



Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Dangerous Offender/Long-Term Offender

Lisa Ramshaw, MD, DPhil, FRCPC; Treena Wilkie, BScH, MD, FRCPC;
Sumeeta Chatterjee, MD, FRCPC; Graham Glancy, MB, ChB, FRCPsych, FRCPC

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. They would also like to thank their expert reviewer, Shabehram Lohrasbe.

Reviewed and approved by the Canadian Academy of Psychiatry and the Law (CAPL)
Board of Directors on November 4, 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 November 4, 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 domain is expected to have the necessary qualifications according to the professional standards in the relevant jurisdiction and for the evaluation at hand.

See the Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: General Principles, which apply to all the guidelines and will not be repeated below. See also the Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Sexual Behaviour and Risk of Sexual Offending.

OVERVIEW OF DANGEROUS OFFENDER/LONG-TERM OFFENDER

The criminal justice system has a role to protect society from danger. Although sentencing options, including custodial sentences, might act as a general and specific deterrent, some individuals will continue to offend and pose an ongoing high risk of harm to the community. For such people, there may be an option upon sentencing of imposing a longer or indeterminate sentence or more extended supervision order than would otherwise be available (i.e., under a long-term offender [LTO] or dangerous offender [DO] designation). Under the Criminal Code of Canada, such designations require expert

input to assess the risk of future violence and assist the court in understanding an individual's potential to be effectively risk managed if they are released into the community.

Legislation and Case Law

The 1947 Habitual Offender Act was one of the first pieces of legislation intended to protect society from repeat offenders. (1,2) This legislation provided for indeterminate sentences for offenders who had at least three convictions and a persistent criminal lifestyle. (3) Parliament added the Criminal Sexual Psychopath Act a year later, in 1948, to target repeat sex offenders. (4) The criteria included evidence that the offender had shown a lack of power to “control his sexual impulses” and consequently was likely to inflict injury or evil on another person. These measures were premised on a concern about the penal system's ability to protect the public. As this legislation did not clearly define “sexual psychopath,” convictions were difficult, and Parliament modified the Act in 1960, bringing the new Dangerous Offender Act into existence. (2,5) This legislation added the criterion that the offender had “failed to control his sexual impulses,” causing injury to others. Only one predicate offence was necessary.

The Criminal Code of Canada legislation has withstood legal challenges. In *R v. Lyons*, (6) the argument that indeterminate detention violated the constitutional right to unfair deprivation of liberty, arbitrary detention, or cruel and unusual punishment as set out in the Charter of Rights and Freedoms in 1982 (7) was rejected.

In 1976, after the death penalty was abolished in Canada, new legislation was enacted that allowed for either the determinate or indeterminate detention of a dangerous sexual offender. (8,9) In 1994, the federal government struck up a task force to review this legislation. (10) As a result of this task force, which included psychiatric input from the Canadian Academy of Psychiatry and the Law (CAPL), Parliament enacted new legislation. In 1997, Parliament enacted the new provisions for a finding of long-term offender into section 753.1 of the Criminal Code of Canada. (11) This section allowed for the imposition of a sentence for a minimum term of two years imprisonment and an order that the offender is supervised by Correctional Service Canada (CSC) in the community for a period not exceeding 10 years. This is significantly longer than the maximum supervision under provincial or territorial probation orders.

In 2008, there were further changes to the legislation in the context of Bill C-2, the Tackling Violent Crime Act. The reforms only apply to offences after July 2, 2008. If the court is satisfied the offender meets the criteria specified in section 753 (see below), the individual will be designated a dangerous offender (DO), which is for life. The court then imposes a sentence to ensure public safety. Possible sentences include the following:

- Indeterminate imprisonment with no chance of parole for seven years, followed by a review every two years.

- Imprisonment for the offence plus a long-term supervision order (LTSO) in the community of up to 10 years after the regular sentence has expired. If there is a breach or another serious personal injury offence, the accused can be convicted and sentenced, or the Crown can apply for and seek an indeterminate detention.
- Imprisonment for the offence, and if the accused commits another serious personal injury offence, the Crown can apply for and seek an indeterminate detention.

The DO/LTO legislation applies to both sexual offenders and violent offenders. The Attorney General must consent to the DO/LTO application. The Crown attorney can apply for an LTO hearing immediately after conviction or if a DO application is not successful. For historical offences that occurred before July 2008, *R v. Johnson* (12) determined that if the offender meets the DO criteria, the court must consider an LTO designation before imposing an indeterminate sentence.

Long-Term Offender Criteria (Criminal Code of Canada, Section 753.1 [1])

The court declares an offender to be an LTO if the following criteria are satisfied:

- a) It would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted,
- b) There is a substantial risk the offender will re-offend, and
- c) There is reasonable possibility of eventual control of risk in the community. (For a DO designation, it is a “reasonable expectation.”)

Substantial risk is based on the offender having shown:

- a) A pattern of repetitive behaviour, of which the offence for which they have been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or
- b) By conduct in any sexual matter, including that involved in the commission of the offence for which the offender has been convicted, a likelihood of causing injury, pain, or other evil to other persons in the future through similar offences.

The concept of whether there is a reasonable possibility of eventual control of risk in the community relates to the issue of whether the offender is considered treatable and whether the treatment will result in protection of the public. The courts have noted that treatability requires more than an expression of hope (*R v. Goforth* [13]; *R v. McCallum* [14]) and that there be at least a reasonable possibility, which is more than hope or conjecture and not speculation (*R v. May* [15]). In *R v. Boutilier*, (16) the SCC directed that the burden is not on the offender to prove reasonable expectation of

adequate protection. The court has mentioned a number of factors in their judgements, including whether the offender has availed themselves of previous programs, whether they have complied with previous court-ordered programs, and whether they are willing to engage in programs or risk management interventions (*R v. Charbonneau*, [17]). In reviewing these factors, the courts have emphasized that the purpose of legislation is to protect the public.

