CAPL
Canadian Academy of Psychiatry and the Law

ACPD
Académie canadienne de psychiatrie et droit

Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: General Principles

Lisa Ramshaw, MD, DPhil, FRCPC[1]; Treena Wilkie, BScH, MD, FRCPC[1]; Sumeeta Chatterjee, MD, FRCPC[1]; Todd Tomita, MD, FRCPC[2]; Graham Glancy, MB, ChB, FRCPsych, FRCPC[1]

The authors would like to thank the National Working Group (Todd Tomita, Alberto Choy, Mansfield Mela, Jeff Waldman, Richard Schneider, Brad Booth, Jocelyne Brault, Mathieu Dufour, and Aileen Brunet) for their essential contributions. The authors would also like to thank their expert reviewer, Hy Bloom.

Reviewed and approved by the Canadian Academy of Psychiatry and the Law (CAPL) Board of Directors on June 23, 2021.

STATEMENT OF INTENT: CAPL Resource Guide for Reference and Training

This document is intended as a review of legal and psychiatric principles to offer practical guidance in the performance of forensic evaluations. This resource document was developed through the participation of forensic psychiatrists across Canada, who routinely conduct a variety of forensic assessments and who have expertise in conducting these evaluations in various practice settings. The development of the document incorporated a thorough review that integrated feedback and revisions into the final draft. This resource document was reviewed and approved by the Board of CAPL on June 23, 2021. It reflects a consensus among members and experts, regarding the principles and practices applicable to the conduct of forensic assessments. This document does not, however, necessarily represent the views of all members of CAPL. Further, this resource document should not be construed as dictating the standard for forensic evaluations. Although it is intended to inform practice, it does not present all currently acceptable ways of performing forensic psychiatry evaluations and following these guidelines does not lead to a guaranteed outcome. Differing facts, clinical factors, relevant statutes, administrative and case law, and the psychiatrist's clinical judgement determine how to proceed in any individual forensic assessment.

This resource document is for psychiatrists and other clinicians working in a forensic assessor role who conduct evaluations and provide opinions on legal and regulatory matters for the courts, tribunals, and other third parties. Any clinician who agrees to perform forensic assessments in any particular domain is expected to have the necessary qualifications according to the professional standards in the relevant jurisdiction and for the evaluation at hand.

This General Principles Guideline informs forensic psychiatry assessments and reports, including within the practice-specific guidelines for the following:

- Fitness to Stand Trial
- Criminal Responsibility
- Violence Risk Assessment
- Sexual Behaviour and Risk
- Dangerous Offender/Long-Term Offender
- Disability
- Fitness to Work/Practise
- Personal Injury
- Professional Misconduct and Malpractice

None of the guidelines address treatment or expert testimony. While there are American resource documents for general

forensic assessments (1,2), these are the first Canadian guidelines for forensic psychiatry assessments and report writing. The reader is referred to Bloom and Schneider for additional Canadian forensic psychiatry topics. (3)

OVERVIEW OF GENERAL PRINCIPLES

Expert Considerations

The following is based on the CAPL *Ethical Guidelines for Canadian Forensic Psychiatrists*, as well as the general practice principles of a forensic psychiatrist.

The Role of the Forensic Psychiatrist in Forensic Psychiatry Assessments

It is the duty of the forensic psychiatrist to provide a fair, objective, nonpartisan, and nonbiased assessment within their area of expertise, while being aware of any inherent limitations to the assessment. (4) The role of a forensic psychiatrist is to provide opinions and target education within the body of knowledge and experience in forensic psychiatry. It is not to align with the outcome or to assume the role of advocate for the evaluee. Forensic psychiatrists who do a considerable number of third-party assessments aim for a balance between conducting both defence- and court-ordered cases for both plaintiffs and defendants, when possible. It is also important to consider all possible interpretations of the information and to explain the rationale for the final opinion.

The CAPL code of ethics notes that forensic psychiatrists have other ethical duties that need to be given equal weight to the Canadian Medical Association (CMA) code of ethics, which first considers the well-being of the patient or evaluee. These other duties include respect for the administration of justice, duty to protect others, social responsibility, and striving for objectivity and honesty. (4) It is important to strive for impartiality independent of who has retained the evaluator.

Forensic psychiatrists openly acknowledge situations in which their opinions may represent new science or diverge from generally held views. This acknowledgement may lead to questions regarding the admissibility of their evidence. (5)

It is not uncommon for forensic psychiatrists to be retained to review the report of a colleague. It is recognized that expert opinions among professionals may differ. Forensic psychiatrists are to avoid impugning the reputation of, or personally attacking, a colleague. Legitimate concerns should be conveyed to the appropriate channels, such as licensing and regulatory bodies.

Forensic psychiatrists are expected to uphold the highest level of professionalism at all times and within all contexts. This extends to interactions with evaluees, colleagues, and third parties, in all domains of communication (including on social media platforms). Attention to time management and adherence to deadlines are fundamental to the forensic skill set.

The Dual Role in Forensic Psychiatry

In general, the forensic psychiatrist tries to avoid dual relationships. For instance, they avoid participating in the forensic evaluation of a patient they are currently treating, except in certain circumstances. There is a dual role when both providing treatment and conducting a forensic assessment (such as when providing care for individuals under the provincial or territorial review board, in correctional settings, for court-ordered treatment orders, or when assessing individuals in an inpatient setting). It is the forensic psychiatrist's duty to acknowledge this dual role and to disclose and manage it in an open and professional manner.

As an example of a dual role, in correctional settings the forensic psychiatrist is often required to work alongside operational staff, with the shared agenda of preserving safety and security while providing mental health treatment to an individual. For example, a correctional psychiatrist may be asked if an inmate with a mental disorder should be charged with institutional "misconduct" for violence against a correctional officer. The correctional psychiatrist must consider whether they can breach patient confidentiality and discuss the patient's clinical status, which might have significant consequences for their institutional record. In advising, the psychiatrist may revert to the guiding principle of "do no harm" (non-maleficence). The ethics involved in correctional psychiatry work may involve some intricate nuances. (6) A full discussion of this is outside the scope of this document. Another common example in Canadian practice is when a psychiatrist provides treatment to the accused person under the auspices of a provincial or territorial review board. In these circumstances, the psychiatrist is called to give evidence to the review board, primarily concerning a significant threat to the safety of the community and, if so found, as to the necessary and appropriate disposition.

In forensic psychiatry assessments conducted at the request of a third party (the court by way of the judge's order, defence or Crown counsel, defence or plaintiff counsel, or another third party), there is no treatment provided or dual role unless the individual is a patient under the care of the forensic psychiatrist at the time. If an individual is assessed in an inpatient setting, they might require treatment. There are also exceptions when there are limited resources. It is the responsibility of the forensic psychiatrist to manage any dual-role conflicts that arise.

Statement and Limitations of Expertise

Forensic psychiatry expertise is based on training, clinical experience, and scholarship in the field of forensic psychiatry. In 2011, the Royal College of Physicians and Surgeons of Canada (RCPSC) recognized forensic psychiatry as a subspecialty of psychiatry. Since 2012, training programs across Canada have begun providing a one-year program in forensic psychiatry after completion of a five-year general psychiatry training program. Following completion

of a one-year subspecialty training program in forensic psychiatry, an RCPSC forensic psychiatry certification examination is required to obtain official designation as a *forensic psychiatrist*. Some provincial licensing bodies will designate certified individuals as *psychiatrists* or *forensic psychiatrists*. The RCPSC also extended a *founder* designation to the first experts who developed the program and set the examinations that now lead to the recognized designation. After completing training, forensic psychiatrists often develop a special interest in certain areas (e.g., risk assessment, sexual behaviour assessments, criminal responsibility, correctional psychiatry, youth and adolescent forensic psychiatry, and civil psychiatry), building and maintaining greater expertise in these areas over time. While RCPSC certification is not required to practise forensic psychiatry, it is highly recommended, as it ensures confirmation of standardized training and competency.

