blanket abolition exists yet, the flexible Section 30 regime can achieve justice case-by-case. Legal practitioners should be prepared with psychiatric evidence and detailed affidavits explaining a survivor's delay in coming forward, to support a Section 30 application.

A precedent such as *Mok Lai Fong v. Ng Po Sui* [2011] 3 HKLRD 67[8] provides a guide on exercising this discretion, and courts have indeed allowed historical abuse claims to proceed where merited.

Types of Civil Claims and Remedies

Personal injury tort claims

[6] https://www.lexology.com/library/detail.aspx?g=683be516-e3fe-47b1-aab6-02362531b09e

[7] https://www.unswlawjournal.unsw.edu.au/article/reform-of-civil-statutes-of-limitation-for-child-sexual-abuse-claims-seismic-change-and-ongoing-challenges

[8] *Mok Lai Fong v. Ng Po Sui* [2011] 3 HKLRD 67

The most common civil route is a personal injury claim for damages against the perpetrator. This typically would be framed in tort[9] e.g., the intentional tort of assault and battery (for the sexual acts themselves, which are non-consensual physical touch), the tort of harassment[10], the misuse of private information should be included (i.e. revenge porn),[11] or negligence/breach of duty if a breach of a duty of care can be established (this might apply if suing an institution or caregiver that owed a duty to protect the child).

In Hong Kong, personal injury damages can cover pain and suffering, emotional distress, medical and therapy expenses, loss of earnings (if the trauma impacted the survivor's education or work for example), and the cost of future care.

In egregious cases, exemplary (punitive) damages might be sought to punish and deter especially outrageous abuse, though courts apply those sparingly. If the abuse caused diagnosable psychiatric illness (e.g., PTSD, depression), those are compensable injuries in civil law.

Types of compensable damages:

- **Pain and Suffering (Loss of Amenities)**

  Compensation for the physical pain, mental anguish, and loss of enjoyment of life caused by the injury. Courts assess this by looking at the severity and lasting impact of the injury, often comparing prior similar cases as a guidelines. Emotional distress and trauma from the abuse are included under this head of damages, as part of the overall pain and suffering award.

- **Medical, Therapy, and Care Expenses**
  All reasonable medical costs can be claimed, including hospital bills, doctors' fees, psychological counseling, rehabilitation therapy, and even future care needs related to the injury. This covers not only past expenses but also the cost of ongoing or future treatment and support (for example, future surgery, long-term therapy, or assistive equipment) as long as they are needed because of the abuse. The goal is to make sure the survivor is not out-of-pocket for getting the care they require.

- **Loss of Earnings (Past and Future):** If the trauma caused the survivor to miss school or work for example, or diminished their capacity to earn income, those financial losses are generally recoverable. A plaintiff can claim lost wages for time off (e.g. during recovery) and any reduction in future earnings potential due to lasting effects of the abuse. For instance, if the psychological or physical injuries hinder the person's educational progress or career prospects, the estimated impact on their future income can form part of the claim. Courts will consider factors like the person's age, pre-injury earning level, and how the injury affects their ability to work when calculating these damages.

- **Psychiatric Injuries:** Mental health conditions caused by the abuse (such as PTSD, depression, or other psychiatric illnesses) are recognised as real injuries in civil law. In other words, if the abuse leads to a diagnosable psychiatric illness, the survivor can claim damages for it just as they would for a physical injury. However, the law requires credible proof – typically in the form a medical expert's diagnosis and report – to show that a genuine psychiatric disorder resulted from the defendant's conduct. Temporary upset or insomnia, for example, would not suffice; it needs to be an actual illness. These psychiatric damages would be included as part of the pain and suffering compensation, or sometimes as aggravated damages if the manner of wrongdoing caused exceptional humiliation or distress.

Need to Prove Causation

Importantly, the survivor must prove the causal link between the abuser's conduct and the injuries or losses claimed. In Hong Kong civil cases, the burden is on the plaintiff to show on a balance of probabilities

[9] Tort liability in Hong Kong arises when a person commits an unlawful act that causes harm to another.

[10] See e.g. Lau Tat Wai v Yip Lai Kuen Joey[2013] 2 HKLRD 1197 and SJ v Persons unlawfully and willfully conducting [2019] 5 HKLRD 500

[11] Although there have been no HK cases directly on point, positive indication that this tort exists was given in X v Z [2020] HKCFI 826.

that the abuse caused or materially contributed to each head of damage they are seeking. In practice this means presenting evidence: for example, medical reports linking the abuse to the diagnosed PTSD, or employment records and expert testimony showing that the trauma led to interrupted education or career setbacks. If a particular loss is reasonably attributable to the wrongful act (and not too remote or unrelated), then it can be compensated subject to the plaintiff substantiating that connection with evidence. Conversely, if the harm would have happened anyway or cannot be convincingly tied to the abuse, it won't be recoverable. In short, any loss "reasonably linked" to the abuser's actions can be claimed**,** but the court will require proof of that linkage (causation) before awarding damages.

Exemplary (Punitive) Damages – Rare in HK

In especially egregious cases of abuse, Hong Kong law *does* allow a victim to seek exemplary (punitive) damages. These are extra damages aimed not at compensation but at **p**unishing the wrongdoer and deterring such outrageous conduct in the future. However, Hong Kong courts apply exemplary damages very sparingly. Unlike in the United States (where multi-million dollar punitive awards are relatively more common), punitive damages in Hong Kong are available only in very limited circumstances and are almost never awarded in practice.

Injunctions and other relief

Apart from or in addition to damages, survivors may seek injunctive relief, which is a court order to prevent the abuser from certain acts. For example, if the perpetrator (perhaps a relative or former caregiver) persists in trying to contact or harass the survivor, the survivor can apply for a non-molestation injunction to restrain the abuser from approaching or communicating with them.

Hong Kong's Domestic and Cohabitation Relationships Violence Ordinance[12] (DCRVO, Cap. 189) allows victims of domestic violence (which includes certain relatives, not just spouses) to seek injunctions such as ouster orders (removing the abuser from a shared home) and non-molestation orders.[13] The District Court or Family Court can grant such injunctions, typically for up to 24 months (renewable). While DCRVO primarily covers violence in domestic relationships, it has been interpreted to cover *relatives* (after amendments) and could extend to a child grown up seeking protection from an abusive parent, family member, or anyone that may have had an intimate "cohabitation" relationship with the parent under s.3B of Cap.189.

Even outside DCRVO, courts have inherent jurisdiction (High Court Ordinance s.21L)[14] to issue injunctions in aid of a substantive claim.[15]

Vicarious Liability and Institutional Defendants

Survivors may seek to hold not only the direct perpetrator liable, but also any institution or employer that enabled the abuse. Under the common law doctrine of vicarious liability, an employer can be held liable for torts committed by its employee in the course of employment.

Historically, courts were hesitant to say sexual assault fell within the "course of employment", viewing such acts as personal frolics outside any job duty. However, leading common law cases have evolved this area.

(1) The House of Lords in *Lister v Hesley Hall Ltd* [2001] UKHL 22[16] (an English case involving a warden who abused children at a boarding home) overturned the old view and held the employer liable, using a "**close connection**" test. If the employee's position provided the opportunity to commit the abuse and it was sufficiently connected to their employment (e.g., caring for children), then the employer may fairly be held responsible. Hong Kong follows these developments.

[12] https://www.elegislation.gov.hk/hk/cap189

[13] There is no statutory time limit to non-molestation orders under Cap.189. The 24-month time limit under s.6 refers to ouster orders and re-entry orders and authorisations of arrest only.

[14] https://www.elegislation.gov.hk/hk/cap4!en

[15] X v Z [2020] HKCFI 826

[16] *Lister v Hesley Hall Ltd* [2001] UKHL 22

(2) Recently, in *Lee Sze Man (by her next friend) v. Cheung Kin Wah and Others* [2024] HKDC 458[17], the District Court found a care home operator vicariously liable for the sexual assault of a resident by the home's warden. The warden (D1) was also a director of the operator company (D2), but the court held an employment relationship did exist and even if it hadn't, liability could arise for relationships "akin to employment". D2 had entrusted D1 with the care of vulnerable residents; the abuse was facilitated by D1's role and access (office on the female ward floor, no supervision). D2 had effectively *no proactive supervision* and took the risk of D1's unchecked authority. The court noted D2 conceded the "close connection" test was satisfied (the abuse was connected to D1's role). This case mirrors Canadian and UK jurisprudence and affirms that Hong Kong courts will hold institutions accountable if there is organisational negligence or a relationship that enabled the abuse.

For a survivor, this means if the abuse was by, for example a teacher, coach, doctor, church clergy, or other authority figure, they may have a civil claim against the school, sports club, hospital, or church for vicarious liability or negligence in failing to prevent the abuse.[18] Such claims increase the chance of compensation (as institutions usually have deeper pockets and insurance) and drive systemic change.

Legal practitioners should investigate the abuser's affiliations: was the perpetrator employed or in a position of trust conferred by an organisation? If yes, both direct and vicarious liability claims should be pleaded. Hong Kong precedents, while fewer than in some jurisdictions, do support these avenues (the *Lee Sze Man* case and others). But note that employers may try to avoid liability by arguing the abuser was on a frolic or not technically an employee, but courts can find dual roles or "akin to employment" relationships to impose liability in the interest of justice.

Damages and Remedies

If the civil claim succeeds, the court will award damages. In assessing damages for sexual abuse, courts consider the physical and psychological injury, the impact on the person's life, and also the *aggravating circumstances* of the assault (abuse of trust, etc.). Hong Kong's damages may be guided by prior case awards and occasionally UK guidelines,[19] but each case depends on its facts. There is also the possibility of obtaining a civil judgment by default if the abuser does not defend the case (for instance, some survivors file suit even if the abuser is overseas or unlikely to respond to obtain a symbolic judgment). Aside from damages, survivors might want a declaration of wrongdoing or an apology (though apologies cannot usually be compelled).

Importantly, civil litigation's goal is compensatory, not punitive (any punitive element is limited). Thus, a survivor might view civil action as a way to obtain resources for treatment and acknowledgment of harm, not a substitute for criminal justice. Both can proceed in parallel or sequence e.g., a criminal conviction can strengthen a subsequent civil claim (via doctrines like estoppel or simply by providing proof of the facts of abuse). In some jurisdictions, a criminal conviction for a sexual offence can reset or extend the civil limitation period (e.g., some US state laws allow civil suits within a certain time after a conviction),[20] but under Hong Kong law no such specific provision exists. Still, a conviction is extremely persuasive evidence in a civil trial.[21]

Civil Litigation Process in Plain Language

Bringing a civil lawsuit in Hong Kong involves several stages, which can be unfamiliar to survivors. Below is a step-by-step outline of the typical civil litigation process for personal injury or related claims

Pre-filing – legal advice and evidence gathering

[17] *Lee Sze Man (by her next friend) v. Cheung Kin Wah and Others* [2024] HKDC 458

[18] *H v LAU KA YEE MICHAEL & ANOR - [2006] 4 HKC 524*

[19] https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

[20] https://www.uscourts.gov/about-federal-courts/types-cases/civil-cases

[21] https://www.elegislation.gov.hk/hk/cap8!en

The survivor (now a prospective plaintiff) first consults a lawyer (or seeks legal aid, see below) to assess the claim. The lawyer will gather evidence: personal statements, medical reports (e.g., diagnosis of PTSD or injuries), any documentary evidence (diaries, letters, past complaints), and identify potential witnesses (perhaps confidants the survivor told about the abuse). This stage may involve obtaining expert reports from psychologists or psychiatrists on the impact of the abuse.

- For personal injury cases, Hong Kong courts require compliance with **Practice Direction 18.1 (PD18.1)** before issuing a writ. PD18.1 sets out the pre-action protocols designed to encourage early disclosure of information and settlement where possible. In practice, this means that the claimant (through their lawyer) should send a "letter before action" to the prospective defendant, summarising the basis of the claim and enclosing key supporting documents, including medical evidence. The defendant then has an opportunity to respond before formal proceedings start.

- When proceedings are filed, all medical evidence relied upon must be exhibited with the Statement of Claim (SOC)**.** This ensures the court and the defendant have clear sight of the diagnosed injuries and their impact from the outset. In addition, the claimant must also file a Statement of Damages, setting out in detail the different categories of loss being claimed (e.g., pain and suffering, therapy costs, loss of earnings, future care).

Commencing proceedings

The lawyer prepares a *writ of summons* (if in High Court) or generally an *originating process* to start the claim. In personal injury cases, a **writ endorsed with a statement of claim** is common – it sets out the parties and a summary of allegations. The case can be filed in the **District Court** (if the claim's value is up to HK$3 million) or the **High Court (Court of First Instance)** if higher or if the matter is complex. Childhood abuse cases often involve significant trauma, so many will fall in High Court jurisdiction for unlimited damages. Once issued by the court, the writ must be **served on the defendant** (delivered formally, which can be challenging if the abuser's whereabouts are unknown – sometimes substitution like newspaper advertisement, social media and digital notice is allowed by court order).

Pleadings and parties

After service, the defendant (the abuser, and possibly an institution) should enter an appearance and file a defence. In their defence they may deny the allegations. Often abusers simply don't respond, in which case the plaintiff may proceed to obtain judgment in default. If the government or a public institution is sued (less typical in abuse cases, unless it's against say Social Welfare Department for negligence, which is rare), then additional steps like notifying the government under the Crown Proceedings Ordinance occur.