Dangerous Offender Criteria (Criminal Code of Canada, Section 753.1)

The 753.1 criteria to be found a dangerous offender include the following (paraphrased):

- a) The offender must have been convicted of a serious personal injury offence, which is defined in the Code, and must constitute a threat to the life, safety, or physical or mental well-being of other persons. It must be an indictable offence that does not include high treason, treason, or first- or second-degree murder. Further, the offender must constitute a threat to the life, safety, or physical or mental well-being of other persons on the basis of evidence establishing:
 - i. A pattern of repetitive behaviour, of which the offence for which they have been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to or inflicting severe psychological harm on others,
 - ii. A pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, that shows a substantial degree of indifference regarding the reasonably foreseeable consequences of his or her behaviour to others, or
 - iii. Any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or
- b) The offence for which the offender has been convicted is a serious personal injury offence, as above, and that by his or her conduct in any sexual matter, including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain, or other evil to other persons through failure in the future to control his or her sexual impulses.

In the matter of “a pattern of repetitive behaviour,” the offence for which the offender has been convicted must be a part of that pattern. There must be at least one prior incident with elements of similarity, although there can be some differences (*R v. Johnson* [12]; *R v. Langevin* [18]). The previous acts do not have to be serious or within the

definition of serious personal injury offences (*R v. Newman* [19]). The definition of “likelihood” has been the subject of many rulings. It has been noted that this does not require anything approaching certainty (*R v. Payne* [20]). *Likelihood* is equivalent to *probability* (*R v. JTH* [21]).

Regarding a “pattern of persistent and aggressive behaviour,” there has been some guidance on the use of the word “persistent.” It has been held to mean the same as “repetitive” (*R v. Naess* [22]). However, because the legislation did not just use the word *repetitive*, Parliament might have intended that the word *persistent* suggests the behaviour repeated itself despite some impediment or intervention, for example, failed treatment. The phrase “a substantial degree of indifference . . . respecting the reasonably foreseeable consequences” (23) has been defined as “conscious but indifferent awareness” (*R v. George* [24]). Several cases have referenced this section, with variations in the wording, “likelihood of causing injury, pain or other evil through failure to control his sexual impulses,” (25) noting that this suggests a failure in the past to control these impulses, leading to the conclusion of future dangerousness (see *R v. Currie* [26]; *R v. Johnson* [12]; *R v. Sullivan* [27]). The failure to control sexual impulses can be identified as pertaining to any sexual matter, including those cited in previous criminal records or even offences that did not result in charges, were dismissed, or were withdrawn (see *R v. CLS* [28]; *R v. Vandelwal* [29]). The judge may also consider serious past events, even if the predicate offence is less severe (*R v. Currie* [26]). The words “injury, pain, or evil” have been interpreted as “moral badness or depravity,” which does not easily translate into the psychiatric or psychological lexicon and are a matter for the judge to define (see *R v. Dwyer* [30]). The definition of “brutal” as used in the Criminal Code is not considered a matter of psychiatric expertise. It may be referred to, however, if criminal offences have been described as *brutal* by triers of fact during prior court proceedings if there are similarities to the current offences.

In deciding an indeterminate or determinate sentence:

(4)(a) The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence. For a determinate sentence, the options include a sentence of two years or more and up to a 10-year LTSO or a fixed sentence for the offence.

Other Considerations

According to the Criminal Code,

On application by the prosecutor, if the court is of the opinion that there are reasonable grounds to believe that an offender who is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a),

might be found to be a DO under section 753 or an LTO under section 753.1, the court shall, by order in writing, before sentence is imposed, remand the offender, for a period not exceeding 60 days, to the custody of a person designated by the court who can perform an assessment or have an assessment performed by experts for use as evidence in an application under section 752.1 and 753.1. (31)

As with any sentencing in Canada, the proceedings are always heard in front of a judge without a jury.

The courts have ruled on the role of expert opinion on this topic, making it clear that the opinion is relevant, but the judge determines the weight and reliability given to the evidence (*R v. Currie* [26]; *R v. Lyons* [6]; *R v. RM* [32]).

The expert's focus is generally the overall risk of violent re-offending and not necessarily the seriousness of the predicate offence. The courts have also addressed the question of whether the criminal or violent propensities of aging offenders decline or cease and have not consistently accepted that aging reduces recidivism (see *R v. Grayer* [33]). Although research has shown that, statistically, offending behaviour often decreases significantly over time, (34) this does not necessarily apply to specific individuals.

The courts have been clear that the purpose of the legislation is to protect society (*R v. Jones* [35]). Previous judgements have noted that in coming to a decision, the judge must balance the state's interests with those of the offender. Therefore, real-world resource limitations or the uncertainty of resources must be considered. If these resources cannot be mobilized, then the policy consideration of protecting the public must prevail (*R v. GL* [36]; *R v. Trevor* [37]).

Designated Dangerous Offenders and Long-Term Offenders in Canada

In 2019, according to the CSC, 967 offenders had been designated DOs and 1,308 had been designated LTSOs since 1978. (38) Of the 826 DOs under the responsibility of CSC, 726 were in custody and 10 were female offenders. A total of 35.5% were Indigenous offenders (compared with 25.2% of the total offender population); 67.6% of the DOs had at least one current conviction for a sexual offence and 79.3% had an indeterminate sentence. Between 1997 and 2019, 1,308 LTSO designations were made. As of 2019, 86 offenders had died, 245 had completed their supervision period, and 18 were female.