Ultimately, the recognition of forensic psychiatric expertise is at the discretion of the court. Admissibility of expert evidence in Canada, as ruled in *R v. Mohan,* (7) requires that the evidence be relevant, that it be necessary to assist the trier of fact, that it not trigger exclusionary rules, and that it be given by a properly qualified expert. (8) When a challenge as to bias is raised about expert witness evidence, the court may apply a second step in admissibility. As set out in *White Burgess Langille Inman v. Abbott and Haliburton Co*., (9) the judge has a gatekeeping role and will apply an overall cost-benefit analysis to determine if the expert evidence is sufficiently beneficial to the trial process to warrant its admission, despite the potential harm to the trial process that may result from admitting it. (10)

Forensic psychiatrists are expected to maintain an up-to-date curriculum vitae and may provide a statement of expertise that can be summarized at the beginning of the forensic psychiatry report. The forensic psychiatrist's role is to be forthcoming about their expertise, limitations of expertise, and potential biases.

Informed Consent and Limits of Confidentiality

Informed consent is required for most forensic psychiatry third-party assessments. Exceptions include involuntary hospitalization under provincial and territorial mental health legislation and fitness-to-stand-trial assessments. Informed consent involves explaining the nature and purpose of the assessment, by whom the assessor has been retained, the nature of the assessor-evaluee relationship, the inherent limits of confidentiality (see Chart 1), and the evaluee's right not to participate or answer specific questions. Some forensic psychiatrists choose to obtain written informed consent, while others document verbal consent.

The evaluee is informed about the limits of confidentiality at the outset of the assessment, and this is documented in the interview notes and forensic report. The evaluee is informed that everything they say could be included in the report. This is accompanied by an explanation of who will have access to the assessment information and report. The evaluee is informed that the expert's purpose is to be objective and to conduct an unbiased assessment, not guarantee a certain outcome.

For court-ordered assessments, the evaluee is informed that the report will be submitted to the court, that the assessor may be requested to testify in court, and that court is a public place.

In defence-requested assessments, it is generally accepted that the assessment falls under the umbrella of solicitor-client privilege; however, the evaluee is informed that if a report is requested, any information obtained from the evaluee could be disclosed. The evaluee is advised that the decision as to whether to disclose information to the court via a forensic report is to be made by the evaluee and their lawyer. The evaluee is informed that information from the assessment is not confidential and could be included in the report, which would be disclosed to the requester. The report is generally considered owned by the retaining party, although jurisdictions may have rules around this. The forensic psychiatrist needs to be aware of the laws and regulations regarding the ownership of reports.

When acting in a dual role with patients under a provincial or territorial review board, the dual role of the forensic psychiatrist is explained, acknowledged, and managed in a professional manner. Similar principles apply to the correctional psychiatrist or to other situations in which the forensic psychiatrist is acting in a dual role.

For all assessments, the evaluee should be informed about other exceptions to confidentiality, for example, when there are concerns about significant risk to self or others discerned from the information provided. (11) This could include breaches of confidentiality in various situations that require mandatory or discretionary reporting, such as involuntary hospitalization under the provincial and territorial mental health legislation, invoking the duty to warn and protect, assisting with the need for urgent medical care, and informing appropriate authorities, such as child protection services and driver and vehicle licensing bodies. The Canadian Medical Protective Association (CMPA) has a document guiding both mandatory and discretionary breaches.

Declarations of Conflict of Interest

Potential conflicts of interest are to be disclosed to the party who retains the assessor and/or the court, depending on the circumstances, as soon as they are detected. These might include, but are not limited to, previous treatment of the evaluee, previous contact with or knowledge of the evaluee's family or friends, and strong transference or countertransference issues if they interfere with objectivity. Further, during assessments of individuals under the provincial or territorial review board, the forensic psychiatrist often has a dual role of providing care and advocating while needing to ensure the safety of the public; this is acknowledged and disclosed.

Chart 1. Example of a Written Limited Confidentiality Letter

LIMITS OF CONFIDENTIALITY LETTER

I, ______________________________ ______________________________

(Name) (Date of birth)

I understand that anything I say could be included in a report that would be sent to my counsel/the court. I was told that in these circumstances, Dr. ____________________ was not my treating doctor but would relay any information to my treatment team at my request. Dr. ____________________ informed me that I could refuse to answer any questions, terminate the interview at any stage, or contact counsel before answering any questions.

I was informed that the assessment team would have a duty to warn or protect a third party when there are concerns about imminent serious bodily harm to an identified individual or class of individuals.

I was informed that if the assessment team suspected child abuse or that a child was in danger, they would have to inform Child Protection Services and/or the police.

I was informed that there are other limits to confidentiality they would bring up if they considered them pertinent.

I understand this and consent verbally and in writing to continue with the interview.

I understand the purpose of disclosing this personal health information to the person noted above. I understand that I can refuse to sign this consent form.

Name: ______________________________

Address: ______________________________

Telephone: ______________________________

Signature: ______________________________ Date ____________________

Witness Name: ______________________________

Signature: ______________________________ Date ____________________

Communication with the Retaining Party/Lawyers

Differences Between Third-Party Assessments and Court-Ordered Assessments

Although all assessments require that the forensic psychiatrist strives for objectivity and impartiality, there are inherent differences between court-ordered and other third party–requested assessments. The guiding maxim should be that the forensic assessor's opinion will remain the same, regardless of who retained them. In striving for impartiality, it can be helpful for the expert to review the completed assessment to determine if it would be any different if retained by an opposing body. It is, of course, important for the expert to acknowledge other possible interpretations of the information and how, for example, missing information might impact the present opinion.

In court-ordered assessments, there may be a time limit stipulated in the Criminal Code for various purposes. There is often a specific setting designated as well (e.g., in a specific forensic assessment unit, at a detention centre, or out of custody). Regardless of the forensic psychiatrist's opinion, the report is submitted to the court. All parties receive this report, and subject to any order to the contrary, any member of the public may obtain a copy of any exhibit filed at a public hearing. There is no communication with any party about the forensic assessor's opinions prior to the submission of the report. However, any party can be contacted to obtain further information or to clarify certain issues.

In other third-party assessments, there might not be a specific court order (unless, for example, it is to transport the evaluee to a different site), and there is no fixed time during which the assessment is conducted, unless stipulated in the

Chart 2. Example of a Retainer Letter

RETAINER LETTER — DR. XX

Address: ____________________

Date: ____________________

Retaining party and address: ____________________

Dear Ms./Mr., ____________________

Re: A.N. Other ____________________

This letter is to confirm receipt of your *email/letter* of (date), wherein you propose to retain my services on behalf of your client. All materials prepared by myself in connection with this retainer will be submitted solely to you and will not be furnished to any other person or party unless you or the court should so direct or require.

Services will be billed on an hourly basis (unless otherwise stated), detailed as follows:

Note: Prices below do not include applicable taxes, which will be added when you receive your invoice.

Hourly fee: evaluee interview, review of material, preparation time, conference with counsel, telephone calls, report preparation	$X00.00 per hour (estimate x hours)
Advance payment	$X
Court appearance	$X per half-day booked (minimum) $X per full day booked
Social work assessment (interview of collaterals)	$X per hour (estimate x hours)
Psychological testing	To be negotiated
Other	To be negotiated
Expenses as incurred	To be negotiated

Any travel time outside x will be billed for each half-day outside of the office on a half-day rate of $X. Travel outside the province will be billed on a daily rate for each day outside of the office at a rate of $X.