It's possible for the survivor to sue *anonymously* (e.g., as "X" or initials) by applying for anonymity order, but unlike in criminal cases, anonymity in civil cases is not automatic – it must be justified as an exception to open justice. Courts have granted anonymity in certain sexual harassment or abuse civil cases especially to protect highly sensitive information, but only if truly necessary. One recent case cautioned that embarrassment or privacy alone is not enough. There must be a risk to justice or to the parties to justify anonymity. Survivors may seek such orders to avoid public identification in media, but they should be aware the default is that civil proceedings are public.

Pre-trial stage

Once pleadings (claim and defence, maybe a reply) are set, the case enters discovery and case management. Both sides exchange relevant documents (discovery process). In an abuse case, relevant documents might include medical records, school or employment records (to show impact), prior complaints or reports, etc. Witness statements or affidavits are prepared – the survivor will provide a detailed statement of their ordeal and its aftermath. Expert evidence is disclosed (medical experts). The court may hold case management conferences to set timelines.

Mediation is encouraged in Hong Kong civil cases (there is even a Practice Direction on mediation). In personal injury cases, mediation could be tricky (it requires the survivor to potentially negotiate with the abuser). However, if an institution is a co-defendant,

mediation might result in a settlement (e.g., the institution paying damages without admitting fault). The survivor always has control in civil litigation to settle or not. If no settlement, the case proceeds to trial.

Trial

At trial, the survivor (plaintiff) has the burden to prove the case on a balance of probabilities (i.e., more likely than not). This is a lower threshold than criminal proof beyond reasonable doubt. The trial is usually before a single judge (no jury in civil sexual assault cases, as juries in High Court civil trials are rare and can be refused in cases involving intricate facts or where a jury might be influenced by emotion – the default is judge-only. The plaintiff will usually testify in open court, unless an anonymity order or special measure allows otherwise. This is usually subject to court discretion. It can be re-traumatising to recount abuse, so measures like *screens* to shield the plaintiff from directly seeing the defendant can be requested.[22]

Courts have inherent discretion to permit evidence by live video link or with screening for vulnerable witnesses, though these are more commonly discussed in criminal context. In civil trials, especially in the Family Court or District Court, judges may be sympathetic and arrange accommodations (closed court, use of video testimony) if asked, particularly if the plaintiff is still psychologically fragile. The defence will cross-examine the survivor – challenging their credibility, memory, and consistency. This is generally the most difficult part for any victim. Given the passage of time, memory lapses do not necessarily defeat the case; judges understand historical abuse cases rely on the survivor's testimony and any corroboration available. Expert witnesses (like psychologists) may testify that the survivor's behaviour (delayed reporting, memory gaps) is consistent with trauma, to bolster credibility.

- After the plaintiff's side, the defence (if any) can present their evidence – the defendant might deny the acts or the impact. Character witnesses or documents might be produced, though in many abuse cases the defence is minimal beyond denial.

Judgment

After hearing the evidence and legal submissions, the judge will deliver a judgment. Sometimes even immediately, though more often in writing after several weeks or months. If the claim is proven, the court will find the defendant liable and award damages; if not, the case is dismissed. Importantly, civil cases do not have to be "all or nothing": outcomes can be mixed, with the survivor winning on some parts of the claim and losing on others, or with certain categories of damages allowed while others are reduced or disallowed. A survivor's testimony, if found credible and consistent, can on its own be sufficient to meet the "balance of probabilities" standard, even without corroborating witnesses, particularly if the defendant does not testify or present a substantive defence.

However, survivors should also be aware of the rules on legal costs: in Hong Kong, unlike in some jurisdictions, costs generally "follow the event," meaning the losing party is ordered to pay the winner's legal costs. This rule can act as a barrier to justice, since the risk of an adverse costs order may deter some survivors from pursuing claims, especially where outcomes are uncertain or only partially successful.

Enforcement

If the survivor wins and is awarded a sum of money, they may need to enforce the judgment if the defendant doesn't pay voluntarily. Enforcement can include seizing the defendant's assets, garnishing their income, or bankruptcy proceedings. Practically, many perpetrators may not have substantial assets, but institutional defendants do. If the defendant is insured (some might have liability insurance if it was institutional), the payout is easier.

- Hong Kong's Legal Aid Department can assist a legally aided plaintiff with enforcement actions.

Appeals

[22] More information here: https://www.doj.gov.hk/en/publications/pdf/ajls20160627e1.pdf

Either party can appeal if they believe there was a legal or factual error. The defendant might appeal a liability finding or the quantum of damages; the plaintiff might appeal if they lose. Appeals from the District Court go to the Court of Appeal, and from the Court of First Instance High Court also to the Court of Appeal, with a further possible appeal to the Court of Final Appeal on important points.

Appeals must be filed shortly after judgment (usually within 28 days). Not every case will be appealed – many settle after a judgment or the defendant may lack funds to continue. If an appeal is pursued, it prolongs the final resolution by months or years.

Overall, the civil litigation journey can be lengthy: often 1-3 years or more from start to finish, depending on complexity and any delays. It requires survivors to engage in an adversarial process, recall painful experiences, and undergo cross-examination.

Therefore, **practical tips for survivors considering civil action** include:

- seek counseling or support through the process;
- work with trauma-informed lawyers if possible;
- utilise available support services (NGOs like RainLily or others often accompany survivors to court);
- consider the timing (ensure you are emotionally ready); and
- have a safety plan if the abuser reacts (hence the potential need for injunction).
- Also, explore legal aid – Hong Kong has a legal aid scheme that covers civil actions for those with limited means (the Legal Aid Department applies a means test and a merits test). Many survivors may qualify financially, and on merits, the department will consider the evidence (sometimes requiring counsel's opinion on prospects).[23] If granted legal aid, the survivor's legal costs are borne by the government fund, which greatly improves access to justice.

Anonymity and Privacy in Civil Proceedings

Unlike criminal trials of sexual offences (where statutory anonymity for complainants is common in some jurisdictions), Hong Kong does not automatically grant anonymity to plaintiffs in civil sexual abuse cases. However, judges can and do issue anonymity orders or hold proceedings *in camera* (not open to the public) in appropriate cases, especially involving sexual abuse of minors or vulnerable adults. As mentioned, the principle of open justice is strong, and any derogation needs justification.

Examples where anonymity is granted include cases with risk of identification causing harm to the plaintiff or where publicity would defeat the ends of justice (e.g., blackmail cases, minors). In *X v. Stefano Mariani* (2023, District Court)[24] concerning sexual harassment, an anonymity order was initially granted but later lifted upon challenge because it was not deemed strictly necessary.

Survivors should discuss with their lawyer early on about whether to apply to sue under a pseudonym (e.g., "XYZ") to protect their identity. If an order is granted, the judgment will refer to the plaintiff by initials and reporting restrictions can be imposed. Hong Kong's courts are mindful of the sensitive nature of sexual abuse cases, so while not routine, such protective measures are available.[25]

Disability discrimination protections

If the survivor has developed a disability (including mental illness) as a result of abuse, Hong Kong's Disability Discrimination Ordinance (DDO, Cap. 487)[26] provides certain protections – though mostly in contexts like employment, education, provision of services. More on this below.

Practical note: Civil justice, at its best, can provide survivors with **financial compensation, a sense of**

[23] https://www.lad.gov.hk/eng/las/faq.html

[24] *X v. Stefano Mariani* (2023, District Court)

[25] *More information here: https://www.lewissilkin.com/zh-cn/insights/2024/05/28/can-victims-of-sexual-harassment-choose-to-stay-anonymous*

[26] https://www.elegislation.gov.hk/hk/cap487

validation, and accountability from offenders or negligent institutions. However, it can be stressful, expensive and public. Survivors should weigh this with supportive counsel. Some may choose to first pursue criminal action (for justice and public safety) and then a civil claim (for compensation). Others, especially where criminal prosecution is not feasible (e.g., lack of evidence to meet the higher criminal standard or if the abuser has died), might opt for a civil claim purely to tell their story in court and hold the perpetrator's estate or institutions liable. Note that these routes are not mutually exclusive.

CRIMINAL RECOURSE OPTIONS

Survivors of child sexual abuse can also engage the criminal justice system to seek the prosecution and punishment of the offender. In Hong Kong, sexual offences against children (and indeed all serious sexual offences) are crimes under the **Crimes Ordinance (Cap. 200)** and related legislation. As an adult survivor, one can still report the historical abuse to the police; there is *no time limit* on prosecuting indictable crimes.

This section outlines the process of reporting, investigation, prosecution (public vs private), court proceedings, victim protections under the **Victims of Crime Charter**, special courtroom measures to reduce trauma, the lack of limitation periods for serious offences, and how survivors may obtain criminal injuries compensation. We also reference precedent cases and practical expectations (e.g., giving evidence and the likelihood of conviction in older cases).

Reporting to Police and Investigation

Reporting the abuse

A survivor can initiate a criminal case by filing a report with the Hong Kong Police. This can be done by calling emergency services (999) if immediate, or more commonly by visiting a police station or making a report to the Child Abuse Investigation Unit (for cases that, even if long past, involve child abuse).[27] Some may also report to social workers or NGOs, who in serious cases will encourage or assist in making a police report. When reporting, the survivor (now the complainant) should be prepared to provide as much detail as they can remember about the abuse: the identity of the abuser, the time frame (even approximate years), locations, and what occurred. The police will typically take an initial statement. Given the sensitivity, the Hong Kong Police have specialised units for sexual violence; a survivor can request to be interviewed by a female officer or in a victim-friendly environment. According to the Victims of Crime Charter and police procedures, victims have the right to be treated with respect and compassion.

Police investigation

Once a report is made, the police will open an investigation. For historical abuse, they may need to locate and interview the alleged perpetrator and any potential witnesses (for instance, family members, schoolmates, or others who might confirm context or similar complaints). They might also seek out any corroborating evidence – old diaries, medical records (did the survivor ever see a doctor or counselor at the time?), or prior reports.

In child sexual abuse cases, even if delayed, the police often look for "similar fact" evidence or other victims, since offenders often have multiple victims. If the survivor has not told anyone before, the case may rest largely on their testimony versus the offender's denial. Police will assess if there is reasonable suspicion to proceed.

Arrest and charge

If the alleged abuser is alive and in Hong Kong, the police can arrest them (or ask them to come in for questioning). The suspect may be interviewed under caution. For very old cases, sometimes suspects confess (especially if confronted with multiple accusers or evidence); other times they deny. The

[27] https://www.police.gov.hk/offbeat/784/eng/f05.htm

police will compile evidence and liaise with prosecutors from the Department of Justice (DoJ).

Ultimately, the DoJ will decide whether to formally **charge** the person and what charges to lay. Common charges in these scenarios include:

- **Indecent assault** (Cap. 200 s.122) – any act of indecency with or towards a person without consent, which carries up to 10 years imprisonment;
- **Rape** (Cap. 200 s.118) if vaginal intercourse by a man without consent (note: Hong Kong's definition of rape is gender-specific, but non-consensual buggery or other sexual assaults have analogous offences);
- **Acts of gross indecency with a child** (various sections if the survivor was under a certain age at the time)
- **Child pornography offences** if relevant.
- There are also offences for **incest** (Cap. 200 s.47-48) if applicable.

[Please see the Appendix for a detailed list of offences]

If the abuse was very prolonged or involved abduction, multiple charges can be laid. However, Hong Kong does not presently recognise persistent abuse cases.

Hong Kong does not have a statute of limitations for these indictable offences, meaning even decades-old crimes can be prosecuted. This stems from the common law doctrine *"Nullum tempus occurrit regi"*- time does not run against the Crown, now applied to the HKSAR Government. Serious sexual crimes, being indictable, are not subject to the 6-month limit that minor summary offences have under the Magistrates Ordinance. As Grenville Cross (former DPP) noted, even historical child-abuse cases can and should be pursued if evidence permits.

Private Prosecutions

In theory, a survivor (or anyone) in Hong Kong can initiate a private prosecution by laying a complaint directly in the Magistrates' Court. However, this is rare and generally not advised for serious crimes.

The Secretary for Justice can take over (and discontinue) a private prosecution. Given that the police and DoJ are willing to prosecute sexual offences in the public interest, a survivor's focus should be on providing all information to the police rather than going it alone. Private prosecution might only become relevant if, say, the authorities for some reason refuse to prosecute and the survivor has strong evidence. Even then, the usual course would be to seek a review of the decision, not start a private case independently in such serious matters. More info here: https://www.doj.gov.hk/en/community_engagement/speeches/pdf/art1001e.pdf

If the Abuser is Overseas or Deceased

Police can still investigate; for overseas suspects, extradition might be sought if the person is in a jurisdiction with an extradition arrangement and charges are serious. If the suspect died, no prosecution is possible. The survivor would then only have civil or restorative options. If the suspect is alive but evidence is insufficient to prosecute (a common outcome if it's one person's word vs another with no corroboration), the survivor may at least have the satisfaction of making an official record of the allegation, and sometimes police keeping the record can help if another victim later comes forward, at which point there might be a critical mass of evidence.

Criminal Court Process and Victim's Role

Once charges are laid, the case enters the court system. The typical path is as follows:

Simplified criminal justice process for sexual offence cases: A complaint leads to investigation, charges, court hearings (from Magistrates' Court preliminaries to trial in a higher court), verdict, and sentencing, with appeal options.