Of the 967 designated DOs since 1978, 165 were in British Columbia, 65 in Alberta, 104 in Saskatchewan, 29 in Manitoba, 411 in Ontario, 126 in Quebec, 47 in the Eastern provinces, and 20 in the Yukon, the Northwest Territories, and Nunavut. (38)

One of the few available studies on the characteristics of DOs looked at a database of sexual offenders in Toronto and compared those found to be DOs with matched control

subjects. (39) The DO group had less education; had more school difficulties; were more often diagnosed with sadism, psychopathy, and substance use disorders; and evidenced prior offences and a longer offence history. (39) Within the federal system, it was found that DOs had more convictions and higher needs, including employment, community functioning, social interaction, and help with substance use issues. (40)

THE DANGEROUS OFFENDER/ LONG-TERM OFFENDER ASSESSMENT

General Approach to the 752.1 Assessment

There are provincial and territorial differences in the determination of how an expert is assigned to conduct a 752.1 court-ordered assessment. Some courts have a provincial roster; in others, the Crown attorney approaches individual experts to conduct the assessment. In some courts, multiple experts may be put forward with an ultimate agreement on one expert. Once a start time is agreed on, the 752.1 court order is for 60 days. Report preparation is for up to 30 days post-assessment, with an option under exceptional circumstances for an extension of up to another 30 days.

For defence-requested assessments (usually after a court-ordered report has been submitted), defence counsel can ask to review the court-ordered assessment report before a complete evaluation is requested. Conversely, the Crown expert is often asked to review the defence expert report once it is submitted.

Once a 752.1 order is made by the court, the possible outcomes include an indeterminate DO designation, a fixed sentence DO designation with or without a period of up to 10 years under an LTSO, or an LTO designation with up to 10 years under an LTSO.

There is a significant amount at stake with 752.1 assessments, reinforcing the need to be comprehensive. Interviews tend to be in-depth, and there are usually lengthy file reviews. The reports also tend to be much longer than most forensic psychiatry reports.

Although many forensic psychiatrists conduct these assessments independently, some employ a social worker to gather collateral information. They may also hire a psychologist to conduct psychological testing and, at times, aspects of the risk assessment. Table 1 provides an overview of a DO/LTO assessment, which is further described below.

Sources of Information

Sufficient file information is required for DO and LTO assessments; thus, it is helpful for the forensic psychiatrist to request that the material be provided, vetted and organized, with a detailed table of contents before the 60-day order. It is important to follow up with the referral source if relevant

Table 1. Dangerous Offender/Long-Term Offender Assessment

<ul style="list-style-type: none">• Sources of information• Review of the disclosure• Interviews:<ul style="list-style-type: none">– Setting– Preliminary caution specific to DO/LTO assessments– Length and depth of interview(s)– Background history (including violence; legal; sexual behaviour, as applicable; attitudes, etc.)– Predicate offence– Review of symptoms– Mental status examination• Collateral interviews• Violence or sexual violence risk assessment• Other testing, as applicable (e.g., phallometric testing, intellectual and personality testing, tests of malingering, urine drug screens, etc.)

material is missing. A significant amount of information is typically available for review; Table 2 provides a detailed list of possible sources of information. A list of the file information needed by the forensic psychiatrist can assist the retaining party. The forensic psychiatrist will often request additional information if it has not been provided, including, for example, a Gladue Report for Indigenous offenders.

The Interviews

Assessment Setting

DO/LTO assessments are usually conducted when the offender is in custody. It is not unusual to obtain a transfer to a facility closer to the forensic psychiatrist, including interprovincial transfers. The assessment may take place in corrections, on a secure forensic unit with per diem transfers escorted by officers, or by video assessment.

Preliminary Caution Specific to Dangerous Offender/Long-Term Offender Assessments

The preliminary caution is not substantially different from other forensic psychiatry violence risk assessments. The assessor explains the reason for the assessment, potential outcome of the hearing, and importance of the evaluatee's contribution. They are further cautioned about each aspect of the assessment and can consent to any specific part of the assessment (e.g., the interview, phallometric testing, other testing). Where the evaluatee chooses not to participate, they are informed that the report will be completed with file review only.

Length and Depth of Assessments

DO/LTO assessments often require multiple interviews for many hours or one longer interview, depending on the

circumstances and the evaluatee's communication style and history. There are times when the offender refuses to participate, and the assessment is based on file review and other collateral information as available. Although risk assessment and risk management recommendations can be made absent a direct assessment, the extent of the limitations of an evaluation without an interview will depend on the scope of file information and prior assessments. A mental status examination can be done and a diagnosis made when an evaluatee is seen but then refuses to proceed with the entire evaluation.

Interview Focus

The interviews are not significantly different from other violence and sexual violence risk assessments. There is, however, an emphasis on the evaluatee's motivation and view of the predicate offence; past conduct, including violence; risk and mitigating factors for behaviours; sexual history, as applicable; views of their behaviour; empathy for the victim(s); anger history; personality variables; stage of change; response to prior supervision and treatment; and willingness to engage in treatment and other risk-mitigating interventions. It is essential to fully understand the offender's background, necessitating, where relevant, a comprehensive psychosexual assessment, history of abuse and neglect, and culture.

Collateral Interviews

The collateral interviews needed will depend on how extensive the file information is and what sources are available. Although collateral interviews can assist, the forensic psychiatrist should always keep in mind (as with any assessment) that partners, friends, and family members may be protective, and former partners might have a

Table 2. Sources of Information

<ul style="list-style-type: none">• Interview(s) with the evaluatee• Collateral interviews• Standardized testing (for cognition, personality, and malingering) as deemed appropriate and as available• Sexual preference testing (as appropriate)• Other testing• File material provided by the court/defence<ul style="list-style-type: none">– A section 752.1 order (if court-ordered)– Predicate offence records– Victim impact statements– Criminal record– Prior occurrences, including court transcripts– CSC records (including psychiatric and risk assessment reports)– Detention centre records– Probation and parole records– Youth Criminal Justice Act records– School board records– Employment records– Child and family services records– Medical records (including psychiatric records)– Other reports (e.g., other DO/LTO reports, a Gladue Report for Indigenous offenders, psychological and risk assessment reports)– Any other records (relating to the behaviour and [or] character of the offender)• File material (that may be) obtained directly<ul style="list-style-type: none">– Usually medical, detention centre records, and others

negative or positive bias, depending on the circumstances. Other possible collateral sources include former employers, employees, and roommates. There might be circumstances when a collateral source, such as a victim, may be contacted either by the police or the assessor for further interviews (which can be conducted with a standardized questionnaire), recognizing the need to be sensitive to the victim's circumstances.