Telephone calls and emails will be billed at a rate of a minimum of 0.1 hours per communication. Multiple communications will be aggregated. If information is sent electronically, any costs incurred for printing and binding will be billed.

An advanced payment will be required in the amount of $X two weeks prior to meeting with your client. Cheque is to be made payable to Dr. X. An itemized invoice will be sent to you upon completion. Any funds held as an advance payment that are in excess of this amount will be returned without interest.

Two business days are required for any cancellation, or a cancellation fee will be billed, amounting up to 100% of the time set aside.

A late payment charge will be billed at the rate of 1% per month on any balance not paid within thirty (30) days of the invoice date. Payment for services is an obligation of your firm. **Please note that even if the case is a legal aid case, you will be responsible for payment.**

If you are in agreement with the terms of the engagement, please return a signed copy of this letter to this office.

I look forward to working with you on this case.

Forensic psychiatrist

The above letter accurately sets forth the terms of your engagement in the case of your client.

____________________ ____________________

Lawyer /Retaining Party **Date**

retainer letter. However, the timeframe for completion is often agreed upon before accepting a retainer from a third party. The forensic psychiatrist may provide preliminary opinions prior to the preparation of a report. A report may not be requested by a third party if the expert's opinion is unhelpful to the case. It is important that the forensic psychiatrist confirms that the third party understands the assessment will be objective, nonpartisan, and based on all relevant information. Information relevant to the expert's opinion will be included in a report, even in circumstances in which disclosure may be averse to the interests of the evaluee. An opinion is only as strong as the factual foundation upon which it rests. Where the data provided to the assessor are incomplete or skewed, the assessor/expert will be left vulnerable to challenge during cross-examination. Forensic psychiatrists ensure that all necessary available information is provided, and they document any omissions; they may give the referring party a comprehensive list of potential sources of information needed for a strong factual foundation.

Clarity of Question

At the outset, it is essential for the assessor to ensure the clarity of the psycholegal question(s) being posed. The question(s) will guide the nature of the assessment process and the report generated. The questions are usually clear in court-ordered assessments. In other third-party assessments, the issue often needs to be delineated (e.g., a psychiatric assessment only, fitness to stand trial, criminal responsibility, damages, disability, risk, etc.). It is helpful for the specific question(s) to be included in the retainer letter. There may be situations in which the question changes over time, depending on the circumstances of the case. The forensic psychiatrist might at times assist a third party in navigating the psycholegal questions relevant to a particular case.

Fees and Retainer Letters

For third-party assessments, it is important that the forensic psychiatrist discuss fees with the party who retains them at the outset of the discussion; these include hourly rates, court testimony rates, applicable taxes, and range of hours expected. Contingency fees are not permitted because they undermine honesty and objectivity. A retainer fee may be requested; it could be argued that this has exactly the opposite effect, *ensuring* honesty and objectivity, as the expert will be paid for their time regardless of the opinion they generate. Many assessors request a retainer letter prior to commencing an assessment (see Chart 2 for an example of a retainer letter). Some assessors may request only an email confirmation of the reason for the assessment and the confirmation of fees.

FORENSIC METHODOLOGY: GENERAL CONSIDERATIONS

Establishing the Focus of Any Assessment

Every forensic assessment is tailored to a specific psycholegal question(s). For example, in fitness-to-stand-trial assessments, the focus is on the Criminal Code criteria and the evaluee's present mental state as it relates to fitness to stand trial. In a criminal responsibility assessment, the focus is on a retrospective assessment of the evaluee's mental state at the time of the alleged offence(s). In a violence risk assessment, the focus is on historical and dynamic factors and how they will impact future risk and risk management; in a disability assessment, the focus is on how the symptomatology translates to limitations or work restrictions.

The focus of the assessment will also determine whether the forensic psychiatrist has the necessary time and expertise to undertake the evaluation. Limited experience with certain types of cases should not automatically preclude the forensic psychiatrist from undertaking an assessment. An important consideration will be the degree to which expertise in a forensic assessor role trumps relative inexperience with the case and whether they will bring knowledge above that of the court or requestor. It is recognized that everyone has a first case—a necessary part of developing expertise in a particular area. It is incumbent upon the expert's professional judgement to decide whether one possesses the abilities and time necessary for such a case.

Limitations of the Assessment

A forensic psychiatry assessment report is based on file information, other collateral information, direct interviews with the evaluee, and adjunctive testing of the evaluee as needed. The quality of an assessment depends on the information upon which it is based. A weak, incomplete, or biased factual foundation will inevitably lead to a similarly flawed assessment.

Limitations could involve inadequate collateral information or the absence of important information (e.g., for a criminal responsibility assessment, the video-recorded police statement by the accused). There are also situations in which the evaluee is not interested in participating, becomes mute, is uncooperative or unreliable, or does not consent to the assessment at the outset (see below for file–review only assessments). Limitations can arise when collecting collateral from third parties, such as family members who may have a vested interest in the outcome. Aiming to collect descriptive details rather than global summaries and opinions from third parties may partially counter potential bias in reporting. Limitations could arise from the need for further assessment to address the psycholegal question more completely (e.g., psychological consultation, medical investigations, opinions of other experts, etc.). Limited

time to conduct the assessment could also impact the quality. Other limitations related to the forensic assessor could include level of expertise and potential bias. Forensic psychiatrists are expected to reflect on potential inherent biases that could impact their ability to conduct an impartial assessment. Assessors may not always be able to provide an opinion, due to the insufficiency of information. This should be immediately reported to the retaining party.

There can be discrepancies between the clinical weight and legal weight given to information. This is set out in *R v. Lavallee.* (12) Findings that have not been deemed admissible and tested in court are viewed as second-hand evidence or hearsay, and an overreliance on untested facts may undermine the weight of the forensic opinion. The exception is that medical records are generally deemed legally factual for the limited purposes of the forensic assessor, who relies on them to establish a psychiatric diagnosis. This is another reason self-reporting needs to be bolstered with collateral information. Assessors should be cognizant that data used for their assessment may be subject to legal exclusion that might necessitate the reevaluation of final opinions.

It is essential that the forensic psychiatrist be aware of, acknowledge, and disclose all limitations. Acknowledgement of limitations demonstrates an awareness of factors that may impact opinions.

Assessment of Malingering

One of the differences between a forensic assessment and a general psychiatric assessment is that the forensic assessor is significantly more aware of the possibility of malingering. Malingering is defined as "the intentional reporting or production of false or grossly exaggerated symptoms for personal gain or external incentives." (13) Because forensic evaluations frequently have an intrinsic incentivized goal, it is important to consider. (14) Estimates of the prevalence of malingering in forensic assessments are variable, depending on the type of assessment, and can range from as low as 8% to as high as 80%. (14,15)

The assessment of malingering includes a clinical interview(s) and a review of collateral information. If needed, standardized tests of malingering and clinical monitoring and observation might assist. The benefit of having more than one interview with an evaluee is the potential to observe discrepancies in their presentation and to ask similar questions separated by time. A review of collateral information may reveal significant discrepancies between descriptions of the evaluee on file, compared with the clinical interviews. These inconsistencies are considered within the context of the broader assessment.

The detection of malingering using standardized assessment instruments is a complicated field that requires interpretation by a qualified mental health professional. Specific tests for malingering (such as the Miller Forensic Assessment of Symptoms Test [M-FAST], Test of Memory Malingering [TOMM], and Structured Inventory of Malingered Symptomatology [SIMS]) may be considered in certain cases. The validity scales on other tests (e.g., the Minnesota Multiphasic Personality Inventory [MMPI]) can also be useful indicators. In the final analysis, the assessor takes into account all information in determining the likelihood of malingering. (15)

File Review–Only and Interview-Only Assessments

Assessments based only on file review may be conducted by forensic psychiatrists for certain types of third-party assessments. However, the limitations of such assessments must be disclosed (including that there was no interview). File-only assessments can be conducted when the evaluee declines to be interviewed or when a preliminary assessment is requested. Examples of file-only assessments include, but are not limited to, criminal responsibility assessments and risk assessments (including dangerous offender assessments), medical negligence, civil assessments (such as retrospective testamentary capacity), and proceedings for the disclosure of mental health records.