Initial court appearances

The charged person (now the *defendant*) will first appear in a **Magistrates' Court**. For serious sexual offences which are indictable (e.g. rape, indecent

assault), the case will be transferred ("committed") to a higher court after possible preliminary inquiries. The Magistrate ensures the defendant understands the charges, deals with bail, and eventually passes the case to the District Court or High Court. Indecent assault can be tried either in Magistrates' Court (summary) or in District Court on indictment, depending on the prosecution's election and case gravity. Rape and buggery offences, due to higher penalties (up to life imprisonment), must be tried on indictment in the **Court of First Instance of the High Court** (with a jury).

Public prosecution

The case will be prosecuted by public prosecutors (from DoJ). The survivor, as the complainant, is technically a witness for the prosecution and not a party to the case. The prosecutor represents the HKSAR. That said, prosecutors are instructed to consider the interests of the victim and keep them informed. Under the **Victims of Crime Charter**, victims have the right to information about the progress of the case and to be treated with courtesy. They may also provide input on bail (for instance, if they fear retaliation, prosecutors can ask for bail conditions like non-contact).

Pre-trial preparations

The prosecution will gather all evidence and disclose material to the defence. In cases of child sexual abuse reported late, evidence often includes the survivor's sworn statement, any outcry witnesses (people the survivor told), medical or psychiatric evidence of harm, and possibly similar complaints. Sometimes, if the survivor as a child had told a teacher or doctor back then, that person's testimony is vital. If there are multiple victims of the same offender, joint or separate trials will be considered. The defence might seek to argue the allegations are false or influenced by therapy (in some cases, defendants argue "false memory"). Pre-trial legal arguments could involve admissibility of certain evidence, whether multiple counts should be tried together, etc.

Trial proper

In the District Court, trials are by a judge alone; in the High Court, by a judge and jury (7 jurors) for rape or other High Court offences. The survivor (complainant) will almost certainly need to testify as the key witness for the prosecution. Recognising the **trauma of testifying**, Hong Kong law and courts provide several **special measures**:

- The court can grant that the trial (or the complainant's testimony) be held *in camera* (closed court to public) to protect privacy.
- As of recent reforms, a complainant of specified sexual offences can give evidence via **live video link** from a separate room, at the court's discretion, even if they are now an adult. (Previously, live-link was mainly for child witnesses or "witnesses in fear" under s.79B of the Criminal Procedure Ordinance. A 2018 law amendment has likely extended this to adult sexual offence complainants on application.) This means the survivor does not have to face the defendant in the courtroom directly.
- Use of a **screen**: If testifying in the courtroom itself, a screen can be positioned so that the survivor does not see the accused, though the accused and counsel can see the survivor via video.
- **Clearing the public gallery**: The judge can order the courtroom cleared of spectators while the survivor testifies, to ensure privacy (the press may be allowed but usually cannot publish the identity of the complainant in sexual cases – Hong Kong has internal guidelines, and under common law, courts often make orders restricting publication of the complainant's name).
- **Intermediaries or support:** If the survivor has special needs (intellectual disability, etc.), an intermediary might be used to assist in communicating questions, though this is more common for child witnesses.
- **Witness support:** A friend or family member might be allowed to sit with the survivor in the live-link room for emotional support (this has to be requested).

The survivor will be questioned first by the prosecutor to tell their story. Good practice is that prosecutors ask open-ended questions and let the witness recount the abuse in their own words, only gently probing for specifics.

After that, the defence counsel will **cross-examine**. This can be the most challenging part – expect detailed questions attacking credibility, consistency, or suggesting alternative explanations. For instance, the defence might question why the survivor didn't report earlier, or suggest consent (if the survivor was, say, an older teenager during part of the abuse – though a child under 16 cannot consent to unlawful sexual intercourse, and under 13 cannot consent to any sexual act by law). They might also reference any possible motive to fabricate (sadly, defences often raise issues like inheritance disputes or family grudges as purported reasons for false accusations). It is the role of the trial judge to control cross-examination so it is not abusive or too harassing, especially given the context.

Trauma-informed judiciary:[28] Hong Kong's judiciary has increasingly recognised the need to handle sexual offence cases with care. Practice directions and training emphasise protecting the dignity of the witness. Still, the adversarial process requires testing the evidence.

If the survivor's testimony remains intact and convincing, the prosecution may not need much else for a conviction, especially if the defendant's story (if they choose to testify) is weak. However, in historical cases, corroboration greatly helps (e.g., a sibling who also was abused, or a diary from years ago, etc.). Juries and judges are cognisant of the dangers of convicting on one person's word alone, but they are also told it is not legally required to have corroboration. That said, a truthful victim's account can suffice if believed beyond reasonable doubt.

Verdict

After the prosecution and defence present their cases (the defendant may testify or remain silent; remaining silent cannot by itself convict them, but the court can draw appropriate inferences in some situations), the fact-finders decide. In High Court, the jury deliberates; in District Court, the judge decides. They must be sure *beyond a reasonable doubt* of the defendant's guilt to convict. If there is doubt, they will acquit. It is common in historical abuse cases to have acquittals due to evidentiary challenges. But successful convictions do happen, particularly if there are multiple independent accusations or very compelling testimony. In any event, the survivor should be prepared for either outcome. The prosecutor will explain the result and the reasons (if acquittal).

Sentencing

If convicted, the offender will be sentenced. For serious sexual offences, Hong Kong courts have guidelines: indecent assault often carries a custodial sentence, with factors like the victim's age at the time, breach of trust, extent of harm, etc. Rape has a starting point of several years in prison, modified by aggravating or mitigating factors. The survivor can often provide a **Victim Impact Statement (VIS)** detailing the effect of the abuse on their life, which the judge will consider in sentencing. The Victims of Crime Charter affirms the victim's right to be heard (this can be through a VIS or through the prosecutor relaying the impact). At sentencing, the court's aim is punishment, deterrence, and acknowledgment of harm. Judges in Hong Kong have emphasised that sexual abuse, especially of children, is heinous and merits stern punishment to reflect the community's condemnation (e.g., District Court case *C v. Hau Kar Kit [2023] HKDC 974*,[29] noting zero tolerance for sexual harassment and by extension abuse). There is no statute of limitations limiting the sentence; even decades-old crimes can get long sentences if the law at the time allowed it.

***Note:** the sentence is based on the law at the time of offence if changes occurred, but for sexual offences the maximum penalties have long been high.*

Appeals

The convicted offender has a right to appeal to the Court of Appeal (and then possibly to the Court of Final Appeal with leave) against conviction or sentence. This can prolong finality. The survivor as a witness does not participate in the appeal but may be called to testify again if a retrial is ordered (rare). The DoJ can also appeal an unduly lenient sentence. Throughout appeals, if the offender is out on bail,

[28] https://judicature.duke.edu/articles/trauma-informed-judicial-practice-from-the-judges-perspective/

[29] *C v. Hau Kar Kit [2023] HKDC 974*

protective measures (like bail conditions of no contact) remain crucial.

- For example, in the case of SJ v Leung Yuet Hung [2014] 3 HKLRD 304,[30] the defendant was convicted of raping a 12 year old girl 20 years before the trial. As a result, the sentence increased on appeal from 4 to 8 years.

From the survivor's perspective, the criminal process can be daunting. They are a witness, not in control of the case, and the standard of proof is high. But it can also be empowering to see the perpetrator held to account by the state and potentially convicted of their crimes.

Protections and Support for Victims in the Criminal Process

Hong Kong's system, while not perfect, has established various protections for victims of sexual crimes:

Victims of Crime Charter (2000)[31]

This is a formal policy document (by the DoJ and related agencies) that outlines rights of crime victims. Key principles include the right to be treated with respect and dignity, the right to be informed of case progress, the right to privacy (e.g., police and courts should avoid unnecessary disclosure of the victim's identity), the right to protection from intimidation (police can arrange measures if a victim is threatened), and the right to seek compensation. All police officers, prosecutors, and court staff are expected to uphold these principles. If a survivor feels mistreated – say a police officer was insensitive – they can cite the Charter and even lodge a complaint. The Charter also emphasises that a victim should be referred to support services (counselling, medical help) and given information about what to expect in court.

Special courtroom arrangements

As detailed above, courts can allow measures like screens, live-link, clearing the public, and anonymity orders to reduce the stress on the victim when giving evidence. Additionally, in cases involving child witnesses (if say the survivor had testified as a child in an earlier proceeding, or in current cases with child victims), pre-recorded video interviews can be used as evidence-in-chief so the child does not have to repeat testimony in open court (this is allowed under sections 79C, 79D of Criminal Procedure Ordinance for vulnerable witnesses). For adult survivors now, this may not apply, but it's good to know the system is adapted for vulnerability.

Separate waiting areas

Courts often arrange for victims to wait separately from the defendant, to avoid any unwanted encounters. The police and prosecutors coordinate on this. There are witness waiting rooms, and in sexual cases sometimes the complainant can enter and leave the court via a different route ("special passage").

Police Victim Support Units

The Hong Kong Police have a Victim Support Program for Victims of Family Violence which has expanded to sexual violence victims. They provide a supporter (often a social worker or volunteer) who can accompany the victim to police statements and to court sessions for emotional support.

NGO support

Organisations like RainLily[32] (a sexual violence crisis center), Tung Wah Group of Hospitals CEASE Crisis Centre,[33] and others offer 24-hour hotlines, counselling, and accompaniments. The police information leaflet lists contacts for such NGOs. Survivors are encouraged to make use of these – for instance, RainLily can provide a volunteer to go to court with the survivor each day of trial, and to debrief after testimony. They can also arrange therapy or support groups.

[30] SJ v Leung Yuet Hung [2014] 3 HKLRD 304

[31] https://www.doj.gov.hk/en/publications/pub200004.html

[32] https://rainlily.org.hk/eng/home

[33] https://www.tungwahcsd.org/en/our-services/youth-and-family-services/family-and-child-welfare-services/CEASE/introduction

Anonymity in media

While Hong Kong doesn't have a specific statute granting automatic anonymity to sexual offence complainants (like the UK's Sexual Offences (Amendment) Act),[34] the practice is generally that media do not name victims of sexual crimes. The Journalists Association and news outlets follow a code of ethics which respects privacy of sexual violence victims. Moreover, courts can issue a gag order if needed (and routinely do in rape/incest cases) to prohibit publication of the victim's identity. The judiciary has recognised preserving anonymity is often critical to encourage reporting and protect victims from social stigma. Survivors can thus be reassured that if their case goes to court, they likely will not be splashed in the news by name – any reporting would refer to them as "X" or just "the victim."

Protection from retaliation

If an offender (or their associates) threatens a survivor for reporting, that is a separate criminal offence (intimidating a witness). The police can take action, including re-arresting the offender or opposing bail. In extreme cases, witness protection programs exist, though those are typically for cases like organised crime. For most sexual abuse cases, such measures won't be necessary, but it's important survivors promptly report any harassment or threats after they engage the justice system.

No Limitation Period for Criminal Prosecution

As noted, Hong Kong imposes no limitation period on serious criminal prosecutions. This means a perpetrator can be charged many years after the offence. The only time limits in criminal matters are for minor *summary-only offences*, which must be brought within 6 months under the Magistrates Ordinance.[35] Sexual offences like rape, indecent assault, etc., are not summary-only; they are indictable (or either-way) and thus not time-barred. This is rooted in common law and ensures that perpetrators of child abuse cannot escape justice merely due to the passage of time. In fact, many jurisdictions are increasingly prosecuting "historical sexual abuse". Hong Kong is no exception when evidence is available.

However, while time is not a bar, delay can have practical impacts: evidence may be scarce, witnesses memories faded, or the offender elderly. In exceptional cases, if a prosecution is brought that the court finds is so delayed that it offends the court's sense of justice or ability to conduct a fair trial, the defence can apply to stay the proceedings for abuse of process due to delay. This is rarely granted; the courts have indicated that absent serious prejudice, the public interest in trying sexual abuse cases outweighs the detriments of delay (there is a "presumption against a stay" in such cases, especially after many places removed time limits by legislation). Hong Kong courts would likely follow UK jurisprudence which only stays proceedings if, say, the delay was culpable (e.g., authorities knew and sat on the case) and trial fairness is irremediably harmed. If only the victim's delayed reporting caused the lapse, that alone is usually not enough to halt a trial – credibility and reliability of the long-delayed testimony is instead left for the judge/jury to weigh.

Criminal Injuries Compensation and Other Remedies

Convicting the offender fulfils the goals of justice and public protection, but survivors may still face financial or emotional fallout. Aside from a civil lawsuit (which can be done even after a criminal trial), Hong Kong provides a specific **Criminal and Law Enforcement Injuries Compensation (CLEIC) Scheme** to compensate victims of violent crimes.

CLEIC Scheme:

This is a government-funded program, administered by a board under the Social Welfare Department. It provides ex gratia payments (cash lump sums) to victims of crimes of violence. Sexual offences clearly qualify as "crimes of violence" for this scheme. The scheme is *non-means-tested* (rich or poor, you can apply). It's meant to acknowledge harm and aid recovery, not to cover everything like a civil damage

[34] https://www.legislation.gov.uk/ukpga/1992/34/contents

[35] https://www.elegislation.gov.hk/hk/cap227

award, but it can be significant for those who choose not to sue or where the offender has no money.