Risk Assessment

The following are examples of risk assessment tools that are often used in DO/LTO assessments. Other tools might also be used, depending on the circumstances of the offender.

- All offenders: Psychopathy Checklist-Revised (PCL-R) (41)
- Violent offenders: Violence Risk Appraisal Guide (VRAG) (42); VRAG-Revised (VRAG-R) (43); Historical Clinical Risk (HCR)-20 (44); Violence Risk Scale (VRS) (45)

- Sex offenders: Static-99R/2002 (46,47); Sex Offender Risk Appraisal Guide (SORAG) (43,48); VRAG-R (43); Risk for Sexual Violence Protocol (RSVP) (49); Sexual Violence Risk-20 (SVR-20) (49); Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR) (50); VRS-Sexual Offense (VRS-SO) (45); STABLE-2007 (51)
- Domestic offenders: Ontario Domestic Assault Risk Assessment (ODARA) (52); Spousal Assault Risk Assessment (SARA) (53,54); Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) (55)
- Criminal harassment: Stalking Assessment and Management (SAM) (56); Stalking Risk Profile (SRP) (57)
- Strength-based tools: Structured Assessment of Protective Factors (SAPROF) (58)

The limitations of the risk instruments are reviewed in the Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Violence Risk Assessment, including

their application to Indigenous and other non-white offenders and female offenders. The tools are used as appropriate, recognizing there have been concerns expressed in court regarding their application to individuals of various cultures (*Ewert v. Canada* [59,60]). In *Ewert*, no finding was made about the validity or reliability of the actuarial tools with Indigenous offenders, though it is important to be aware of the potential limitations of the tools when they are used. Studies addressing the accuracy of risk assessment tools in Indigenous and other non-white offenders are ongoing; however, the evidence indicates that the best available risk assessment methodology remains structured professional judgement or actuarial instruments.

Although research on violence risk assessment has largely been conducted with white males, and there are no female-specific violence risk assessment tools, many of the risk factors (e.g., history of violence and criminality, substance abuse, antisociality or psychopathy) apply to female offenders. Recognizing there are limitations to any risk assessment tool, both the PCL-R and the HCR-20 have been used with female offenders. (61) It is important to be aware of and highlight the limitations of the instruments.

Scores on the various risk assessment tools can help to describe not only the percentile rank compared to a similar population (e.g., adult male offenders in corrections) but also the individual risk factors in each case, what may be motivating the offending behaviour, and treatment targets to manage risk.

Although risk over the long term is a critical issue in DO and LTO assessments, other factors are considered, such as:

- imminence (including proximal risk factors related to offending),
- severity,
- frequency,
- nature of violence (including psychological harm),
- victim pool (gender, age, relationship to the offender),
- context,
- motivation for offending,
- acute risk factors, and
- protective factors (to be able to build on strengths).

Other Testing

Sexological testing (e.g., phallometry, visual reaction time) in sex offenders is often helpful both in assessing risk and understanding the diagnoses and motivation for the offending behaviour, particularly in those with offences against children. (62) Formal intellectual, neurocognitive, personality, and malingering testing can also provide information for the risk assessment. Medical tests (sex hormone levels, endocrine status, urine drug screens, imaging, etc.) may be helpful. The forensic psychiatrist might also request consultations with other specialists, such as neurologists or endocrinologists, in certain circumstances.

Specific Considerations

There are specific considerations when assessing female offenders, Indigenous and other non-white offenders, those with intellectual disabilities, and youth and older offenders. The assessor needs to be aware of the risk assessment limitations and needs of the different populations.

Dilemmas and Limitations

As with any forensic psychiatric assessment, it is important to consider potential limitations in arriving at one's conclusions. Some limitations of DO/LTO assessments are discussed below.

There is a paucity of information

In the context of a lack of information, risk assessment, opinions, and recommendations may be limited. The forensic psychiatrist should acknowledge any limitations and their impact on the risk assessment, opinions, and recommendations, if any.

The offender declines to participate in the assessment

The assessment may be impacted if the offender declines to participate. However, the assessor may be able to proceed with risk assessments and provide opinions and recommendations if there is sufficient file material. The absence of an interview with the offender and the reason for this is documented in the report.

No prior violence history

When there is no known history of violence (e.g., the application is based on a single "brutal" violent offence), a risk assessment can still be conducted. Many important factors can be elicited, and personality variables and diagnoses can be examined. As noted, the term *brutal* does not easily translate into psychiatric terminology and is, therefore, a matter for the judge to define. It is essential that the forensic assessor attempt to understand the circumstances of and motivation for the predicate offence behaviour. There may be situations when risk assessment tools reveal a relatively low risk of re-offending, though the severity of the offending and potential severity of re-offending may influence decisions about the need for ongoing monitoring and supervision. In addition to probability, the severity of offending, likely type of harm, frequency, and probable pathway to recidivism will often inform about the potential for safe community reintegration and types of monitoring and supervision. Recommendations might also include ongoing or serial risk assessments to evaluate salient dynamic variables (e.g., relationships, stressors, coping skills) and to address these variables as needed.