An inherent limitation of a file-only assessment is that the physician cannot diagnose an evaluee unless the person has been seen. The psychiatric report clearly documents the fact that the evaluee has not been personally examined and the reasons why the interview was not conducted. For example, in a file-only assessment of a dangerous offender, the forensic assessor makes appropriate efforts to conduct a personal examination. The effort is documented, and the opinion is formulated based on other information. The forensic psychiatrist can express hypothetical opinions about possible diagnoses based on evident symptomology, and they can comment on the evidence for and against others' diagnostic opinions. When the information clearly establishes the presence of psychiatric diagnoses that cannot be made due to the absence of an interview with an evaluee, the forensic assessor may choose to report this, for example, by stating that the evaluee has all the typical features consistent with a specific diagnosis.

Interview-only assessments are inherently limited and generally considered a preliminary psychiatric evaluation of the individual. However, it is accepted that there are situations in which the evaluee may be less than helpful to an assessment, as their mental state may preclude meaningful participation at that time. With respect to retrospective assessments (e.g., criminal responsibility), the evaluee may genuinely have no recollection or may confabulate to fill in gaps. The evaluee cannot derail/defeat an assessment simply by refusing to cooperate. This might occur when the Crown raises the issue of criminal responsibility over the accused's objection. An evaluation of criminal responsibility may nevertheless proceed and, depending on the sufficiency of the data, be concluded without the accused's participation.

The Impact of Social Determinants of Health on the Forensic Population

It is well established that offenders with mental illness are disproportionately impacted by social determinants of health that have contributed to either the criminalization of those with mental illness or to challenges with their rehabilitation and reintegration. (16) Such factors include, but are not limited to, increased stigma related to their combined history of mental illness and forensic past, poor access to health care and social services, poverty, inadequate housing, increased exposure to violence, social marginalization, and unemployment. There is also often a high prevalence of adverse childhood events in offenders. These social determinants of health can be mirrored in the dynamic risk factors that forensic assessors use to inform their assessment and management recommendations.

The over-representation of visible minorities in offending populations (both with and without mental illness) deserves special consideration. Evolving from a legacy of systemic racism, visible minorities face greater obstacles in their trajectory through the criminal justice system. Additional consideration in the assessment process should be given to the evaluee's culture and history of trauma. Indigenous offenders, for example, are over-represented in the criminal and forensic systems, likely related to colonization, residential school legacies, and other past government and societal practices that disenfranchised the community. Awareness of the inherent biases, gaps in research, and specific needs of other marginalized populations (i.e., LGBTQ2S+, women, immigrants, visible minorities, and other groups) is also important. Forensic psychiatry assessments should be culturally competent.

Although the task of the forensic assessor is to respond to the ultimate psycholegal question before them, it is important to consider, formulate, and incorporate the individual biological, psychological, social, religious, and specific cultural factors that have brought an evaluee to that point in time. Forensic assessors, while sitting at the privileged intersection between medicine and the law, are also physicians obligated to fulfill the competencies of their profession, including being a leader, health advocate, and collaborator. (17) Some might, therefore, contend that it is their duty to educate the court or relevant party in these domains, while maintaining a neutral and unbiased stance during the assessment process.

THE FORENSIC PSYCHIATRY ASSESSMENT

Approach to the Psycholegal Question(s)

Further to the General Principles, different psycholegal questions require varying frameworks to guide the forensic assessment, as reviewed in the specific guidelines on fitness to stand trial, criminal responsibility, disability, sexual behaviour, and risk assessment. At the most basic level, all forensic psychiatric assessments examine three foundational questions:

1. Does the evaluee have a DSM-5 psychiatric disorder(s) or psychiatric symptoms?
2. Is the DSM-5 psychiatric disorder(s)/symptom(s) causing impairment?
3. Is the evaluee's psychiatric impairment relevant to the psycholegal question(s)? If so, what is the causal connection?

Sources of Information

There is a significant difference between a forensic psychiatric assessment and a general psychiatric assessment. The role of a forensic assessor is different from that of an assessing and treating general psychiatrist. Consequently, the amount of, type of, and weight given to sources of information varies. A critical difference is that a treating psychiatrist may accept a person's self-report at face value; additional sources of information may or may not be necessary. In contrast, the forensic assessor's role requires multiple sources of information. It is a rare case in which sole reliance on self-report is adequate.

Sources of information for forensic assessments may include the following:

- Interviews with the evaluee
- File information (including police reports, witness statements, physical evidence, etc.) and audio and video information
- Medical records and information from treatment providers
- Correctional records
- Academic and employment records
- Reports by other experts
- Collateral interviews with third parties
- Adjunctive tests
- Standardized assessment instruments
- Actuarial and structured professional judgement instruments
- Clinical observation and monitoring during inpatient assessments

Different sources of information might have different degrees of validity. There is a continuum, from the most subjective to the most objective data. The best exemplar of subjective data is the evaluee's self-report by interview and screening tools. More objective data sources would include the mental status examination, academic records, work performance evaluations, psychometric testing with validity indicators, diagnostic studies, such as CT or MRI, and the information determined by the court to be fact.

Interview with an Evaluee

An interview with an evaluee is, of course, an obvious place to begin gathering information. Often a forensic interview tends to be lengthier than a general psychiatric interview, which can be due to several factors, including the complexity of the case and the importance of gathering sufficient and detailed information necessary to support one's opinions. Alternatively, relying exclusively on an evaluee's self-report can be a significant limitation, as there are many reasons self-report might not be accurate. At times the evaluee may be motivated, consciously or unconsciously, to portray themselves in a particular way for a desired outcome and to provide inaccurate information. The evaluee may be compromised, such that their "memory" is a function of circumstances, or they may be confabulating. For this reason, the assessor seeks out multiple sources of information in pursuit of comparative evidence that speaks to the psycholegal question at hand.

File Information

A review of file information is foundational to a forensic psychiatry assessment. The sources of information are partly dependent on the psycholegal question(s). Psychiatric, medical, and mental health information, when available, are critical sources in any type of forensic assessment.

In some criminal matters, audio and video information, such as the post-arrest statement of an accused person, can be important. It is incumbent on the forensic assessor to advise the retaining party about missing information or, if critical documentation is absent, the fact that an opinion cannot be proffered without it. When the forensic assessor deems additional file information helpful, this may be sought out by the retaining party or using proper channels of consent (such as medical, school, or employment records, etc.). Forensic psychiatrists should be aware that a base of facts may be established and included in file information. Conversely, they should also be aware that provided file information may include untested facts or opinions, such as police summaries or information, that may not represent the established facts of the case.

Collateral Interviews with Third Parties

The forensic assessor can identify potentially helpful collateral sources of information. The assessor may choose to interview the identified source(s) themselves, or they might work in an interdisciplinary team that includes a social worker or other qualified individual who may contact collateral sources. At the outset of the interview, the collateral source is informed of the limited confidentiality and purpose of the interview. In general, detailed descriptive information is more helpful than opinion information.

When reviewing collateral information from third parties, the forensic assessor acknowledges that these sources may present with their own biases regarding the evaluee, which could impact the objectivity of their disclosure. When interviewing collateral sources who might have a vested interest in outcome, the assessor considers of objectivity, motivation to present information in a particular light, length of relationship and nature of contact with the evaluee, and consistency of themes across multiple sources. For example, an evaluee's mother might have detailed information about an individual's history that no one else can provide, but she might also be motivated to minimize wrongdoings to protect the evaluee from a perceived adverse outcome in a legal proceeding.