- **Eligibility & conditions:**

  The victim must have sustained personal injury (physical or psychological) or died as a result of a crime of violence. The incident must have been reported to police "without unreasonable delay". For historical cases, this raises a question: if you report years later, is that "unreasonable delay"? The scheme rules suggest the board must be satisfied the circumstances of injury "have been the subject of criminal proceedings, or were reported to the police without unreasonable delays". If a survivor reports as an adult something that happened as a child, the Board may still consider it, especially if the delay is explainable (child fear, etc.). Another condition: the victim (applicant) must give full cooperation to the Board (e.g., medical reports).

- **Time to apply:**

  - Generally, an application must be made within **3 years of the incident**. This would obviously be a problem for historical abuse. In practice, the Board has some discretion on what constitutes the "date of the incident" in such cases. If the crime was only reported decades later and perhaps the prosecution just concluded, the time might count from when it was officially recognised. The scheme does allow a re-application within 1 year if a prior application was closed due to lost contact. It's advisable for survivors to apply as soon as possible once they become aware of the scheme and have engaged with the system – the Board might waive the limit if there are good reasons.

  - Also, the victim must have the right to remain in Hong Kong – so non-residents or foreigners might not qualify (e.g., a foreign child abused in HK who left might not be eligible; domestic workers etc. do usually have the right to reside during their employment, which might suffice).

- **Process:**

  The victim fills an application form (available at police stations or SWD offices).[36] The Board reviews police reports, medical evidence, etc. They do not need a conviction – they can award compensation if satisfied a crime took place and injury resulted. But if a conviction exists, that obviously helps. The Board uses a scale of awards depending on the injury. For instance, there are set amounts for certain injuries (loss of earning capacity, etc.). They also provide a bereavement payment to dependants if the victim died, and payments for funeral expenses. For non-fatal injuries, it could include medical expenses and a certain sum for pain and suffering. There are limits (a maximum award).

- **Other notes:**

  - For sexual violence victims, even if no obvious physical injury, psychological injury counts as disability. The scheme does require at least 3 days loss of earnings or capacity (except in death or serious disability cases). Many survivors might not have been employed at the time (child) – but if now as an adult they needed to take time off work for the trial or treatment, that could count. The Board can waive the 3-day work loss rule in some circumstances, especially for sexual crimes where the trauma is severe even without work loss.

  - It's worth noting the scheme cannot double-compensate. If the survivor later wins a civil suit, they might need to repay the government some of the money (the scheme's terms often have subrogation). But survivors shouldn't worry about that at first – the key is to get help when needed.

Restitution orders

[36] https://www.swd.gov.hk/en/pubsvc/socsecu/criminalan/

In criminal cases, Hong Kong courts have power (under the Criminal Procedure Ordinance) to order a convicted offender to pay compensation to the victim for injury or loss, up to a certain amount. This is not commonly used in sexual offence cases (more in property offence or minor injury cases) because serious matters are left for civil court on quantum. But theoretically, a survivor could ask the prosecutor to seek a compensation order after conviction. Any amount ordered would offset what could be claimed in civil court.

Therapeutic and community remedies

While not legal "recourse" in the formal sense, survivors might also pursue healing through therapy, support groups, or restorative justice programs if available. In some cases, especially intrafamilial abuse, a survivor might want an apology or acknowledgment. BUT Hong Kong does not have a standard restorative justice framework for sexual abuse, but with professional facilitation and if the offender admits guilt, some form of mediated communication could be attempted (only with survivor's initiative and consent).

Precedent and Notable Cases

Hong Kong jurisprudence on child sexual abuse includes both civil and criminal cases:

On the **criminal side**, cases like *HKSAR v. Chow Siu Wa*[37] have affirmed convictions for historical sexual offences, demonstrating the courts' willingness to rely on victim testimony even after years. Also, *HKSAR v. Kwan Ka Hung*(an illustrative name for example) might deal with a father prosecuted by an adult daughter years later – showing how sentencing reflects the breach of trust. [For illustration – no specific citation provided].

Another trend is courts adopting principles from other common law jurisdictions. For example, the High Court of Australia in *M v The Queen*[38] and subsequent cases cautioned about the need for careful jury directions in historical abuse cases (to warn jurors about memory issues due to delay). Hong Kong courts likely give similar directions to juries, instructing them not to unfairly prejudice the defendant for lack of timely complaint but also acknowledging reasons why victims delay (as per *R v. Dang* or other English cases).

In **civil context**, beyond *Lee Sze Man*, there have been cases of teachers or priests sued for abuse, often settled confidentially. The vLex and HKLII databases list cases like *X (a minor) v. The Incorporated Management of School Y* (hypothetical for example) where an institution was sued. Many such cases might not be reported if settled.

The law is continually evolving. Policymakers are looking at reforms such as explicitly removing limitation periods for sexual abuse civil claims (to provide certainty) and strengthening anonymity protections. As of 2025, no major reform has been enacted on limitation law specifically for sexual abuse, but stakeholders should remain vigilant of any Law Reform Commission studies or legislative proposals.

Sources:

- Limitation Ordinance (Cap. 347) – sections 22, 27, 30.
- *Mok Lai Fong v. Ng Po Sui* [2011] 3 HKLRD 67 – guidelines on discretion to extend time.
- *Lee Sze Man (by her next friend) v. Cheung Kin Wah & Ors* [2024] HKDC 458 – vicarious liability for sexual assault in care home.
- *Lister v Hesley Hall Ltd* [2001] UKHL 22 – seminal UK case on vicarious liability for sexual abuse.
- Police Victim Information (Hong Kong Police "Information to Adult Sexual Violence Victims" leaflet) – court protections (screens, live link).
- Department of Justice, *Victims of Crime Charter* (2000).
- Criminal Procedure Ordinance (Cap. 221) s.79B – special measures for witnesses (and 2018 amendment extending to sexual offence complainants).
- Crimes Ordinance (Cap. 200) – e.g., s.122 indecent assault, s.118 rape, s.47 incest, etc.
- *Grenville Cross, "Delayed prosecutions...public interest"* (China Daily, 13 June 2023) – discusses no time bar for prosecution chinadailyhk.comchinadailyhk.com.

[37] *HKSAR v. Chow Siu Wa*

[38] *M v The Queen*

- Hong Kong Police, Criminal Injuries Compensation FAQ.
- ONC Lawyers article on personal injury limitation (2019) – explanation of knowledge and discretion.
- Lewis Silkin article "Can victims stay anonymous?" (2024) – anonymity order principles lewissilkin.comlewissilkin.com.
- Community Legal Information Centre (CLIC) – personal injury limitation FAQ and civil procedure guides.

ANTI-DISCRIMINATION AND EMPLOYMENT RIGHTS

Adult survivors of child sexual abuse often endure long-term psychological or physical effects, such as post-traumatic stress disorder (PTSD), depression, or anxiety. In Hong Kong, these trauma-related conditions can qualify as "disabilities" under the law, meaning survivors are protected from discrimination in many areas of life. This research memo outlines survivors' rights under Hong Kong's **Disability Discrimination Ordinance (Cap. 487)** ("DDO"), focusing on protections in employment, education, and access to services. It explains the legal duties of employers, schools, and service providers to avoid disability-based discrimination and to provide reasonable accommodations.

It also provides guidance on how survivors can request accommodations (and document their needs), steps to file a complaint with the Equal Opportunities Commission (EOC), illustrative case law (from Hong Kong and other common law jurisdictions) relevant to trauma-related disabilities, and practical tips (e.g. keeping records).

Overview of Disability Discrimination Ordinance (Cap. 487)[39]

Hong Kong's DDO is the primary law prohibiting disability-based discrimination, harassment, and vilification. It aims to ensure persons with disabilities enjoy equal opportunities in major life areas.

Survivors of child sexual abuse who suffer long-term psychological injuries (like PTSD or other mental illnesses) are protected by this law. Mental conditions affecting a person's thought processes, emotions, or behaviour fall squarely within the DDO's broad definition of "disability". Crucially, the DDO covers not only current disabilities, but also past disabilities, potential future disabilities, and even disabilities that someone is *perceived* to have. In short, a survivor who has recovered from a trauma-related mental illness or is *regarded* as having one is still protected.

Protected Sectors

The DDO makes disability discrimination unlawful in virtually all private domains. This includes employment, education, the provision of goods, services and facilities, access to premises (public places), housing (tenancies), clubs, and the conduct of the government. In each of these sectors, it is illegal to treat a person less favourably because of their disability or to fail to provide equal access and opportunities.

- For example, an employer cannot refuse to hire or must not fire someone due to PTSD; a school cannot deny admission to a student due to a past psychiatric illness; a hospital or shop cannot refuse to serve a person because of their mental health condition. These protections also extend to a disabled person's associates (meaning it is unlawful to discriminate against someone *because* they have a relative or companion with a disability).

Forms of Prohibited Conduct

The DDO outlaws several specific types of conduct on the ground of disability: direct discrimination, indirect discrimination, harassment, and vilification. Each is defined by the Ordinance:

- **Direct discrimination** means treating a person with a disability less favourably than others in similar circumstances, *because* of the disability. If disability is one of the reasons (even not the sole reason) for an unfavourable decision, that is

[39] https://www.elegislation.gov.hk/hk/cap487

sufficient to amount to discrimination. For instance, if an employer rejects a survivor for a job upon learning she has PTSD, whereas the employer would hire a similarly qualified candidate without PTSD, that is direct discrimination.

- **Indirect discrimination** involves applying a general requirement or condition that is the same for everyone but which disproportionately disadvantages people with a particular disability, and which is not justified as reasonable in the circumstances. In simpler terms, a rule or policy that appears neutral can be unlawful if it puts survivors (or others with a certain disability) at a substantial disadvantage without a valid reason. For example, if a training course requires all students to attend an overnight camping trip with no exceptions, this could indirectly discriminate against a survivor with PTSD triggered by nighttime or confined spaces – unless the requirement is shown to be necessary and no accommodation (like an alternative activity) is possible. Indirect discrimination has a built-in defense: the party applying the condition can escape liability by proving the requirement is "justifiable", meaning it serves a legitimate objective and is proportionate/necessary. (We will see an illustration of this in a case involving a university policy, below.)

- **Harassment** is also unlawful. Disability harassment is defined as unwelcome conduct (which can be verbal, physical, or written) towards a person because of their disability, where a reasonable person would anticipate that the target feels humiliated, offended or intimidated. Harassment can include ridicule, insults, name-calling, or intrusive questioning about one's disability. Example: Repeatedly calling an employee "crazy" or "psycho" because of their PTSD constitutes harassment. In fact, in a U.S. case, a supervisor who referred to an employee with PTSD as a "psycho" (even jokingly) and mocked his therapy routine created an intolerable hostile environment; this resulted in a legal settlement and required anti-harassment training at that company. The DDO makes disability harassment unlawful in the workplace, in educational settings, in provision of services and facilities, in clubs, and in common areas of premises – essentially any context covered by the Ordinance.

- **Vilification** is a more extreme form of public disability-based hate speech.[40] It is any public activity that incites hatred towards, serious contempt for, or severe ridicule of people with a disability. For example, if someone publicly distributes materials portraying persons with mental illness as dangerous or mocking them in a hateful way, that could be vilification. Serious vilification (involving threats of physical harm or incitement of others to harm) is actually a criminal offence punishable by fines and imprisonment. While vilification cases are rare, this provision underscores that society should not tolerate public hate against those with disabilities.

Vicarious Liability

Employers, principals, and service providers should note they can be held liable for discriminatory acts done by their employees or agents in the course of employment, *unless* they took reasonably practicable steps to prevent such acts. (Already discussed in detail above).

Employment Protections for Survivors with Disabilities

Employment is a key area of protection under the DDO. Survivors with PTSD or other psychological injuries are entitled to equal opportunities in hiring and employment terms, and employers have a duty to accommodate their needs to the extent reasonable. The law applies broadly to employment relationships: full-time and part-time employees, job applicants, contract workers and freelancers working through labour contractors, commission agents, and even members of partnerships or professional vocational training programs are all covered.

[40] https://www.eoc.org.hk/en/discrimination-laws/disability-discrimination/faq/the-disability-discrimination-ordinance-and-i

In short, an employer cannot refuse to hire, cannot dismiss, and cannot subject an employee to any detriment (such as demotion, pay cut, or unfavourable terms) *because* of the employee's disability. This holds true whether the disability is physical or psychological. Dismissing an employee *simply for having* PTSD or needing therapy, for example, would violate the DDO. Additionally, workplace harassment or bullying of a survivor due to their trauma-related condition is unlawful, and employers should actively prevent and address such behaviour.

Reasonable Accommodations in the Workplace

Hong Kong law expects employers to make reasonable accommodations for employees with disabilities to enable them to perform their jobs. If a survivor can carry out the inherent requirements of a job with some adjustments or aid, the employer is required to consider providing those adjustments.

[**Reasonable accommodation** (sometimes called "reasonable adjustment") refers to any modification or provision of facilities, equipment, or flexibility that allows a person with a disability to do the job on an equal footing. These accommodations can be at any stage of employment, tailored to the employee's needs.][41]

Examples of reasonable accommodations in a work context include:

- adjusting working hours or providing **flexible scheduling** (for instance, allowing flexible start times or time off for therapy appointments);
- **modifying job duties** or re-assigning marginal tasks that aggravate the person's condition;
- providing **assistive devices or adaptive technology** (like noise-cancelling devices or specialised computer software);
- **altering the work environment** (e.g. creating a quieter workspace to reduce PTSD-related anxiety triggers);
- granting additional breaks during the day to cope with stress; or allowing **work-from-home** arrangements when feasible.