The offender is appealing the predicate offence conviction(s)

Sometimes the offender indicates their intention to appeal the conviction that led to their DO/LTO application. This usually means the evaluatee will provide limited information

about their behaviour, which can impact the assessor's ability to understand the offending, as well as other factors that inform the risk assessment.

THE DANGEROUS OFFENDER/ LONG-TERM OFFENDER REPORT

The basis of the DO/LTO report is not substantially different from other violence risk assessment reports, except for the amount of data reviewed. Although a detailed review is fundamental to any DO/LTO assessment, the information summarized is determined by its relevance to the psychiatric opinions. The length of the report will depend on the complexity of the matter and the applicable information available. Some forensic psychiatrists prefer to separate the review of file information from the self-report with an appendix. See Table 3 for a sample DO/LTO assessment report template.

The Opinions and Recommendations Section

It is important that the information be weighed appropriately and that all potential risk mitigation strategies are reviewed.

Diagnosis

DSM-5 diagnoses often include personality disorders (most commonly antisocial, narcissistic, borderline, or paranoid) or maladaptive traits, substance use disorders, and paraphilias (for sexual offenders). Other diagnoses include, but are not limited to, intellectual disabilities and fetal alcohol spectrum disorders, attention-deficit hyperactivity disorder (ADHD), mood disorders, and, less commonly, psychotic disorders and posttraumatic stress disorder (PTSD). As well, some medical illnesses can impact impulsivity (e.g., head injury, Huntington's chorea). A rationale is provided for each diagnosis made or considered. The prognosis for each can also assist in understanding risk over time. Additionally, treatment recommendations may contribute to risk management, depending on the likelihood of the evaluatee's participation. It can also be helpful to include a formulation that synthesizes relevant criminogenic factors.

Other considerations in this section may include diagnoses that have or have not been ruled out, previous diagnoses with an explanation about whether there is agreement or disagreement with such diagnoses, and a description of cognitive function. The impact of cultural and psychosocial factors can also be described in this section.

History and Overall Risk of Violence (in Various Settings or Contexts)

This is a summary of the various types of offending (physical violence, domestic violence, sexual violence, arson, psychological harm). Typologies for certain types of offenders may also be described (e.g., female offenders, arson offenders, and criminal harassment offenders [63–65]), as well as the pattern of offending, including gaps in

offending and times when offending has been higher (which will inform risk management).

The overall violence risk findings (level of risk) as derived from the risk assessment tools and how they apply to the offender are described in the assessment report (as are any discrepancies among various tools). Comparisons can be made to other offenders in the same risk category, general offenders, and the general population. This section can include the risk of what, to whom, when, and in what context the risk is heightened. Potential mitigating factors are also described (age, external control, treatment, meaningful engagement, etc.).

The forensic psychiatrist can detail the possibility of the risk of violence with and without treatment, over time, and in different settings, including:

- A custodial setting
- In the community under an LTSO
- In the community absent supervision

Prior risk assessments can be compared to the current findings and summarized in this section. If there are changes over time or different scores, it can be helpful to provide a rationale for this (for example, factors such as time, age, further offending, risk management interventions, or having more information).

Specific Parts of Section 753.1 of the Criminal Code of Canada (Optional)

Some forensic psychiatrists structure their conclusions according to specific parts of section 753.1 of the Criminal Code. For example, separate sections may be used to address:

- Patterns of repetitive behaviour
- Failure to restrain behaviour
- Patterns of persistent aggressive behaviour
- Substantial degree of indifference
- Substantial risk of re-offending
- Reasonable possibility of eventual control in the community

Taking a more specific approach requires significant attention to interpretations of the wording of the Criminal Code of Canada. The court determines the ultimate issues; consequently, some assessors may choose to limit their opinions to the areas concerning risk and the risk management needed to mitigate risk (in custody and in the community), as discussed above.

Motivation for Offending and Re-Offence Scenarios

This section describes motivations for the various types of offending. A formulation of the factors and contexts that may have played a role might also be included.

Table 3. Sample Template for Dangerous Offender/Long-Term Offender Reports

- Referral source (court-ordered or defence-requested)
- Reason for assessment
- Sources of information
- Preliminary caution
- Introduction/identifying data
- Predicate offence(s)
- Criminal history
- Other occurrences that came to the attention of the police
- Institutional history
- Community supervision, including violations
- Psychiatric (including a review of symptoms and prior treatment), medical, and substance use history
- Personal and developmental history
 - Early history
 - Cultural and religious background
 - Residential history
 - History of abuse
 - Conduct and behavioural history
 - Education history
 - Employment and financial history
 - Relationship history
 - Sexual behaviour history, as appropriate
 - Personality variables and self-view
- Violence history
- Anger history
- Future goals and willingness to engage in treatment
- Review of symptoms and mental status examination
- Risk assessment (tools, risk factors, protective factors)
- Sexual preference testing (as applicable)
- Psychometric testing (as applicable)
- Other testing (as applicable)
- Other reports (e.g., DO reports, psychological assessments, prior psychiatric reports) – these may be included in other relevant sections
- Summaries of relevant collateral information
- Opinions and recommendations:
 - Summary (essential features of background)
 - Diagnoses (including rationale and prognosis for each) and formulation
 - Overall risk of violence (in various settings or contexts)
 - Specific headings from section 753.1 (optional)
 - Motivation for offending (e.g., sexual, paraphilic, personality-driven)
 - criminogenic factors and how they align with motivation