Adjunctive Testing

Forensic assessments can be strengthened by the addition of various types of testing that can augment clinical forensic evaluations by providing a more robust foundation.

Medical investigations can include a physical examination, laboratory tests, a urine drug screen for the presence of substances, and diagnostic imaging. Generally, most forensic psychiatrists would refer to a medical colleague to address issues outside the scope of a general psychiatrist. For example, if it is believed that a thyroid condition is contributing to the formulation of a case, a referral to an endocrinologist would be considered.

Clinical testing, such as electroencephalograms, and various types of diagnostic imaging, such as MRIs and PET scans, might be helpful in certain types of evaluations. Forensic psychiatrists generally familiarize themselves with these techniques. The potential relevance of these findings to the psycholegal question should be carefully evaluated in the context of the overall assessment.

Specialized testing can also be considered in some cases. For example, the use of penile plethysmography (phallometric testing) can be used with an adult male evaluee who has been convicted of a sexual offence. This test is not used to determine guilt or innocence. It is generally used in Canada for helping to establish sexual preference, determining possible treatments, and as one factor in a risk assessment. It is expected that the laboratories conducting the tests will have the reliability and validity data available. (18–21) These tests are interpreted by those qualified in the area. Informed consent from the evaluee is required prior to the test. Consultation with another health care professional (e.g., a neurologist) might also be considered. With the exception of inpatient assessments, consultation occurs with the awareness and consent of the retaining party and in accordance with legal constraints.

Standardized Psychometric Assessment Instruments

Standardized assessment instruments can provide insight into several domains, including but not limited to, cognitive functioning, personality profile, malingering, and psychopathology. Forensic psychiatrists are concerned with the use of deception, malingering, and impression management, and testing can be useful in forming an opinion

about these issues. The instruments are administered and interpreted by qualified mental health professionals. In many cases, the forensic psychiatrist subcontracts this task to a forensic psychologist when available. It is helpful if the forensic psychiatrist has a general understanding of the use of these tests.

Forensic psychiatrists might also consider using various rating scales that could provide useful information pertinent to an assessment. These scales lend a measure of objectivity to the evaluation. The assessor may consider the weight they give to open-ended questions versus embedded questions in formal psychological testing, versus a self-report scale that includes checklists that amount to closed questions.

Actuarial and Structured Professional Judgement Instruments

Over the last several decades, there has been increasing reliance on actuarial and structured professional judgement tools to augment forensic clinical opinion. In certain types of forensic assessments, such as risk assessments, it is generally considered the standard of practice to use one or both techniques to help inform clinical opinion. Forensic psychiatrists should be aware of the strengths and limitations of these instruments and cognizant of the literature regarding these. A fuller discussion of these instruments is available in the Violence Risk Assessment Guideline.

Clinical Observation and Monitoring During Inpatient Assessments

Clinical observation and monitoring by an interdisciplinary team during an inpatient forensic assessment can be helpful in identifying signs or behaviours that are typical of or consistent with a psychiatric disorder(s). Conversely, atypical behaviours may flag considerations of malingering. To a lesser extent, clinical observations and monitoring by mental health staff in a pre-trial remand setting may provide similar information, though this would be obtained through a review of file information rather than direct interactions with other interdisciplinary team members on an inpatient forensic unit.

The Forensic Psychiatry Interview

Physical Setting and Safety Measures

The forensic psychiatrist has many aspects of an interview to consider prior to sitting down with an evaluee, beginning with a review of safety measures. They must consider the physical setting of the interview with respect to security. Forensic assessments can occur in various settings, including a hospital office or interview room, a private office, a jail or prison, a courthouse, or by videoconference. The literature is not clear on whether forensic psychiatrists are more at risk than general psychiatrists, and risk may be attenuated by the fact that forensic psychiatrists are more attuned to the risk of a physical attack. (22)

When considering the physical setting, the architecture of some of these spaces is beyond the forensic psychiatrist's control. However, it is helpful if they keep in mind the space prior to the interview. This is easier to achieve in a private office than in other settings, such as in jails. In a detention centre, the forensic psychiatrist might ask the correctional officer whether the evaluee is cooperative and discuss contingency plans with them, should safety issues arise. The assessor might find it helpful if the meeting room is arranged so that the evaluee can leave without having to confront the assessor (for example, by ensuring the evaluee is not between the assessor and the door).

In some settings, emergency buttons or devices will be available. The assessor should familiarize themselves with these before the interview and develop an emergency contingency plan should safety issues arise. They should learn whether a colleague or security official will be in the interview room or at the door. Every effort should be made to ensure that confidentiality is preserved, but not at the expense of the physical safety of those involved in the evaluation.

Privacy

The forensic psychiatrist should determine the level of privacy the space affords and whether other parties will be witnessing or participating in the assessment, for what purpose, and what rules of privacy and/or privilege are in play. In certain circumstances, it may be helpful to have another member of the interdisciplinary team or a security officer present at the interview. In some instances, the evaluee might request that a third party be present, which could be a contentious issue. The forensic psychiatrist assesses the potential benefits and threats to the objectives of the assessment when considering this issue. A possible manner of dealing with this is to agree and have a member of the interdisciplinary team present. It may be beneficial that the third party is not in the evaluee's line of sight, as they might be able to influence their answers by their expressions or gestures. This also applies if lawyers request to be present during the evaluation, which is rare and irregular but sometimes happens.

Use of Interpreters

Prior to beginning an evaluation, the assessor should determine whether interpreting services will be required. Interpreters provide language translation and cultural context to the translation. It is important that dialectical differences within broader language groups be considered when using interpreters. The forensic psychiatrist should ensure that the interpreter strives to maintain neutrality during the assessment process (i.e., has no relationship with the evaluee) and is certified to interpret in the target language. Interpreters can be present in person, over videoconferencing, or over phone conferencing. Depending on the language skills of the evaluee, different styles of interpretation may be required. For example, simultaneous interpretation occurs when an

interpreter translates information from the source to the target language in real time, thereby permitting a more natural flow to the conversation. In contrast, consecutive interpretation requires the source to pause after each sentence, allowing time for the material to be translated into the target language. This latter style may be more arrhythmic, but necessary, depending on the complexity of the discourse. Alternatively, an interpreter may be kept on standby, only to be used at the direction of the evaluee.

Virtual Interview

Forensic psychiatrists have increasingly been using videoconferencing and audioconferencing platforms to perform assessments, usually borne of necessity (i.e., if the evaluee is not accessible in person). When using these platforms, the forensic psychiatrist should consider familiarity and comfort with the technology; the technological support available, if any; the potential for privacy breaches when using these communication modalities; and whether there are aspects of the assessment that either cannot be performed or might be compromised. As in other circumstances, informed consent is typically required; however, when an in-person assessment is impossible, a court or tribunal may direct that the assessment take place using an electronic modality.

The limitations, ethics, and procedures involved in conducting virtual interviews are evolving, and the forensic assessor needs to remain apprised of new practice standards and any relevant new case law.

Recording the Interview

Forensic psychiatrists generally make a thorough record of their interviews. Most commonly, this is by way of contemporaneous note taking. Sometimes these notes are requested by the parties and may be used in examination in court. It is important for the assessor to retain these notes according to provincial and territorial requirements.

It is not presently general practice for forensic psychiatrists in Canada to video or audio record their interviews. This is more common in the US. The purpose of recording is to obtain an accurate and complete record that can be reviewed at a later date, perhaps in preparation of a report or for trial. Consent from the evaluee is required for audio and video recordings. Further complexities include who conducts, keeps, and transcribes the recordings to ensure the integrity of the original. Recording does create logistical problems, in that some institutions, such as jails or detention centres and perhaps even hospitals, might not allow recording, and prior permission has to be obtained. Recordings are secured and stored in a fashion similar to written information.