An employer might also adjust supervisory methods. For example, if a survivor finds face-to-face confrontation traumatic, a supervisor could agree to provide instructions and feedback in writing or in a supportive tone. The goal of accommodation is to ensure the employee can perform the essential functions of the job in spite of disability.

Importantly, an employer must not simply assume a survivor "cannot handle" a job without first considering whether accommodations would enable them to do it. In other words, an employer cannot bypass a qualified candidate or terminate an employee on the basis of disability unless and until they assess the person against the job's core requirements *with reasonable adjustments in place*. This principle was emphasised by the EOC's Code of Practice and affirmed by the courts: employers should tread carefully to distinguish between legitimately considering an employee's health in decision-making versus discriminating "because of" the disability. There is, as one court put it, a fine line – taking a disability into account to support an employee is proper, but making an adverse decision *due solely to* the disability (when the person could work with accommodations) is likely unlawful.

Undue Hardship and Inherent Requirements: The Limits of Accommodation

While the law favours accommodation, it recognises limits. An employer is not required to accommodate if doing so would impose an "unjustifiable hardship." This is the only explicit exception allowing disability-based decisions in employment. Unjustifiable hardship means that the needed accommodation would impose excessive

[41] https://nda.ie/uploads/publications/reasonable-accommodations-obstacles-and-opportunities-to-the-employment-of-persons-with-a-disability1.pdf

difficulty or expense on the employer, considering the employer's circumstances. For example, a very small company with limited finances might not be expected to install an expensive elevator solely for one employee if it would practically bankrupt the business. That could be an unjustifiable hardship. Typical factors are the cost of the accommodation, the employer's financial and other resources, and the availability of external assistance or alternatives. The burden is on the employer to prove that a particular accommodation is not feasible due to undue hardship. In practice, most accommodations for mental health (like flexibility or minor adjustments) cost little or nothing, so claims of unjustifiable hardship may be hard to justify in those cases.

Relatedly, the DDO allows an employer to refuse to hire or to dismiss a person *if* that person, because of disability, cannot perform the inherent requirements of the job even with reasonable accommodations. "Inherent requirements" are the fundamental duties or essential outcomes of a position. The law does *not* require an employer to change the essential nature of the job or lower the genuine performance standard for a role. For instance, if a job's inherent requirement is to respond quickly to emergency situations in person, but a candidate's severe PTSD symptoms unpredictably incapacitate them under stress even after accommodations, the employer could lawfully decide the person is not able to meet that inherent requirement. However, this is assessed on a case-by-case basis. Employers must consider all relevant factors (the person's training, experience, past performance, and the nature of the disability – whether temporary or permanent, etc.) before concluding someone cannot fulfil a role. The key point is that an employer should attempt feasible accommodations first; only if the person still cannot do the job's core duties, or if accommodations needed are extreme, can the employer lawfully rely on the "inherent requirements" defence.

The District Court in one case summarised this two-step inquiry: identify the job's essential requirements, then ask whether the employee is unable to perform those due to disability even after considering reasonable accommodations. If yes, the decision (not to hire or to dismiss) may be justified.

Case Illustration (Hong Kong):

- In **M v Secretary for Justice** (DCEO 8/2004),[42] a government officer with generalised anxiety disorder claimed he was harassed and eventually forced to resign due to his disability. The court found the employer had not known of his condition (and his symptoms were not obvious), so there was no direct discrimination. The court also held it was not discriminatory for the employer to apply the same performance standards to him as to others because, on balance, the job's nature required it and there was no less onerous measure – essentially treating it as justified indirectly.

- Furthermore, the court noted that even had there been discrimination, the employer could rely on the inherent requirements defense: the role of Administrative Officer was highly demanding, and due to the plaintiff's disability he was unable to meet those core requirements (even with possible accommodations). This case shows that where a survivor's condition truly prevents performing a critical job function, an employer may lawfully take action – but it must be prepared to prove that point and show that accommodations were not viable.

Case Illustration (UK):

- In contrast, employers who *prematurely* decide an employee "is not fit" without exploring support can face severe consequences. A recent UK Employment Tribunal case demonstrates this. **Wright-Turner v. Dept. of Education (2024)**[43] involved a senior public servant who developed PTSD (and ADHD) after working on the Grenfell Tower disaster. She disclosed her conditions to her new employer, but faced hostility and lack of support from her line manager. After she took sick leave for her mental health, the employer extended her probation and then dismissed her, citing performance issues. The Tribunal found that her manager's conduct (such as triggering discussions of her trauma and calling her an

[42] M v Secretary for Justice (DCEO 8/2004),

[43] Wright-Turner v. Dept. of Education (2024)

"outsider") amounted to harassment. It ruled that the extension of her probation and her eventual dismissal were directly because of her PTSD/ADHD and were not justified – a hypothetical employee without those disabilities would not have been treated the same. Notably, the employer had failed to obtain medical evidence or consider further adjustments; instead they focused on "how to get rid of her" once she took leave.

- The Tribunal awarded £4.58 million in compensation, one of the highest ever, reflecting her lost future earnings (as her health was so damaged she could likely never work again) and including £60k for injury to feelings (at the top of the Vento scale for severe emotional harm).[44] This extraordinary award, which included aggravated and exemplary damages, underscores the importance of proper handling: had the employer engaged with her condition and tried accommodations (e.g. adjusted workload or extended leave with support), the outcome might have been very different. The case is a cautionary tale that automatic dismissal of a survivor for showing PTSD symptoms can be blatant discrimination, with costly results. Hong Kong courts have not issued such a large award to date, but they similarly recognise **injury to feelings** as a head of damage and use a scaled approach (the UK Vento bands, adjusted for Hong Kong's context)[45] to compensate emotional distress.

Harassment and Victimisation in Employment

Survivors also have the right to a work environment free from harassment and stigma. As noted, disability harassment by a boss or colleagues is unlawful. Employers should cultivate a *trauma-informed workplace*, meaning staff are educated to be sensitive about mental health issues and avoid actions that could retraumatise or humiliate survivors. For example, jokes or comments belittling someone's abuse history or PTSD triggers are inappropriate and could be harassment. If an employee with a disability is being bullied or taunted by coworkers, the employer should take prompt action (investigate, discipline the harassers, etc.) both to comply with the law and to fulfill their duty of care. Failure to address known harassment could make the employer vicariously liable.

Additionally, the DDO protects individuals from victimisation. Victimisation in this context means subjecting someone to retaliation or adverse consequences because they exercised their rights under the anti-discrimination laws (such as making a complaint or helping someone else to complain). For instance, if a survivor requests an accommodation or files an internal discrimination grievance, the employer cannot lawfully punish them for it (e.g. by firing, demoting or ostracising them). The Family CLIC guidance explicitly notes that if you are treated badly for lodging a complaint or giving evidence in a discrimination case, you can file a separate complaint of victimisation under the DDO. This encourages survivors (and their colleagues) to assert their rights without fear. In practical terms, an employer should never respond to an accommodation request with hostility or threaten an employee for contacting the EOC. That itself would violate the law.

Other Employment Protections: Sick Leave and Unfair Dismissal

Beyond the DDO, survivors in employment have additional protections under Hong Kong's general labour laws. The **Employment Ordinance (Cap. 57)** provides certain safeguards that can be highly relevant for survivors dealing with medical issues from trauma:

Paid Sick Leave Entitlements

Employees earn paid sick leave under the Employment Ordinance. If a survivor needs time off

[44] Under Hong Kong's anti-discrimination legislation, one of the common remedies that a claimant in a claim for an unlawful act of discrimination or harassment usually seeks is damages for injury to feelings. The assessment of such damages is usually carried out according to what is called a Vento scale, which consists of three broad "bands" of damages, depending on the severity of injury to feelings. The Vento scale, derived from English case law, has been adopted and consistently applied in Hong Kong.

[45] https://www.jsm.com/publications/2025/hong-kong-district-court-increases-damages-payable-by-employers-in-discrimination-cases/

work for therapy, medical appointments, or recovery due to PTSD or related conditions, they are entitled to use their accrued sick leave days (with a medical certificate) and receive a sickness allowance (paid at a fraction of wages) as stipulated by law. After a certain period of employment, these paid sick days accumulate (for example, 2 days per month in the initial months, and more thereafter). Employers should inform survivors of their sick leave balance and allow them to take this leave for mental health as readily as for physical health – mental illness is equally valid for sick leave.

Protection from Dismissal During Paid Sick Leave

It is unlawful for an employer to terminate an employee who is on paid statutory sick leave, except in cases of serious misconduct justifying summary dismissal. This means if a survivor is on doctor-certified sick leave for trauma-related treatment (and the leave is within their statutory entitlement), the employer must not fire them during that period. Firing someone on sick leave is a criminal offence in Hong Kong: an offending employer may be prosecuted and fined up to HK$100,000. They would also be required to pay the employee compensation (including wages in lieu of notice, an additional sum of at least 7 days' wages, and any owed sickness allowance) within 7 days.

Unreasonable Dismissal Claims

If an employer terminates a survivor *because of* their disability or health condition, not only is that a DDO discrimination claim, it may also be an "unreasonable and unlawful dismissal" under the Employment Ordinance if none of the legally valid reasons for termination (like misconduct, redundancy, etc.) apply. The employee can lodge a claim with the Labour Department or Labour Tribunal for remedies. While compensation under the Employment Ordinance for unreasonable dismissal is relatively modest (capped by statute, often one month's wage or reinstatement in limited cases), it's an additional avenue of redress. If proven, the Labour Tribunal can award up to HK$150K in compensation - if the employee is not reinstated or reengaged at work.

In practice, if a survivor's PTSD symptoms intermittently affect work, a good employer should discuss options: perhaps adjusting workload, granting flexible hours, or allowing use of annual leave or unpaid leave in addition to sick leave if needed for treatment. Termination should be the last resort and only if all accommodations would impose undue hardship or if, after recovery period, the employee still cannot fulfil the core duties.

Education Protections for Students with Trauma-Related Disabilities

Survivors of child sexual abuse may interact with the education system as adult learners – for example, attending university, vocational training, or continuing education courses. The DDO expressly prohibits disability discrimination by educational establishments, which includes schools, colleges, universities and any organisation providing education or training. This means that a person cannot be denied admission, expelled, or treated less favourably in any terms of education (such as access to courses, evaluation, campus accommodations, etc.) on the ground of a disability.

Admissions and Access

Education providers must not refuse to admit an applicant due to a disability, unless an exception applies (e.g. the institution provides truly specialised education not suitable for the person – a rare scenario – or unless accommodating the student would impose unjustifiable hardship on the institution). Once admitted, students with disabilities should have equal access to facilities, programs, and extracurricular activities. For instance, a university cannot bar a student with known PTSD from enrolling in certain courses out of bias or paternalism; nor can a training institute reject an applicant after a health questionnaire reveals a history of mental illness, unless it can show the disability would prevent fulfilment of an essential requirement of the program (and no accommodation could address it). In Hong Kong, educational establishments are encouraged to adopt inclusive policies. The EOC issued a Code of Practice on Education which provides guidance on accommodating students with disabilities (e.g.

arranging building access, curriculum modifications, etc.), similar in spirit to the employment code.

Reasonable Accommodations in Education

Just as employers must accommodate employees, schools should provide accommodations to students with disabilities to ensure they are not placed at a substantial disadvantage. Some reasonable accommodations or adjustments in education might include: allowing a student with PTSD to have flexible deadlines or exam arrangements during periods of acute symptoms (e.g. extra time on exams, take-home exams, or rescheduled exams if panic attacks occur); permitting brief breaks during long classes or exams if needed to manage anxiety; providing counselling services or a support person on campus; ensuring classroom materials are available in advance (so a student with concentration issues can prepare); modifying class participation requirements if, for example, public speaking triggers severe trauma responses (perhaps allowing written submissions instead of an oral presentation); or creating a "safe space" or trauma-informed counselling room the student can retreat to if overwhelmed. In courses covering sensitive content (e.g. discussions of sexual violence), a trauma-informed approach might involve giving content warnings and offering alternative assignments if needed.

No Harassment or Bullying

A survivor-student is protected from harassment by staff and fellow students. The DDO makes it unlawful for a teacher or an employee of a school to harass a student with a disability. Although the Ordinance doesn't explicitly list student-to-student harassment, schools have a duty of care and can be held responsible for maintaining a non-hostile environment. In practice, if a student with PTSD is being taunted by classmates (e.g. called derogatory names relating to their mental health), the school administration should intervene. Many institutions have anti-bullying and anti-harassment codes which encompass disability.

Case Illustration:

- In **C v The Chinese University of Hong Kong [2022] HKDC 77**, we see how disability discrimination law was tested in an education context. A postgraduate student who suffered from depression and generalised anxiety (verified by a psychiatrist) had fallen behind in her coursework. She requested an extension of the program's time limit, explaining that her mental health issues had impeded her progress and providing medical documentation. The University denied her extension and discontinued her enrolment, citing the expiration of the maximum study period. The student sued, alleging that the decision was made *because of* her psychiatric disabilities and that the strict application of the study period was indirectly discriminatory against students with mental illnesses who may need more time. In this particular case, the District Court ultimately ruled against the student – it found no direct discrimination since the University's reference to her condition in the rejection letter was viewed as concern for her well-being rather than prejudice. The court also rejected the indirect discrimination claim, reasoning that the four-year time limit was a uniform requirement and there wasn't clear evidence that students with disabilities as a class could not meet it (especially since the university had extension mechanisms). The court concluded the requirement was academically justified and applied evenly, with discretionary extensions as a safety valve.
    - **Lesson:** This case demonstrates the nuance in proving discrimination! The mere fact that a rigid rule adversely affected a disabled student did not guarantee a legal win, especially when the institution showed a legitimate academic rationale.
    - However, the case also underscored the need for universities to have policies addressing the needs of students with disabilities. The student had argued that the lack of any policy or flexibility for disabled students was itself problematic. While she did not succeed, the publicity around the case prompted discussions in the education sector about formalising accommodations for mental health.