Continued

Table 3. Continued

<ul style="list-style-type: none">– Treatability (i.e., based on prior response to intervention or treatment) and readiness for treatment and manageability<ul style="list-style-type: none">○ likelihood of control in the community– Other psycholegal issues, as applicable (related to the duty to warn, involuntary hospitalization, driver’s license, child and family services, etc.)– Risk management recommendations<ul style="list-style-type: none">○ In various settings or contexts:<ul style="list-style-type: none">* In corrections:<ul style="list-style-type: none">– interventions recommended before residing in the community* In the community:<ul style="list-style-type: none">– level of supervision and support needed– specific monitoring (the Internet, relationships, the environment, substance use, medication [e.g., sex drive–reducing medication])– psychosocial needs (cultural factors, relationship skills, housing, work, employment prospects)– mental health needs (substance related, sexual behaviour, mental disorder, stress and anger management, etc.)* Over time
<ul style="list-style-type: none">• Signature block

Motivating factors for violence include but are not limited to:

- Reactive violence (such as anger or rage)
- Perceived self-defence (fear and the perceived need for protection)
- Instrumental violence
- Need for dominance
- Non-paraphilic sadistic drives
- Paraphilic drives
- Psychotic beliefs
- Religious and cultural ideologies

Further, numerous other potential disinhibitors and factors can play a role in aggression and sexual violence, including:

- Alcohol and drugs
- Impulsivity
- High levels of psychopathy and narcissism
 - Grandiosity
 - Lack of empathy
 - An external attributional style
- Lack of boundaries (as seen in highly criminally versatile offenders)
- Cognitive distortions justifying criminality and (or) violence

A narrative describing the offender’s past offending and the potential scenarios and pathways for future offending could be described in this section. There may of course be more than one likely scenario, depending on the diversity of the offending pattern.

Prior Response to Intervention and Treatment, Stage of Change, and Treatability

This section consists of prior treatments, responses to treatment, motivation, attitudes toward treatment over time, and changes over time. The assessor can include substance abuse treatment, medication treatments, psychological and medical sexual behaviour interventions, anger management, cognitive-behavioural assessment, etc. The assessor might also describe the offender’s current view of their needs, treatments, and readiness for change might also be described, as they factor in the likelihood of treatment amenability and future response and what might be needed to assist with readiness for treatment (e.g., motivational interviewing).

In this section, the assessor could also include the offender’s response to sanctions and supervision, their ability to follow court orders, and any history of re-offending while under supervision. Factors that have impacted the offender’s response to past sanctions, as well as responsivity factors and recommendations to address these, can be detailed here.

Table 4. Examples of Risk Management Recommendations

<p>Before release to the community, the following programming/treatment is recommended:</p> <ul style="list-style-type: none">• Motivational interviewing is a strategy to assist individuals in their readiness to change and throughout treatment interventions; it could help with problems of sex offending, anger, and substance abuse. Incorporating a strengths-based approach in the risk management plan can also help.• In custody, high-intensity sexual behaviour treatment is recommended. This would include sexual behaviour education, relationship skills, and relapse prevention; evaluatees might do better with a Good Lives model to emphasize strengths while focusing on relapse prevention. Cultural factors and cognitive distortions should also be examined. Consideration should be made for sex drive—reducing medication while in the community (especially if there is increasingly poor communication, disengagement from therapy, and/or noncompliance with orders).• In custody, anger management and communication skills would likely also assist, particularly if the evaluatee begins to recognize they have a problem with these. Therapy would help to improve coping strategies in the context of increased stressors and encourage open and accurate communication. Skill-based rather than cognitive-based training may be more beneficial to offenders who have difficulty with abstract thinking.• In custody, alcohol abuse treatment is also recommended. The evaluatee could benefit from individual alcohol relapse prevention therapy. Random urine screens would assist in monitoring alcohol and other substances of abuse. <p>Upon release to the community, the following is recommended:</p> <ul style="list-style-type: none">• Supervision: Close supervision with monitoring and support through the parole system would assist in providing community stability and reducing risk to vulnerable people. Supervisors or counsellors should be informed of the evaluatee’s history. Their stability and progress cannot be based on self-report. Supervisors should encourage open communication about difficulties and stressors, emphasizing that the offender be forthcoming.• Programming: Continued sexual behaviour treatment, substance treatment and monitoring, anger management, and skills development are recommended.• Housing and employment: Stable housing and employment could assist in evaluatees’ stability.• Support: Psychosocial support and ongoing close contact with family would provide stability.

Although some evaluatees report that they are motivated to participate in treatment, their treatment history, level of insight into their difficulties, and personality traits will influence their response to interventions. Of significant concern are those who indicate they will not comply with conditions imposed and those who have previously not complied.

Recognizing that most crimes decrease with age, educating the court about the impact of aging on the risk of recidivism rates of sexual offending, physical violence, and domestic violence can assist the court in determining the sentence length and length of supervision.

Other Psycholegal Issues

Some forensic psychiatrists include any significant concerns about fitness to proceed with sentencing, duty to warn, and the need for involuntary hospitalization, driving restrictions, or child protection, etc.

Risk Management Recommendations

Risk management recommendations depend on the level of risk, the risk factors and protective factors, the offender’s motivation for change, and what is needed in various settings and contexts—in corrections, in the community, and over time. The offender’s response to previous risk

management strategies is also described. Risk management recommendations may take into account the risk-need-responsivity (RNR) model. (66) For Indigenous offenders, a Gladue Report (*R v. Gladue* [67]) is considered when examining the responsivity style and cultural needs of the individual.

Although it is not the forensic psychiatrist’s role to determine if there will be sufficient resources to manage this person’s risk (in various contexts), it is their role to describe what resources are needed to and to consider the reasonableness of the recommendations. For some offenders, specific treatment might suffice to manage risk; for others, more external controls may be needed. It is important to note the difference among those who have engaged in prior treatment (and responded or not), those who have been offered treatment and declined, and those who have never been offered treatment opportunities.