CAPL does not have a position on video recording at this time. The American Academy of Psychiatry and the Law (APPL) convened an *ad hoc* task force to review this issue. (23) Readers may refer to this document, in which the pros and cons of video recording are thoroughly reviewed.

The Interview Process

Prior to beginning the assessment, forensic psychiatrists consider the duration of and approach to the interview process. Regarding duration, there is no standard length for a forensic assessment. Some may be brief, for example, correctional assessments and assessments for whether an accused is unfit to stand trial. Others may run for many hours over the course of a day or more or be spread over multiple days with shorter interview lengths. Each method has its own pros and cons. Lengthier, full-day interviewing might be efficient when the assessor is facing time constraints and it might not allow the evaluee time to rework their responses and image portrayed during subsequent meetings. However, lengthy meetings can present a challenge in maintaining focus and engagement and represent only one moment from which opinions can be formulated. Shorter interviews over multiple days might have the advantage of evaluating an individual over many encounters, and it may be easier to maintain attention. An assessor might also have time between encounters to prepare questioning in specific areas of inquiry and to review any additional material with the evaluee. However, multiple opportunities to speak with an assessor may give an evaluee time to examine and rework how they choose to present themselves over the course of several assessments, which might influence spontaneity and guardedness in the interview process.

Interview Style

As in general psychiatry, the approach an assessor assumes can have a significant effect on the tone set during the assessment. Creating an environment where an individual feels respected and heard is a fundamental component of any psychiatric assessment, including a forensic evaluation. However, most forensic evaluations deal with difficult issues, events, or contradictions that will have to be addressed during the interviews. The forensic psychiatrist should consider when and how these areas will be explored. In certain circumstances, it may be preferable to begin by addressing the legal matter at the outset of the interview, while in others, more neutral aspects of the evaluee's history may be addressed first. The latter has the effect of allowing the evaluee to become comfortable with the situation in reviewing, for instance, their personal history over the course of the first hour or so of the interview.

For portions of the interview, the forensic psychiatrist may find the use of open-ended questions to be best practice, depending on the mental state of the evaluee and the issue being addressed. In other parts of the interview, for instance, the review of symptoms, some leading questions may be necessary. For example, when asking about the presence of delusions or hallucinations at the material time, it is more important to avoid leading questions. At such critical points, the evaluee might become upset and aroused, which the assessor would need to acknowledge and attend to with, for example, forensic empathy or detached concern. (24) A

break could be needed at this stage and the interview may be continued later or on another day.

Leading questions could offer the evaluee an opportunity to engage in impression management in an effort to sway the assessor's opinion. Sometimes the forensic psychiatrist will find it necessary to confront the evaluee with inconsistencies and suspected fabrications in their narrative. They should do this calmly and respectfully, with a neutral stance.

Being mindful of these interviewing nuances, including countertransference, can assist the forensic psychiatrist in navigating the interview process with intention and purpose. It is necessary that the assessor keep an open mind as to the outcome of any assessment. Forensic psychiatry assessments are an opportunity to inquire about different hypotheses, recognizing that some motivating and contributing variables can be uncovered or ruled out during an interview by asking relevant questions.

The Interview Content

Domains of Inquiry: In general, the areas covered in a forensic evaluation are largely the same as those covered in a general psychiatry interview, albeit in much greater detail and with a focus on the specific psycholegal issue. Specialized forensic assessments will require that certain domains be addressed (e.g., a sexological assessment), which are covered in the specific guidelines.

Common to all forensic psychiatric interviews are the identifying data that offer the socio-demographic profile of the evaluee; these can provide a valuable backdrop of the individual being assessed. Aspects covered include age, living circumstances, relationship status, employment status, source of income, dependents, and current legal prohibitions/release orders. Other areas of inquiry include the behaviour of concern, personal history, legal history, medical history, substance and psychiatric history, family history, sexological history as applicable, review of symptoms and mental status examination, and risk issues.

The order of areas explored thereafter is a matter of preference, style, goals, limitations, and intention of the assessor. The forensic psychiatrist should keep in mind that the level of detail explored in each section is dictated by time, the mental status of the evaluee, the purpose of the assessment, and the complexity of the case. An advantage of beginning with an individual's personal history or other non-contentious area is that it permits the assessor time to develop rapport with an evaluee prior to engaging them in potentially difficult discussions.

The following represents one possible sequence of inquiry:

- Limits to confidentiality and informed consent
- Identifying data
- Personal history (history of gestation and delivery, toxic and teratogenic prenatal exposures, neonatal period, childhood development and family, childhood illnesses, trauma history, education, employment, relationships/ supports, self-perception, and individual psychological, social, religious, and cultural factors)
- Detailed psychosexual history (as appropriate)
- Medical history (all physiological conditions, with a focus on those that can impact mental health and behaviour, i.e., head trauma, epilepsy, neurocognitive disorders)
- Family history (of mental health problems, criminality, substance use and medical histories), which may include family dynamics
- Psychiatric history (psychiatric admissions, self-harm, suicidal and violence histories, psychotropic medication use, psychotherapies, efficacy of previous treatments, compliance with treatment recommendations, etc.)
- Substance use history and treatment attempts (sufficient detail to render a diagnostic opinion and understand impact on mental health, behaviour, and functioning)
- Legal history (self-reported and official records of arrest and conviction are reviewed and compared with file information)
- Evaluee's narrative of the particular circumstance (index offence/reason for referral/tortious act/workplace issue)
- Review of symptoms
- Mental status examination
- Acute risk issues and reporting obligations

THE FORENSIC PSYCHIATRY REPORT

Forensic psychiatry reports differ from general psychiatry reports in focus, sources of information, and level of detail. The ability to produce a well-written forensic psychiatry report is a key feature of expertise in the forensic assessor role.

The forensic report is the primary method of communicating the analysis, opinions, and recommendations that flow from the forensic assessment. The report organizes the data and sets out the forensic assessor's reasoning and opinion, which is a cornerstone of forensic assessor role expertise. It is a document of significant import for both the receiving third party and the author, as it summarizes all the necessary information needed, from a psychiatric perspective, to address the psycholegal questions. If the forensic psychiatrist must give testimony in court, it is also a guide for reference when preparing for and giving testimony.

In court proceedings, once tendered, the forensic report may become an exhibit and a public document. In civil proceedings, the forensic report may be provided to multiple people or agencies, including tribunals, professional regulatory bodies, and workplaces. This highlights the importance of a report being readable and understandable

by a varied audience, including judges, counsel, medical professionals, and laypeople. Large volumes of file material might also need to be synthesized into a consumable length that is sufficiently detailed regarding factors relevant to the focus of the assessment. The assessor may consider using an appendix to review other file information, if appropriate.

There is no single structure for a forensic report. Rather, it is determined by the individual and regional requirements and preferences, as well as by the psycholegal question(s) to be addressed. Buchanan and Norko outline a generic forensic report format and go on to demonstrate how it can be modified for different types of forensic assessments. (25) A similar format is suggested by Reid, who offers extensive examples of reports that can guide various forensic situations. (26)

Organization and clarity are key to assisting the reader in understanding a large body of information. This can include organizing the report with frequent headings and subheadings. It is essential that the forensic psychiatrist clearly identify sources of information in the body of the report. The report should avoid the significant use of medical jargon (or at least explain their meaning in parentheses). The language should also aim to be neutral, communicating information in narrative form, while not using terms meant to evoke a strong emotional response or to focus on information with no ultimate bearing on the conclusions. It may be requested that the report be written in English or French, depending on the region.

Reviewing reports for spelling and grammatical errors is imperative to elevate the integrity of the report as a professional document.