Access to Goods, Services, and Facilities

The DDO guarantees that persons with disabilities have equal access to goods, services, and facilities available to the public. This broad category covers healthcare, transportation, banking, hotels, restaurants, shops, entertainment venues, public agencies, and more – essentially any service provider, whether public or private, cannot discriminate against a customer or client due to disability. For survivors of abuse with mental or physical disabilities, this means you have the right to receive services in a non-discriminatory way.

No Denial or Differential Treatment

A service provider must not refuse to serve someone because of their disability, nor provide sub-standard service or impose extra burdens on that person (unless justified). For example, a hospital or clinic cannot turn away a patient or make them wait longer *because* the patient has a mental illness. A private dentist who learns a patient takes anxiety medication cannot deny treatment out of unfounded fear. Retail stores and restaurants should not deny entry or service to someone who, say, shows mild PTSD symptoms (such as anxiety or needing a support companion) – doing so could be direct discrimination. There may be rare cases where a service modification is warranted for safety (for instance, if a person's disability causes dangerous behaviour threatening others, action can be taken as a "justifiable" measure), but these are exceptions and must be based on objective evidence, not stereotypes. The U.S. EEOC guidance makes clear that covered entities cannot rely on myths or generalised fears about mental health conditions; they need objective evidence of a safety risk that *cannot be mitigated by accommodation* before excluding someone. Hong Kong's law aligns with this principle: decisions must be evidence-based, not driven by stigma.

Reasonable Accommodation in Services

Services and facilities should be reasonably accessible to persons with disabilities. For physical facilities, Hong Kong's building regulations and DDO require things like ramps, lifts, or accessible toilets unless that causes unjustifiable hardship. But what about accommodations for psychological disabilities? While less codified, service providers are encouraged to be flexible and creative to accommodate mental health needs. Some examples: A public-facing office (say, a government benefits centre) might allow a survivor with severe social anxiety to have a support person accompany them in a meeting, even if normally only the client is allowed, as an accommodation. A hospital might flag a survivor's file for *trauma-informed care* – meaning staff are alerted to approach the patient in a sensitive manner (for instance, explaining procedures thoroughly to avoid triggering feelings of helplessness that CSA survivors might experience).

If a survivor has panic attacks in crowded waiting rooms, a clinic could accommodate by letting them wait in a quieter area or call them in as soon as a room is free. For someone whose PTSD is triggered by certain environments (e.g. narrow MRI machines), a healthcare provider could explore alternatives (such as open MRI or sedation options). A library or community centre could arrange *quiet zones* or specific timings where a person with PTSD can use facilities with fewer people around.

Housing and Premises

The DDO also covers the sale or rental of premises. Landlords cannot refuse to rent to someone because that person has a disability (including a psychiatric disability). Nor can they impose extra conditions (like requiring a higher deposit because the tenant has a disability). Survivors seeking housing should be judged on the same criteria (creditworthiness, ability to pay rent, rental history) as anyone else. If a survivor requires a certain accommodation in housing. For example, being allowed an assistance animal despite a building's pet ban, or needing the landlord to install an additional lock or alarm for PTSD-related sense of security. They should communicate with the landlord. While private housing accommodations are a gray area in Hong Kong (it's less common to treat an emotional support need like a legally mandated accommodation), a reasonable landlord should be open to discussion especially if it doesn't cause them hardship.

Harassment in Services

It is unlawful for a service provider or their staff to harass a customer with a disability. For instance, if a

bus driver or flight attendant mocks or yells at a passenger for having a panic attack, that could be harassment. Likewise, a security guard ridiculing someone's medically-needed behaviour (like doing breathing exercises in a mall) could be liable. Businesses should ensure their employees maintain professionalism. The earlier example from the EEOC's cases of a supervisor repeatedly insulting an employee with PTSD ("psycho") is a caution not only in employment but for any customer interactions – had that been a service context (say a staff calling a *customer* "psycho"), it would squarely fall under DDO harassment as well.

Note: *Certain specific activities can have exceptions – for example, insurance services can use actuarial data to differentiate risks, and infectious disease control measures might justify different treatment in healthcare in rare cases – but these are unlikely to affect most survivors of CSA-related PTSD. Generally, psychological disabilities should not pose any legitimate reason to refuse service in mainstream scenarios.*

Requesting Accommodations and Documenting Your Needs

One practical challenge survivors face is *how* to inform employers, schools, or service providers about their disability and request the help they need. While disclosure of such deeply personal issues can be difficult, it is often necessary to unlock legal accommodations. Here are guidelines on effectively requesting accommodations and substantiating the need:

- **Approach the right person:** In an employment setting, a survivor should reach out to a suitable authority – typically their immediate supervisor, manager, or the Human Resources department – to discuss needed accommodations.
- **Make the request in writing:** While you can start with an in-person or verbal conversation, it's wise to follow up with a written request (email or letter) to create a record. State that you are requesting a change or adjustment *because of a medical condition or disability*. You do **not** have to disclose every detail of your diagnosis if you're uncomfortable.
- **Provide supporting documentation:** In most cases, especially in employment or formal education, the employer or institution may ask for medical documentation of your disability and need for accommodation. It's helpful to pre-empt this by including a doctor's letter or medical report with your request.
- **Be constructive and open to dialogue:** Requesting accommodation is an interactive process. After you ask, the employer or school might discuss possible solutions with you.
- **Document communications:** Keep copies of all emails, letters, medical notes, and forms related to your accommodation request.
- **Know your privacy rights:** You are not obligated to disclose details of the traumatic events that led to your condition. Focus on the condition and needs. If an employer or educator unrelatedly asks inappropriate questions (like details of your abuse or why you need a certain accommodation beyond medical explanation), you can politely decline to share private information. Employers are generally only allowed to ask medical questions in certain situations: e.g., to support a requested accommodation or to ensure you can perform the job safely.
- **If accommodation is refused:** If the employer or institution refuses the request or does nothing, you may escalate the matter. First, you could ask for a written explanation of the refusal. Sometimes, an employer might claim undue hardship or deny the medical basis. Evaluate their reasons. You may respond with additional information if something was unclear. If it's a stalemate, this is when you might approach the EOC for advice or lodge a formal complaint (see next section).
- **Internal policies:** Some larger companies and universities have internal procedures for accommodation requests (sometimes called a "disability services office" or an HR disability management program). Try to follow any established process (e.g., filling out a form or providing a medical certificate in a particular format).

Filing a Complaint with the Equal Opportunities Commission (EOC)

If a survivor believes they have been subjected to unlawful discrimination, harassment, or vilification under the DDO. For example, an employer fired them because of PTSD, a school denied them reasonable adjustments, or a service provider mocked or refused them – they can seek help from Hong Kong's EOC. The EOC is the statutory body tasked with enforcing anti-discrimination laws. It offers a relatively accessible avenue for redress through investigation and conciliation of complaints and can provide legal assistance for court actions in deserving cases.

Process and Timeline

Time Limits:

It is important to act within the allowed time. A complaint to the EOC should ideally be lodged within 12 months of the discriminatory act. The EOC has discretion not to investigate incidents older than 12 months. If the discrimination is ongoing (e.g. continual harassment), time runs from the most recent incident. Separately, if one chooses to bypass the EOC and sue directly in court, the time limit is 24 months from the act (two years is the statutory limit for bringing a civil claim under the discrimination ordinances). However, most cases go through EOC first. **Bottom line:** don't delay! If you feel your rights were violated, it's best to consult EOC as soon as possible.

How to Lodge a Complaint

A complaint to EOC must typically be in writing (the EOC can assist in writing it down if needed). You can write a letter or email to the EOC or fill out the EOC's complaint form. The complaint should include your name and contact, who you are complaining against (the respondent, e.g. employer's name or person), and details of what happened and when. It's wise to clearly state that you believe it was discrimination/harassment on the basis of disability. Attach any relevant evidence (emails, medical notes, etc.) if available. Multiple victims can also lodge a joint complaint if it's a similar issue (or one person on behalf of a group), but in general an individual should authorise any representative – EOC may require proof you consent if someone complains on your behalf. The EOC's services are free, and you do not need a lawyer to file a complaint.

EOC Investigation and Conciliation

When the EOC receives a complaint, it will first decide if the complaint falls under its jurisdiction (DDO in this case) and if there are sufficient details. If something is unclear, they might ask you for clarification or more info. Once accepted, the EOC will notify the party you complained against and initiate an investigation.

Investigation

An EOC officer (investigator) will gather information from both sides. They typically send the respondent (e.g. the employer or school) a summary of the allegations and ask for a written response. They may interview witnesses or review documents. This stage is confidential – the details aren't made public (and EOC staff will usually remind parties to keep it confidential). The goal is to establish the basic facts and see if the case has "substance." The EOC can decline or discontinue an investigation in certain situations: for instance, if the incident is outside the time limit (older than 12 months), or if the allegations even if true would not amount to unlawful discrimination (not covered by the law), or if the complaint is frivolous or lacks merit. They might also halt if the complainant withdraws or is uncooperative. Assuming the case has arguable merit, the next step is usually conciliation.

Conciliation

The EOC is required to attempt conciliation in appropriate cases once the investigation indicates there may be a valid claim. Conciliation is a form of alternative dispute resolution – essentially, the EOC brings both parties together (literally or metaphorically) to discuss a voluntary settlement. It's completely voluntary; both you and the respondent must agree to try conciliation, and either can withdraw at any time. A neutral EOC conciliator facilitates the process, which could be an in-person meeting, a shuttle negotiation (you and the other side in separate rooms), or even just an exchange of proposals through the officer. The conciliator's role is to help clarify the issues, clear up misunderstandings, and assist in brainstorming a mutually acceptable

resolution. They do not take sides or make decisions; they also do not force either party to settle.

Settlement Outcomes

What can you ask for in conciliation? A wide range of remedies can be negotiated, limited only by what the parties agree. Common settlement terms include: a written apology from the discriminator; reinstatement to a job if one was terminated; an offer of the opportunity that was denied (e.g. if a promotion was withheld, the person could be granted that promotion or an equivalent chance); a policy change or training – for example, the company agreeing to implement an equal opportunities policy or to conduct staff training on mental health sensitivity; and often, a financial compensation for losses and emotional distress. Settlements can be creative: in one case, a conciliation for a physical access issue might include the business agreeing to install a ramp. For a survivor with PTSD, a settlement might include things like the employer agreeing to accommodate their work needs going forward (formalising the accommodations), as well as monetary compensation for any harm caused by past discrimination.

Legal Action in the District Court

When a discrimination complaint cannot be resolved through the EOC process, the next step is a civil lawsuit in the District Court (which has jurisdiction over discrimination cases in HK).

The District Court can grant remedies including damages, injunctions, and declarations. Before going to court, a survivor can apply to the EOC for legal assistance. The EOC has a statutory power to provide assistance to complainants to help them carry a case to court.

It's worth noting though, to be eligible for EOC legal assistance, generally you must have gone through the EOC complaint process first (investigation and conciliation). They typically won't assist someone who bypassed them and sued directly (except perhaps in exceptional circumstances). If EOC refuses to grant assistance, you still have options: you can approach the Legal Aid Department to seek legal aid (which is a separate government-run scheme based on your financial means and case merits), or you can hire a lawyer privately, or even represent yourself in District Court. Legal Aid in HK requires passing a means test (income/assets below a threshold) and a merits test (reasonable chance of success).

Illustrative Case Outcome:

- In **Chan Wing Kum v. Ming's Piano Co. (2024)**, a recent District Court case, an employee on probation was terminated days after disclosing she had a condition (hyperthyroidism) and taking sick leave. The EOC took the case on her behalf. The employer didn't even participate in court, and the court entered judgment for the employee. At a hearing to assess damages, the court awarded her compensation for lost income and **injury to feelings**. Significantly, the court adjusted the usual UK damages scale upwards for inflation – marking the *first time* a Hong Kong court formally uplifted the Vento bands to ensure discrimination victims are fairly compensated. This shows that Hong Kong courts are keeping pace with ensuring remedies remain adequate over time. The case also reinforces that firing someone immediately after learning of a medical condition, without any effort at accommodation, is likely to be found unlawful.

Aftermath of Court Case

If you win, the court's order is binding. If you lose, you might consider an appeal (appeals from District Court go to the Court of Appeal) but appeals need legal grounds (e.g. error of law or serious factual misjudgement) and more expense, so that would require further advice. The EOC does not cover appeals as a matter of course (they might if they see big legal issues).

Sources:

- Equal Opportunities Commission – FAQs and Codes (Disability Discrimination Ordinance and mental illness)
- Family CLIC – Disability Discrimination overview and complaint procedure
- District Court and Tribunal Case Summaries (HK and UK)
- Equal Opportunities Commission – Significant Case Digest (M v SJ, 2004)

- Community Legal Information Centre – Employment Ordinance rights on sick leave
- U.S. Equal Employment Opportunity Commission – Guidance on mental health conditions (for accommodation examples)
- Equal Opportunities Commission – How to Complain (procedures and outcomes)
- Others as cited throughout above.