The forensic psychiatrist provides a summary about whether the offender’s risk is manageable in the community and under what conditions. For some offenders, risk management in custody and in the community need to be detailed separately. Each setting can be further described in terms of 1) supervision and support needs, 2) mental health and programming needs, and 3) psychosocial stability needs.

Table 5. Second Example of Risk Management Recommendations

<p><i>Participation in the Integrated Correctional Program Model (ICPM)</i></p> <p>The ICPM is a holistic approach meant to target multiple risk factors that contribute to criminal behaviour. Interventions of specific relevance include cognitive and behavioural skills, anger management, and programs to deal with antisocial attitudes, etc. To benefit from treatment, individual needs (e.g., readiness for change, cultural factors, attentional deficits, capacity to engage in group vs. individual settings) and protective factors would be in keeping with the responsivity principle. Such interventions should continue after release into the community.</p> <p><i>Monitoring by a mental health professional</i></p> <p>Ongoing mental state assessment and management (e.g., for psychotic, anxiety, or mood symptoms) and evaluation of psychological needs is suggested. Medication to address symptoms and (or) diagnoses and monitoring for treatment response, side effects, and compliance is recommended.</p> <p><i>Attendance in specific programs</i></p> <p>Specific programming might address coping deficits, distress tolerance, and emotional dysregulation. Dialectical-behavioural therapy (DBT) may be useful for symptoms of affective and behavioural dysregulation, anger, coping deficits, problems navigating interpersonal relationships, etc.</p> <p><i>Abstinence from substance use</i></p> <p>Intensive substance use programming in the institution and during potential transition into the community is recommended. Depending on the pattern of substance use, maintenance programming should continue long term. Abstinence from alcohol and drug use in perpetuity is recommended, as is random urine screening to monitor use in custody and during any potential community release.</p> <p><i>Participation in a sexual offender treatment program</i></p> <p>Completion of a sexual offender treatment program during incarceration with maintenance programming upon eventual transition to the community is recommended. Treatment with sex drive-reducing medication before the offender's eventual release into the community would decrease the risk of them re-offending. In the event that informed consent is provided, medical evaluations would need to be completed before initiating medication treatment.</p> <p><i>Case management and supervision</i></p> <p>Upon the offender's eventual release into the community (which might include initial placement in a residential correctional facility), intensive supervision may be recommended. Independent access to the community should occur gradually, allowing for rapid intervention in the case of noncompliance with conditions. There should be clear communication about the behavioural expectations of the offender during any period of supervision. Those involved in the case management and supervision in the community should be advised of a history of being duplicitous, providing limited or vague personal information, being impulsive, trafficking substances, having coping difficulties related to stressors, etc. Efforts should be made to verify information from collateral sources.</p> <p><i>Limited external communication</i></p> <p>Access to the Internet, chatlines, social media, and electronic devices should be limited, prohibited, or monitored—recognizing the potential challenges in supervising these areas.</p> <p><i>Prohibitions</i></p> <p>Prohibitions could include:</p> <ul style="list-style-type: none">• Unsupervised access to children under age 16 (for sex offenders against children)• Contact with specified people• Contact with criminally oriented or substance-abusing peers outside correctional facilities• Possession of any weapons, firearms, incendiary devices, etc.

Each of the recommendations can further be qualified in terms of expected response or concerns based on individual variables (for example, stage of change, level of insight, cognitive abilities, level of psychopathy, etc.). See Tables 4 and 5 for examples of risk management recommendations.

Author Affiliations

Department of Psychiatry, University of Toronto, Toronto, Ontario, Canada.