Purpose of the Assessment

At the outset, the assessor must frame the report by identifying the expressed purpose of the assessment, explicitly noting the psycholegal question(s) being asked by the court or retaining party.

Expertise

The forensic psychiatrist's statement of expertise can be summarized at the beginning of the report, with care taken to highlight expertise that may be relevant to the assessment. The assessor is also expected to be forthcoming about expertise limitations and potential bias.

Sources of Information

The sources of information used in preparing the report are described or listed, usually at the outset. The assessor should present a comprehensive account of the sources in order to identify the information upon which the assessment is based. Sources of information that were not available or sought should also be determined, as these may be identified as limitations of the overall assessment.

The information can be organized into the following:

Interview sources

- Dates (and sometimes lengths) of interviews with the evaluee
- Dates of interviews with family, friends, mental health professionals, and others

Other assessments

- Reports authored by others involved in the assessment process (e.g., psychology, social work)
- Reports of test results for the purpose of assessment (e.g., penile plethysmography)

File information

- Disclosure, including audiovisual information provided by the retaining party or the court
- File information sought during the assessment by the assessor (e.g., health records)

Other sources

- Case law
- Other expert reports

Informed Consent and Limits of Confidentiality

In the report, it is important that the assessor document the information provided to the evaluee in terms of the nature and purpose of the assessment, the limits to confidentiality, and to whom the report will be provided. It is useful if the forensic psychiatrist state that the evaluee was notified of the absence of a traditional doctor-patient relationship and the circumstances under which it would be necessary to disclose information in the context of safety. They would also note whether the evaluee consented to participate in the assessment process, whether this consent was verbal or in writing, and whether consent was given with any limitations. In some cases, an evaluee may, for example, consent to one part of the assessment but not another or refuse to answer some of the questions.

Identifying Data

It is useful for the assessor to document the evaluee's demographic data early in the report to clearly identify their circumstances at the time of assessment. This generally includes the following information:

- Age and sex
- Current residence or location
- Relationship status
- Dependents
- Employment or other sources of financial income
- Citizenship/immigration status
- Cultural background

The assessor might include information about the evaluee's status prior to their arrest (if relevant), particularly if there

have been significant changes. For example, at the time of assessment, the evaluee may be single, unemployed, and in jail, but prior to arrest, they might have been married, employed, and residing in a particular town or city that could be meaningful to the overall formulation.

Information Gathered from the Interview and from Collateral Sources

Headings and subheadings can be a useful way to organize the information gathered from the interview. These are generally documented as follows:

- Personal and developmental history
  - Childhood and family history
  - Educational history and conduct-disordered behaviour
- Employment history
- Relationship history
- Personality and self-perception
- Psychological, social, religious, and cultural factors
- Medical, medication, and allergy history
- Psychiatric history
- Family psychiatric history
- Substance use history
- Legal history
- History of index offence/issues of concern

When detailing the index offence/circumstances, subheadings can assist in organizing information:

- Official documentation of the offence/circumstances
  - Synopsis or agreed statement of facts
  - Interviews with police, etc.
- Evaluee's self-report
- File information
- Information from collateral sources

When documenting the evaluee's self-report, it can be helpful if the assessor uses direct quotations and includes explanations for any discrepancies. If the evaluee provides information about the index offence to various assessors, subheadings can be used for self-reports made to psychologists, a social worker, or other people involved with the assessment.

Review of Symptoms and Mental Status Examination

This section describes the presentation of the evaluee at the time of assessment. The review of symptoms documents any current and recent symptomatology, generally referring to the time period proximal to the interview and how it impacts function. The review of symptoms can include the following headings:

- Mood symptoms
- Anxiety symptoms
- Psychotic symptoms
- Anger symptoms

It might also include other screens for mental health conditions, depending on the history of the evaluee, including attention-deficit hyperactivity disorder (ADHD) symptoms, personality disorders, and impulse control disorders, among others. The purpose of the review is to document active symptoms of mental health conditions, if any, that may be relevant to the diagnosis, prognosis, and conclusions of the assessment. Further, it might also be relevant if the accused is not manifesting active symptoms of a mental health condition at the time of assessment but had exhibited these symptoms in the past.

The mental status examination is expected to be sufficiently detailed to describe the evaluee's presentation at the time of assessment, including physical appearance, communication, affect, level of engagement, attitude, thought form and process, perceptual abnormalities, safety issues (suicidal or violent, homicidal ideation), insight, and judgement, among other variables.

Collateral and File Information

Forensic psychiatrists may consider whether to imbed information from collateral sources and file information into the narrative under the headings that detail information from the interview or whether to document them in separate sections of the report. This decision usually depends on the following:

- The amount of information
- The evaluee's ability to provide a coherent and complete narrative
- Whether there is a significant degree of inconsistency among the sources of information

Ultimately, the decision depends on which method of organization will best convey the material in an easily readable form. If there is significant inconsistency among sources, the forensic psychiatrist might separate information into subheadings that distinguish the evaluee's "self-report" from other information. The use of appendices might also be considered, especially in the context of a large amount of file information.

Testing: Psychological Assessment, Penile Plethysmography, Medical Consultations, etc.

The results of testing or specialist consultation are generally detailed in a separate section of the report. Often these are excerpted directly from the reports, rather than being summarized, depending on length and level of detail. The report of testing or consultation itself may be appended for review. Prescription records and drug toxicology results can provide useful information for evaluations and should be judged according to the conclusions to be conveyed.

Opinions and Recommendations

The conclusions of a forensic report primarily address the specific issues for which the report was written. In certain jurisdictions, the report might also address other issues as a routine.

Limitations of Assessments

The limitations of the assessment process can be identified or reiterated in the conclusions of the report. Some examples include a lack of access to specific pieces of information, inability to speak with collateral sources, inability to resolve inconsistencies in the file information, if the evaluee did not participate in all or parts of the interview process, and lack of available interpretation services. Strategies used to address limitations can also be documented.

Clinical Summary

A brief summary of the background information obtained can be helpful to the reader.

Psychiatric Diagnosis

The diagnoses and differential diagnoses of the evaluee (if any) can be detailed in narrative or list form. Reference to the DSM-5 is used to identify the source of diagnostic terminology. (13, p 749–759) Some forensic psychiatrists use templates explaining the diagnostic criteria in summary form for many common diagnoses.

It may be important to explain why certain psychiatric diagnoses are *not* made, depending on the specifics of the case (for example, individuals with a historical diagnosis of a mental health condition that the assessor has deemed absent). It can also be helpful for the assessor to demonstrate that they have considered alternate hypotheses for the evaluee's presentation (e.g., a substance-induced mental health condition), even if the assessor concludes that the diagnosis is not present. Further, an explanation of why diagnoses have changed over time may be provided. Finally, given the legal context, malingering is often addressed as a clinical variable that led the assessor to pursue it as a potential contributing factor or not. (15)

A comprehensive biological, psychological, social, religious, and cultural formulation is provided to assist in understanding the evaluee and their behaviours. (27,28) It can also clarify how an individual may view their mental illness or how they are coping with it.

Addressing the Specific Psycholegal Question

The final sections of a report generally outline the assessor's opinions regarding the question(s) that formed the basis of the assessment. A summary of the legal statute or common law test, as understood by the forensic psychiatrist, may be a useful opening for this section of the report. The assessor then lays out the information and reasoning upon which the assessment is based, from a psychiatric perspective.

A logical consistency should flow from the data in the body of the report to the conclusions. (29) It is of utmost importance that the forensic psychiatrist establishes a nexus between the information contained in the report and the final opinions. It is also important that the actual psycholegal question is clearly addressed. In general, it is most helpful if the forensic assessor's reasoning is explicit rather than implicit. The strength of forensic opinions and the weight that third parties and the court subsequently attribute to them often turn on the soundness of the forensic assessor's scientific reasoning in establishing causal connections among psychiatric disorder(s) or symptoms, functional impairment, and the psycholegal question(s).