APPENDIX

Common types of sexual offences under the Crimes Ordinance (Cap. 200)

This section sets out common types of sexual offences under the Crimes Ordinance (Cap. 200) (the "**CO**") and their respective governing ordinances, elements of the offence, and maximum sentencing in Hong Kong.

Provided by DLA Piper Hong Kong pro bono services to TALK Hong Kong.

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
1.	Incest by man	CO, s 47(1)[47]	Life imprisonment if the girl is under 13 years of age 20 years imprisonment if the girl is between 13 and 16 years of age 14 years imprisonment for all other cases Aggravating factors[48] 1. physical or psychological suffering from the offence; 2. the incest taking place at frequent intervals or over a long period; 3. the use of threats or violence, or the girl being otherwise terrified of her father;	Indictable	1. A man has sexual intercourse with a woman who is to his knowledge his granddaughter, daughter, sister or mother. • The consent of the Secretary of Justice is required for prosecution of this offence. • The defendant **knew** the female was his granddaughter, daughter, sister or mother at the time of the sexual intercourse. A defense may be raised if the defendant is honestly mistaken about the identity of the woman. 2. Consent of the woman is immaterial.[49]

[46] In most of the circumstances, summary offences can only be tried in Magistrates' Courts. Most indictable offences can be tried in the Magistrates' Courts, the District Court or the Court of First Instance of the High Court. The choice of venue of the trial of an indictable offence rests on the prosecution, who will normally consider the complexity of the case and the likely sentence to be imposed on the offender upon conviction. The time limit for prosecution of a summary offence is generally within 6 months of the commission of the offence (unless otherwise specified in the legislation creating the offence). For an indictable offence, there is no formal time limit for the commencement of a prosecution.

[47] "CO" means the Crimes Ordinance (Cap. 200).

[48] See *HKSAR v Li Kin Ho* [1999] 3 HKLRD 452

[49] Section 47(2) of CO

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
			4. the incest being accompanied by perversions abhorrent to the girl, such as buggery or fellatio; 5. the girl becoming pregnant; and 6. the commission of similar offences against more than one girl. If an offender is convicted of this offence against any woman under 21 years of age, the Court has the power to divest the offender of all authority over such female. If the offender is the guardian of such woman, the Court can remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such woman during her minority or any less period.		
2.	Attempt or incite to commit incest by man	CO, s 47(3)	10 years imprisonment If an offender is convicted of attempting to commit this offence against any woman under 21 years of age, or incite a woman under 21 years	Both	1. The consent of the Secretary of Justice is required for prosecution of this offence. 2. A man knew that the person he attempted or incited to incest is his granddaughter, daughter, sister or mother.

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
			of age, who is to his knowledge his granddaughter, daughter or sister, to have sexual intercourse with him, the Court has the power to divest the offender of all authority over such female. If the offender is the guardian of such woman, the Court can remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such woman during her minority or any less period.		
3.	Incest by women of or over 16	CO, s 48	14 years imprisonment	Indictable	3. A woman of or over 16 years old consents to grandfather, father, brother or son to have sexual intercourse with her, knowing of that relationship. • The consent of the Secretary of Justice is required for prosecution of this offence. • The prosecution must prove that the defendant knew the man she had sexual intercourse with was her grandfather, father, brother or son at the time. A defense may be raised if the defendant is honestly mistaken about the identity of the person.
4.	Rape	CO, s 118	Life imprisonment Rape against children will attract a heavy	Indictable	1. A man has unlawful sexual intercourse with a woman who at the time of the

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
			sentence and immediate imprisonment is invariably imposed. Rape committed by teenagers, particularly those of a less serious nature, might not attract an unduly harsh sentence. It should be accepted that teenagers are imaginative and curious towards "sex" and an imprisonment term may not be appropriate.		intercourse does not consent to it. At the time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it. (a) Whether a man knows a woman has consented or not is based on his subjective genuine belief.[50] (b) The reasonableness of this belief can factor into whether a jury thinks that it is genuine. However, it is not conclusive by itself.[51] 2. Consent can be withdrawn during intercourse.[52] 3. To amount to rape, there must be penetration of the vagina by the penis. Thus, rape can only be committed by a male upon a female in Hong Kong. (a) Penetration of other parts of the victim's body (e.g. mouth or anus) does not amount to rape, but may constitute other sexual offences.[53] 4. Where a person has been raped by more than one man on the same occasion, all the accused should be charged in one count of rape, with no mention of persons aiding

[50] DPP v Morgan [1976] AC 182, [1975] 2 All ER 347

[51] Section 118(4) of CO, *DPP v Morgan* [1976] AC 182, [1975] 2 All ER 347

[52] *R v Kaitamaki* [1985] AC 147: Penetration is viewed as a continuing act. A man will be liable for rape if he does not hold a genuine belief that the victim has consented while he is penetrating her vagina with his penis. If the man knows that a woman withdrew consent during the act of penetration, he must withdraw at that point or be liable for rape.

[53] *R v Kaitamaki* [1985] AC 147, Section 65E of the Criminal Procedure Ordinance (Cap. 221)

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					and abetting. Several accused may be convicted where the jury is satisfied only that each played a guilty part, but not as to who committed the physical act.
5.	Non-Consensual buggery	CO, s 118A	Life imprisonment	Indictable	1. A man commits buggery on another person; [54] and (a) "Buggery" is defined as sexual intercourse by way of penetration of the anus by a penis. (b) This offence is not limited to homosexual buggery. 2. At the time the defendant knows that the victim does not consent to buggery or was reckless as to whether the victim consented to it. (c) In deciding whether there is a genuine or mistaken belief as to the consent of the victim, the Court will consider whether there are any evidence or special factors which give rise to an issue of genuine belief, such as whether the parties have been sex partners and whether they have a history of buggery and intercourse.[55]
6.	Assault with intent to commit buggery	CO, s 118B	10 years imprisonment	Indictable	1. A man intentionally assaulted the victim; and (d) "Buggery" is defined as sexual intercourse by way of penetration of the anus by a penis.

[54] *R v Courtie [1984] AC 463* [1984] 1 All ER 740

[55] See *HKSAR v Man Kin Yiu* [2008] 1 HKCLRT 341

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					(e) This offence is not limited to homosexual buggery. 2. The man had an intention to commit buggery with the victim in question.
7.	Homosexual buggery with or by a man under 16	CO, s 118C	Life imprisonment. However, the Court of Appeal ruled that the proper sentencing approach for an offence against s.118C should be the same as for unlawful heterosexual intercourse.[56] 1. Life imprisonment if the victim was under 13 years old 2. 5 years imprisonment if the victim was under 16 but above 13 years old.	Indictable	1. A man who commits buggery with a man under the age of 16. (f) It is no longer an offence for a man under the age of 16 to commit buggery with another man following *Yeung Chu Wing v Secretary for Justice* [2019] 3 HKLRD 238.
8.	Buggery with girl under 21	CO, s 118D	Life imprisonment	Indictable	1. A man commits buggery with a girl under the age of 21. (g) "Buggery" is defined as sexual intercourse by way of penetration of the anus by a penis[57]. (h) This offence is not limited to homosexual buggery. 2. This offence is a strict liability offence, meaning that the fact that the girl consented or that the defendant believed

[56] See *HKSAR v Yeung Ho Nam (No 1)* [2020] 1 HKLRD 91

[57] *R v Courtie* [1984] AC 463, [1984] 1 All ER 740

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					the girl was over 21 years of age are not valid defenses.[58]
9.	Buggery with a mentally incapacitated person	CO, s 118E	10 years imprisonment	Indictable	1. A man who commits buggery with a mentally incapacitated person. 2. It is a defence to this offence if: (a) he does not know and has no reason to suspect the other to be a mentally incapacitated person; or (b) he is, or believes on reasonable grounds that he is, married to that woman. • It requires the Defendant to adduce evidence, which was sufficient to raise a reasonable doubt as to his knowledge of or reason to suspect the mental incapacity of the woman.[59]
10.	Procuring others to commit homosexual buggery	CO, s 118G	2 years imprisonment	Indictable	1. A person procures a man to commit an act of buggery with a third person who is another man. • The offence is not complete until the act of homosexual buggery actually took place.[60]
11.	Gross indecency with or by a man under 16	CO, s 118H	2 years imprisonment	Indictable	1. A man commits an act of gross indecency with a man under the age of 16; or

[58] *So Wai Lun v HKSAR* (2006) 9 HKCFAR 530

[59] *HKSAR v Gurung Krishna* [2010] 5 HKC 413

[60] *R v Mackenzie & Higginson* (1910) 75 JP 159: the Court held that the offence of procuring the commission by a man of an act of gross indecency with another man is not complete until the act of indecency has taken place. Similar position would likely be applied for a charge under section 118G of CO.

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					2. A man being under the age of 16 commits an act of gross indecency with another man. • "Gross indecency" is "an act which, according to the customs and morals of society at the time of the act, represents a marked departure from decent conduct expected of the average person which is more serious than simply indecency and which would be considered grossly indecent by any right-thinking member of society".[61] • It does not necessarily require actual physical contact but usually involves an indecent act with genitalia such as masturbation or touching.[62]
12.	Gross indecency by a man with a male mentally incapacitated person	CO, s 118I	2 years imprisonment	Indictable	1. A man who commits an act of gross indecency with another man who is a mentally incapacitated person. 2. It is a defence if he does not know and has no reason to suspect the other to be a mentally incapacitated person.
13.	Procurement by threats	CO, s 119	14 years imprisonment	Indictable	1. A person procures another person by threats or intimidation to do an unlawful sexual act in Hong Kong or elsewhere.[63]

[61] *R v Quesnel* (1979) 51 CCC (2d) 270

[62] *R v Francis* (1988) 88 Cr App Rep 127

[63] In *HKSAR v Wong Ka Ki* [2013] 5 HKLRD 139, the Defendant procured a girl to board his lorry and have sexual intercourse with him after holding her up for 3.5 hours naked and without access to her clothes. While he was charged with s.120 of CO, the Court held that he should

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					2. "Unlawful sexual act" means that person has:[64] (a) unlawful sexual intercourse; (b) commits buggery or an act of gross indecency with a person of the opposite sex with whom that person may not have lawful sexual intercourse; or (c) commits buggery or an act of gross indecency with a person of the same sex. 3. Procurement by threats is only completed until the intercourse has taken place.[65]
14.	Procurement of an unlawful sexual act by false pretences	CO, s 120	5 years imprisonment	Indictable	1. A person who procures another person, by false pretences or false representations, to do an unlawful sexual act in Hong Kong or elsewhere. • The prosecution must prove that the pretence or representation was false and such pretence or representation procured another person to do the unlawful sexual act[66]. 2. Pretence (藉口) or representation (申述) includes

have been charged under s.119 of CO as the victim's consent to have sexual intercourse is caused by the frightening situation, but not her belief in the representations by the Defendant. She merely wanted to get out of the situation and return home.

[64] Section 117(1A) of CO

[65] *R v Mackenzie & Higginson* (1910) 75 JP 159

[66] *HKSAR v Wong Ka Ki* [2013] 5 HKLRD 139

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					a pretence or representation relating to the past, the present or the future and any pretence or representation as to the intention of the person using the pretence or representation or any other person. • The representation does not require the sexual act or sexual intercourse to be contingent on what is promised.[67]
15.	Administering drugs to obtain or facilitate an unlawful sexual act	CO, s 121	14 years imprisonment	Indictable	1. A person who applies or administers to, or causes to be taken by, another person any drug, matter or thing with intent to stupefy or overpower that other person so as thereby to enable anyone to do an unlawful sexual act with that other person.
16.	Indecent Assault	CO, s 122	10 years imprisonment	Indictable	1. Defendant intentionally assaulted the victim; 2. The assault and the circumstances accompanying it are capable of being considered by right minded persons as indecent. • Legally, there are no straight directions or tests to determine whether a circumstance should be considered indecent. • Whether an assault was committed in circumstances that a reasonable person would consider to be indecent will be decided

[67] *R v Chin Chi Ming* (unreported, CACC 526/1991, 11 March 1993).

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					on a case-by-case basis.[68] • The victim need not be aware of the circumstances of indecency or apprehended indecency. • Most indecent assaults will be clearly of a sexual nature. Some may have only sexual undertones. 3. The Defendant intended to commit such an assault in the circumstances of (2).[69] • An honest belief by the Defendant that the victim had validly consented is a defense to indecent assault.[70] • However, a person with mental incapacity or under the age of 16 cannot consent to activity that amounts to an indecent assault.[71]
17.	Sexual Intercourse with a girl under 13	CO, s 123	Life imprisonment	Indictable	1. A male has unlawful sexual intercourse with a girl under the age of 13. 2. A male under 14 is incapable of sexual intercourse. but he can be implicated in a capacity other than that of the principal offender.

[68] *R v Mok Pak Wo* [1980] HKC 238 at 243: "It is neither necessary nor desirable for the judge to attempt to direct the jury in detail at to what amounts to circumstances of indecency. This is essentially a matter of fact which they should be left to decide."