REFERENCES

1. Criminal Code, SC 1947, C-55.
2. McRuer JC. Report of the Royal Commission on the criminal law relating to criminal sexual psychopaths. Ottawa (ON): Queen's Printer; 1954.
3. Glancy G, Regehr C, Bradford J. Sexual predator laws in Canada. *J Am Acad Psychiatry Law* 2001;29:232–237.
4. Statutes of Canada. An act to amend the Criminal Code, c.39, 1948.
5. Statutes of Canada. An act to amend the Criminal Code, c.43, 1960.
6. *R v. Lyons* [1987] 2 SCR 309.
7. Canadian Charter of Rights and Freedoms: part 1 of the Constitution Act 1982, Being schedule B to the Canada Act (UK), c.11. 1982.
8. Statutes of Canada. An act to amend the Criminal Code, S.C. 1997, Bill C-55. 1997.
9. Criminal Code, RSC 1985, c. C-46.
10. Petrunik M. Models of dangerousness: a cross jurisdictional review of dangerousness legislation and practice. Toronto (ON): Solicitor General Canada, Ministry Secretariat; 1994.
11. Criminal Code, section 753.1 1(c).
12. *R v. Johnson* [2003] SCJ 45.
13. *R v. Goforth* [2007] SKCA 144.
14. *R v. McCallum* [2007] OJ 5415.
15. *R v. May* [2011] OJ 945.
16. *R v. Boutilier* [2017] SCC 64.
17. *R v. Charbonneau* [2007] OJ 3609.
18. *R v. Langevin* [1984] OJ 357.
19. *R v. Newman* [1994] NJ 54.
20. *R v. Payne* [2001] OJ 146.
21. *R v. JTH* [2002] NSJ 476.
22. *R v. Naess* [2005] OJ 936.
23. Criminal Code, section 753(1)(a).
24. *R v. George* [1960] CanLII 45 SCC 871.
25. Criminal Code, section 753(1)(b).
26. *R v. Currie* [1997] 2 SCR 260.
27. *R v. Sullivan* [2020] ONCA 333.
28. *R v. CLS* [1999] OJ 257.
29. *R v. Vandelwal* [2010] OJ 246.
30. *R v. Dwyer* [1977] AJ 743.
31. Criminal Code, section 752.1 and 753.1.
32. *R v. RM* [2007] OJ 4856.
33. *R v. Grayer* [2007] OJ 123.
34. Hanson RK. Recidivism and age: follow-up data from 4,673 sexual offenders. *J Interpers Violence* 2002;17(10):1046–1062.
35. *R v. Jones* [1994] 114 DLR 645
36. *R v. GL* [2007] OJ 2935
37. *R v. Trevor* [2010] BCJ 1293
38. Public Safety Canada. 2019 Corrections and Conditional Release statistical overview. Ottawa (ON): Queen's Printer of Canada; 2020.
39. Langevin R, Curnoe S. Are dangerous offenders different from other offenders? A clinical profile. *Int J Offender Ther Comp Criminol* 2014;58(7):780–801.
40. Trevethan SD, Crutcher N, Moore J-P. A profile of federal offenders designated as dangerous offenders or serving long-term supervision orders. Ottawa (ON): Correctional Service of Canada, Research Branch; 2002.
41. Hare R. The Hare Psychopathy Checklist—Revised. Toronto (ON): Multi-Health Systems; 1991.
42. Harris GT, Rice ME, Quinsey VL. Violent recidivism of mentally disordered offenders: the development of a statistical prediction instrument. *Crim Justice Behav* 1993;20(4):315–335.
43. Rice ME, Harris GT, Lang C. Validation of and revision to the VRAG and SORAG: the Violence Risk Appraisal Guide—Revised (VRAG-R). *Psychol Assess* 2013;25(3):951.
44. Hart S, Webster C, Douglas K, et al. HCR-20 V3: assessing risk of violence. User guide. Burnaby (BC): Law and Policy Institute, Simon Fraser University; 2013.
45. Olver M, Kelley S, Johnson L, et al. Violence Risk Scale-Sexual Offense version (VRS-SO): users' workbook [Internet]; 2020 [cited 2022 July 19]. Available from: <https://bit.ly/39ZMIH2>.
46. Hanson RK, Thornton D. Static 99: improving actuarial risk assessments for sex offenders [Internet]. Ottawa (ON): Solicitor General's Office; 1999 [cited 2022 July 19]. Available from: <https://bit.ly/3zhtu4d>.
47. Hanson R, Thornton D. Improving risk assessments for sex offenders: a comparison of three actuarial scales. *Law Hum Behav* 2000;24(1):119–136.
48. Quinsey V, Harris G, Rice M, et al. Violent offenders: managing and appraising risk. Washington (DC): American Psychological Association; 1998.
49. Hart SD, Boer DP. Structured professional judgment guidelines for sexual violence risk assessment: the Sexual Violence Risk-20 (SVR-20) versions 1 and 2 and Risk for Sexual Violence Protocol (RSVP). In: Otto RK, Douglas KS, editors. Handbook of violence risk assessment. New York (NY): Routledge; 2020.
50. Hanson R. The development of a brief actuarial risk scale for sexual offense recidivism: 1997–04. Ottawa (ON): Public Works and Government Services Canada. Modified 2022.
51. Brankley A, Helmus L, Hanson R. STABLE-2007 evaluator workbook: updated recidivism rates (includes combinations with Static-99R, Static-2002R, and Risk Matrix 2000). Revised 2017. Unpublished report. Ottawa (ON): Public Safety Canada; 2017.
52. Hilton NZ. Domestic violence risk assessment: tools for effective prediction and management. 2nd ed. Washington (DC): American Psychological Association; 2021.

53. Kropp PR, Hart SD. The Spousal Assault Risk Assessment (SARA) guide: reliability and validity in adult male offenders. *Law Hum Behav* 2000;24(1):101–118.
54. Kropp P, Hart S. The Spousal Assault Risk Assessment guide-version 3 (SARA-V3). Vancouver (BC): ProActive ReSolutions; 2015.
55. Kropp PR, Hart SD, Belfrage H. Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER): user manual. Vancouver (BC): ProActive ReSolutions; 2005.
56. Kropp PR, Hart S, Lyon D. Stalking Assessment and Management (SAM). Vancouver (BC): ProActive ReSolutions; 2008.
57. MacKenzie R, McEwan TE, Pathé M, et al. Stalking Risk Profile: guidelines for the assessment and management of stalkers. Australia: Monash University; 2009.
58. de Vries Robbé M, de Vogel V, Veldhuizen A. The Structured Assessment of Protective Factors for violence risk (SAPROF). *Handbook of violence risk assessment*. London (UK): Routledge; 2020. p 410–437.
59. R v. Ewert [2018] 2 SCR 165.
60. Hart S. Culture and violence risk assessment: the case of Ewert v. Canada. *Journal of Threat Assessment and Management* 2016;3(2):76.
61. Warren JI, Wellbeloved-Stone JM, Dietz PE, et al. Gender and violence risk assessment in prisons. *Psychol Serv* 2018;15(4):543.
62. Bradford J, Levin G, Booth B, et al. Forensic assessment of sex offenders. In: Gold L, Frierson R, editors. *The American Psychiatric Association Publishing textbook of forensic psychiatry*. 3rd ed. Washington (DC): American Psychiatric Association Publishing; 2018.
63. Mathews R, Matthews JK, Speltz K. Female sexual offenders: an exploratory study. Orwell (VT): Safer Society Press; 1989.
64. Gannon TA, Ciardha CÓ, Doley RM, et al. The Multi-Trajectory Theory of Adult Firesetting (M-TTAF). *Aggress Violent Behav* 2012;17(2):107–121.
65. Kamphuis JH, Emmelkamp P. Stalking—a contemporary challenge for forensic and clinical psychiatry. *Br J Psychiatry* 2000;176(3):206–209.
66. Bonta J, Andrews DA. Risk-need-responsivity model for offender assessment and rehabilitation. *Rehabilitation* 2007;6(1):1–22.
67. R v. Gladue [1999] 1 SCR 688.