If it is not possible to arrive at a conclusion, the reasons for this should be given. There are situations in which the forensic psychiatrist will be unable to provide a firm determination in a complicated case; for example, there may be competing sets of facts and assumptions that lead to different conclusions. In the final analysis, this is for the courts to decide. To resolve uncertainty, the forensic psychiatrist may render conditional opinions, depending on information discrepancies or varied accounts.

In a court-ordered assessment, the specific question to be answered is set out in the assessment order. For instance, during an assessment of whether an evaluee is unfit to stand trial, criminal responsibility or future dangerousness is not addressed. Information not requested may be seen as prejudicial and may result in the report being redacted, so that only the questions asked are answered in the report.

Answering the Ultimate Question

In legal processes, determination of the specific issues being examined in the assessment is ultimately made by the court. The forensic report is meant to provide information to the court, from a psychiatric perspective, to assist in those determinations. In certain jurisdictions, for example, in the US, federal court evaluators can include opinions regarding the ultimate issue but cannot testify about these in jury trials. (30) In Canada, the issue is less clear. It depends on the jurisdiction and sometimes on the individual judge. It is ideal to ensure that all aspects of the psychiatric issues relevant to the decision about the ultimate question are addressed and to avoid providing an opinion about the ultimate question, unless specifically asked or unless it is considered a standard in the region in which the opinion is provided. If the forensic psychiatrist does speak to the ultimate issue, they should use language to acknowledge they are providing a forensic psychiatric interpretation and opinion of the relevant legal issue.

Other Psycholegal Issues

The forensic psychiatric focus is on the specific psycholegal question requested. Going outside of this may bring unforeseen difficulties for the court/requestor, evaluee, and

psychiatrist. However, it may be necessary or beneficial to comment on some issues, weighing the risks and benefits of this. These instances include the following:

- Involuntary hospitalization under provincial and territorial mental health legislation (There are occasions when an individual may meet the criteria for involuntary hospitalization, though the mental health legislation might not be used — for example, if the individual is not being released into the community.)
- Capacities, such as consent to treatment and managing finances (e.g., if they are an inpatient)
- Reporting requirements regarding driving, child protection services, etc.
- Duty to warn and protect

Recommendations

Any recommendations will depend on the type of forensic assessment being conducted and whether they have been specifically requested.

Signature Block

The final part of the report is the signature block. This is often preceded by "Respectfully submitted" for court-ordered reports and "Sincerely" for others.

Making Changes to the Report Post-Submission

At times, assessors will be asked to make changes to their reports after they have been submitted. This requires consideration of ethical issues. Changes can generally be considered in the following instances:

- If they reflect factual information that enhances clarity
- If they address an issue not sufficiently addressed in the initial report
- If they do not alter the integrity of the report or change the professional opinion expressed in the report

As with any part of an assessment, the forensic psychiatrist may benefit from discussion with a colleague and/or consultation with professional standards documents.

If changes are requested (e.g., in the context of additional information or for clarification), the assessor might consider adding an addendum rather than changing the report itself. Also, if changes are made to a report, this can be identified and documented in a revised report.

Author Affiliations

[1]Department of Psychiatry, University of Toronto, Toronto, Ontario, Canada.
[2]Department of Psychiatry, University of British Columbia, Vancouver, BC, Canada.

REFERENCES

1. Glancy G, Ash P, Bath EP, et al. AAPL practice guideline for the forensic assessment. J Am Acad Psychiatry Law 2015; 43(2 Suppl):S3–S53.
2. Glancy G. Forensic evaluations and reports. In: Gold L, Frierson R, Simon R, editors. The American Psychiatric Association Publishing textbook of forensic psychiatry. 3rd ed. Arlington (VA): APA; 2018.
3. Bloom H, Schneider RD, editors. Law and mental disorder — a comprehensive and practical approach. Toronto (ON): Irwin Law; 2013.
4. Canadian Academy of Psychiatry and the Law. Ethical guidelines for Canadian forensic psychiatrists. Ottawa (ON): CAPL; 2019.
5. R v. ILJ [2000] 2 SCR 600.
6. Glancy G, Simpson A. Ethics dilemmas in correctional institutions. In: Griffiths EE, editor. Ethics challenges in forensic psychiatry and psychology practice. New York (NY): Columbia University Press; 2018. p 101–115.
7. R v. Mohan [1994] 2 SCR 9.
8. Glancy G, Regehr C. Canadian landmark cases in forensic medical health. Toronto (ON): University of Toronto Press; 2020.
9. White Burgess Langille Inman v. Abbott and Haliburton Co [2015] SCC 23.
10. Schneider RD. Expert evidence: judge as gatekeeper. In: Pakosh C, editor. The lawyer's guide to the forensic sciences. Toronto (ON): Irwin Law; 2016.
11. Smith v. Jones [1999] SCR 455.
12. R v. Lavallee [1990] 1 SCR 852.
13. American Psychiatric Association. Diagnostic and statistical manual of mental disorders. 5th ed. Arlington (VA): APA; 2013.
14. McDermott B. Evaluation of malingering. In: Gold LH, Frierson RL, editors. The American Psychiatric Association Publishing textbook of forensic psychiatry. Arlington (VA): APA; 2017. p 75–92.
15. Rogers R, Bender SD. Clinical assessment of malingering and deception. 4th ed. New York (NY): Guilford Press; 2018.
16. Caruso GD. Public health and safety: the social determinants of health and criminal behavior. ResearchersLinks Books [Internet]; 2017.
17. Candilis PJ, Griffith EE. Thoughtful forensic practice combats structural racism. J Am Acad Psychiatry Law 2021;49(1):12–15.
18. Blanchard R, Klassen P, Dickey R, et al. Sensitivity and specificity of the phallometric test for pedophilia in nonadmitting sex offenders. Psychol Assess 2001;13:118.
19. Lalumière ML, Harris GT. Common questions regarding the use of phallometric testing with sexual offenders. Sex Abuse 1998;10:227–237.
20. McPhail IV, Hermann CA, Fernane S, et al. Validity in phallometric testing for sexual interests in children: a meta-analytic review. Assessment 2019;26:535–551.

21. Purcell MS, Chandler JA, Fedoroff JP. The use of phallometric evidence in Canadian criminal law. J Am Acad Psychiatry Law 2015;43:141–153.
22. Kaye NS, Glancy G. Ask the experts. AAPL Newsl 2020;45(3):6–7.
23. AAPL Task Force. Videotaping of forensic psychiatric evaluations. J Am Acad Psychiatry Law 1999;27:345.
24. Glancy G, Chatterjee S, Miller D. Ethics, empathy, and detached concern in forensic psychiatry. J Am Acad Psychiatry Law 2021;49(2):246–253.
25. Buchanan A, Norko MA. The psychiatric report: principles and practice of forensic writing. New York (NY): Cambridge University Press; 2011.
26. Reid WH. Developing a forensic practice: operations and ethics for experts. New York (NY): Routledge; 2013.
27. Aggarwal NK. Adapting the cultural formation for clinical assessments in forensic psychiatry. J Am Acad Psychiatry Law 2012;40:113–118.
28. Kirmayer LJ, Rousseau C, Lashley M. The place of culture in forensic psychiatry. J Am Acad Psychiatry Law 2007;35(1):98.
29. Arboleda-Floréz J. Forensic psychiatric evidence. Oxford (UK): Butterworth-Heinemann; 2000.
30. Buchanan A. Psychiatric evidence on the ultimate issue. J Am Acad Psychiatry Law 2006;34(1):14–21.