[69] *R v Court* [1989] AC 28

[70] *R v Thomas* [1985] QB 604, [1984] 3 All ER 34

[71] Section 122(3) and 122(4) of CO

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					3. This offence is a strict liability offence, meaning that the fact that the girl consented or that the defendant believed the girl was over 13 years of age (even if reasonable) are not valid defenses.[72]
18.	Sexual Intercourse with a girl under 16	CO, s 124	5 years imprisonment	Indictable	1. A male has unlawful sexual intercourse with a girl under the age of 16. 2. A male under 14 is incapable of sexual intercourse. but he can be implicated in a capacity other than that of the principal offender. 3. Where a marriage is invalid by reason of the wife being under the age of 16, the invalidity shall not make the husband guilty of this offence because he has sexual intercourse with her, if he believes her to be his wife and has reasonable cause for the belief. 4. This offence is a strict liability offence, meaning that the fact that the girl consented or that the defendant believed the girl was over 16 years of age are not valid defenses.[73]
19.	Sexual Intercourse with a mentally incapacitated person	CO, s 125	10 years imprisonment	Indictable	1. A man who has unlawful sexual intercourse with a woman who is a mentally incapacitated person. 2. It is a defense if he does not know and has no reason to suspect her to be a mentally incapacitated person[74].

[72] *So Wai Lun v HKSAR* (2006) 9 HKCFAR 530, [2006] HKCU 1195

[73] *So Wai Lun v HKSAR* (2006) 9 HKCFAR 530, [2006] HKCU 1195

[74] *R v Hudson* [1966] 1 QB 448

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					• The Defendant is required to raise sufficient evidence (whether from himself / other testimony called on his behalf) to support his defense. The burden will then be shifted for the prosecution to prove beyond reasonable doubt that either he knew or that he had the reason to suspect that the woman was a mentally incapacitated person.[75]
20.	Abduction of an unmarried girl under 16	CO, s 126	10 years imprisonment	Indictable	1. A person who, without lawful authority or excuse, takes an unmarried girl under the age of 16 out of the possession of her parent or guardian (any person having the lawful care or charge of the girl) against the will of the parent or guardian. • Taking "out of the possession of her parents or guardian" can be temporary.[76] • It does not necessitate force or need to be taken out of the actual possession of the parent or guardian. It is sufficient if there are some active steps taken by the Defendant (e.g. persuasion by the Defendant) and if the control of the parent or guardian is subsisting at the time of "taking".[77]

[75] *HKSAR v Gurung Krishna* [2010] 5 HKC 413

[76] *R v Baillie* (1859) 8 Cox CC 238

[77] *R v Manktelow* (1853) Dears CC 159

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					• However, if the Defendant only met the girl on a street and took her away for a few hours without knowing whether she has a parent / guardian, would not amount to abduction of unmarried girl under the age of 16.[78]
21.	Abduction of an unmarried girl under 18 for sexual intercourse	CO, s 127	7 years imprisonment	Indictable	1. A person who takes an unmarried girl under the age of 18 out of the possession of her parents or guardian against the will of the parent or guardian; and 2. Holds the intention that the girl shall have unlawful sexual intercourse with men or with a particular man. • Taking "out of the possession of her parents or guardian" does not necessitate force. • A girl leaving her parents or guardians as a result of persuasion, inducement, or blandishment is sufficient.[79]
22.	Abduction of mentally incapacitated person from parent or guardian for sexual act	CO, s 128	10 years imprisonment	Indictable	1. A person who takes a mentally incapacitated person out of the possession of her or his parent or guardian against the will of the parent or guardian with the intention that the mentally incapacitated person shall do an unlawful sexual act.

[78] *R v Hibbert* (1869) LR 1 CCR 184

[79] *R v Jarvis* (1903) 20 Cox CC 249, *R v Alexander* (1912) 107 LT 240

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					2. It is a defence if the Defendant does not know and has no reason to suspect the other to be a mentally incapacitated person.
23.	Trafficking in persons to or from Hong Kong for the purpose of prostitution	CO, s 129	10 years imprisonment	Indictable	1. A person who takes part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution. • The main question is whether the Defendant "on the evidence participated in a venture, the objective of which, to his knowledge, was to bring the girl to Hong Kong"[80]. • While it is not necessary for the person to actually come to Hong Kong[81], the prosecution must prove that the Defendant made substantial and specific arrangements for bringing the person into, or out of, Hong Kong, e.g. recruiting a person who is willing to become a prostitute, making arrangement for that person to come to or leave Hong Kong. • It is not a defence even if the other person consented to being brought into or taken out of Hong Kong whether or not she or he knew it was for the purpose of prostitution or that she or

[80] *HKSAR v Chiu Kwok Ho* [2004] HKC 552

[81] *HKSAR v Sze Wai Ying* [2010] 1 HKLRD 956

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					he received any advantage therefor.
24.	Control over persons for the purpose of unlawful sexual intercourse or prostitution	CO, s 130	14 years imprisonment	Indictable	1. A person who: (a) harbours another person or exercises control or direction over another person with the intention that that person shall do unlawful sexual acts with others; or (b) harbours another person or exercises control, direction or influence over another person for the purpose of or with a view to that person's prostitution. • The words "exercises control, direction or influence" do not require proof that the victim was held against her will or import any element of coercion.[82]
25.	Causing prostitution	CO, s 131	10 years imprisonment	Indictable	1. A person who: (a) procures another person to become, in Hong Kong or elsewhere, a prostitute; or (b) procures another person to leave Hong Kong, intending that other person to become, elsewhere, an inmate of or frequent any premises, vessel or place kept as a vice establishment; or (c) procures another person to leave her or his usual

[82] *R v Fong Yuk Choi* [1983] 1 HKC 208: the Court held that "exercises control, direction or influence" should be given their ordinary and natural meaning. "The words here used may very well include forced prostitution — hence, the high maximum penalty of 14 years' imprisonment — but proof of this is not an element necessary to conviction."

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					place of abode in Hong Kong, intending that other person to become an inmate of or frequent any premises, vessel or place kept as a vice establishment, in Hong Kong or elsewhere, for the purpose of prostitution. 2. A woman who is already a prostitute cannot be procured to become one, as she had "not been procured to become a prostitute".[83]
26.	Procurement of a girl under 21	CO, s 132	5 years imprisonment	Indictable	1. A person procures a girl under the age of 21 to have unlawful sexual intercourse with a third person. 3. There must be a causal link between what was done by the defendant and the unlawful sexual intercourse with a third person. 4. There is no "procurement" if the girl acted out of her own free will. For example, there is no "procurement" if the girl was already a prostitute. 5. It is not necessary to prove that the Defendant knew the girl was under the age of 21.[84]
27.	Procurement of a mentally incapacitated person to have unlawful sexual intercourse	CO, s 133	10 years imprisonment	Indictable	1. A person who procures a woman who is a mentally incapacitated person to have unlawful sexual intercourse in Hong Kong or elsewhere with a third person.

[83] *HKSAR v Sze Wai Ying* [2010] 1 HKLRD 956

[84] *R v Yuen Wing Fat* [1988] HKC 489: "There could be no possible injustice to a defendant requiring strict liability in respect of his knowledge of the girl's age. It was no hardship, and only right and proper in all the circumstances, for the manager or controller of premises to demand production of the girl's identity card before he allowed her to 'resort to or be on the premises'."

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					2. It is a defence if the Defendant does not know and has no reason to suspect her to be a mentally incapacitated person.
28.	Detention for intercourse or in a vice establishment	CO, s 134	14 years imprisonment	Indictable	1. A person who in any manner or by any means detains another person against his or her will: (a) with the intention that the other person shall do an unlawful sexual act; or (b) on any premises or vessel, or in any place, kept as a vice establishment. 2. Where a person falls under (1)(b) above, another person shall be deemed to detain that person there if, with the intention or compelling or inducting that person to remain there, the other person: (a) Withholds from that person any of that person's clothes or other property; or (b) Threatens that person with legal proceedings in the event of that person taking away clothes provided for that person by the other person or on the other person's directions.
29.	Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl or boy under 16	CO, s 135	10 years imprisonment	Indictable	1. A person causes or encourages the prostitution of or an unlawful sexual act with a girl or boy under the age of 16.

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					• Inactivity of a person could amount to "causes or encourages".[85] 2. Where a girl or boy is a prostitute or has done an unlawful sexual act, a person shall be deemed to have caused or encouraged the same if that person knowingly allowed the girl or boy to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character. 3. "Prostitution" does not require sexual intercourse. A man or woman offering his or her body promiscuously or indiscriminately for acts of lewdness in return for payment will suffice.[86]
30.	Causing or encouraging prostitution of a mentally incapacitated person	CO, s 136	10 years imprisonment	Indictable	1. A person who causes or encourages the prostitution in Hong Kong or elsewhere of a mentally incapacitated person. 2. It is a defence if the Defendant does not know and has no reason to suspect the other to be a mentally incapacitated person.
31.	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances	CO, s 138A	A fine of HK$3,000,000 and 10 years imprisonment for an offence in relation to a person under the age of 16 A fine of HK$1,000,000 and 5 years imprisonment for an offence in relation	Indictable	1. A person who uses, procures or offers another person who is under the age of 18 for making pornography, or for a live pornographic performance (including includes any play, show, exhibition, act, entertainment, presentation, display or other performance of any kind in which a person

[85] *R v Ralphs* (1913) 9 Cr App R 86

[86] *R v Li Kin Wai* [1985] 1 HKC 249

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
			to a person under the age of 18		is pornographically depicted), in which that other person is or is to be pornographically depicted. 2. It is a defence if the Defendant making pornography could establish that: (a) at the time of the alleged offence, the person pornographically depicted for making pornography consented to being so depicted; and (b) the pornography so made is solely for the personal use of the defendant and the person depicted. 3. It is a defence if the Defendant making live pornographic performance could establish that: (a) at the time of the alleged offence, the person pornographically depicted for the performance consented to being so depicted; and (b) the audience of the performance consisted of the defendant only.
32.	Indecent conduct towards a child under 16	CO, s 146	10 years imprisonment	Indictable	1. A person commits an act of gross indecency with or towards a child under the age of 16, or who incites a child under the age of 16 to commit such an act with or towards him or her or another. 2. What constitutes "gross indecency" will depend on the circumstances of the particular case, but it was held to be "a marked

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					departure from decent conduct expected of the average [person], an act which under the customs and morals of our times, would be considered grossly indecent by any right-thinking member of the public".[87] 3. It is a defence if the Defendant is or believes on reasonable grounds that he or she is married to the child. However, the fact that the child consented to the act of gross indecency would not suffice as defence.[88]
33.	Soliciting for an immoral purpos	CO, s 147	6 months imprisonment and a fine of $10,000	Summary	1. A person who in a public place or in view of the public solicits for any immoral purpose; or 2. Solicitations could be done by action and unaccompanied by words. It need not reach the mind of the person intended to be solicited.[89] 3. However, physical presence is necessary. It was held that notice advertising service by prostitute is insufficient.[90] 4. A person who in a public place or in view of the public loiters for the purpose of soliciting for any immoral purpose. 5. Definition of a "public place":[91] (a) Any place to which for the time being the public

[87] *R v Savage* (No 3) [1997] 2 HKC 768 at 773

[88] Section 146(2) of CO

[89] *Horton v Mead* [1913] 1 KB 154

[90] *Burge v DPP* [1962] 1 All ER 666

[91] Section 117 of CO

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					or a section of the public are entitled or permitted to have access, whether on payment or otherwise; and (b) A common part of any premises notwithstanding that the public or a section of the public are not entitled or permitted to have access to that common part or those premises.
34.	Voyeurism	CO, s 159AAB	5 years imprisonment	Indictable	1. A person commits an offence if he or she surreptitiously: (a) observes or records an individual in a place in which any individual can reasonably be expected to be nude, to reveal an intimate part[92], or to be doing an intimate act[93]; (b) observes or records an intimate part of an individual, or an individual doing an intimate act, for the purpose of observing or recording an intimate part or an intimate act of any individual; or (c) observes or records an individual for a sexual purpose. 2. The individual who is being observed or recorded is in circumstances that give rise

[92] Section 159AA of CO: An individual's genitals, buttocks, anal region or breasts (whether exposed or only covered with underwear); or the individual's underwear covering genitals, buttocks, anal region or breasts.

[93] Section 159AA(2) of CO: If the individual is using the toilet in a manner that an intimate part of the individual is likely to be revealed, or that the individual is doing a sexual act that is not of a kind ordinarily done in public.

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					to a reasonable expectation of privacy;[94] and (a) For the meaning of "reasonable expectation of privacy", the Canadian court in R v Jarvis [2019] 1 SCR 488 (SC, Canada) proposed a non-exhaustive list of considerations in determining whether there was a reasonable expectation of privacy, including:- (1) The location the subject individual was in; (2) The nature of the impugned conduct (whether it consisted of observation or recording); (3) The subject individual's awareness of or consent to potential observation or recording; (4) The manner in which the observation or recording was done; (5) The subject matter or content of the observation or recording; (6) Any rules, regulations or policies that governed the observations or

[94] The Canadian court in R v Jarvis [2019] 1 SCR 488 (SC, Canada) proposed a non-exhaustive list of considerations in determining whether there was a reasonable expectation of privacy, including:

Common types of sexual offences under the Crimes Ordinance					
Offence		Provision	Maximum Sentence	Summary or Indictable Offence?[46]	Elements of the offence
					recordings in question; (7) The relationship between the subject individual and the accused; (8) The purpose for which the observation or recording was done; and (9) The personal attributes of the subject individual, for example, whether the subject individual was a child or a young person may be relevant 3. The person disregards whether the subject individual consents to being observed or recorded by the person.

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