Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Fitness to Work/Practise

Lisa Ramshaw, MD, DPhil, FRCPC[1]; Treena Wilkie, BScH, MD, FRCPC[1]; Sumeeta Chatterjee, MD, FRCPC[1]; 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 D. Booth, Jocelyne Brault, Mathieu Dufour, and Aileen Brunet) for their essential contributions. They 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 28, 2022.

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 28, 2022. 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 applies to all of the guidelines and will not be repeated below.

OVERVIEW OF FITNESS-TO-WORK ASSESSMENTS

Fitness-to-work assessments are like disability assessments, which are a type of workplace assessment (see the *Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Disability*). The main difference is that fitness to work focuses on whether a disability, symptoms, or behaviour affect the essential duties of a particular vocation or job and whether an individual can fulfil the obligations of their profession or work as a result. The assessment involves understanding the written and unwritten job requirements, as well as emotional stability, stress tolerance, interpersonal skills, and productivity, and context-specific aspects, such as fitness to carry a firearm. Much of the literature focuses

on the use of these assessments for physicians and police officers. (1–4) The language used to describe the assessment can be specific to a professional workplace; for example, assessments of physicians are usually referred to as *Fitness to Practise*, and assessments of police officers are usually referred to as *Fitness for Duty*. However, the same principles apply to virtually any profession or workplace. This includes lawyers, teachers, and other regulated professions covered under provincial and territorial Health Professions Acts (HPAs), as well as other nonregulated workers.

When dealing with evaluees in each of these professions, the assessor must link the disability, issue, symptoms, or behaviour to the requirements outlined in the evaluee's job description. The American Psychiatric Association defines *impairment* in physicians as "the inability to practice medicine with reasonable skill and safety as a result of illness or injury." (5) This definition applies equally to the essential duties of most professions and includes any psychiatric disorder, substance use disorder, physical disease, or disability under the rubric of illness.

Issues that might precipitate a referral to a psychiatrist include but are not limited to the following:

- A change in performance suggestive of mental health issue
- Unethical or illegal behaviour
- Disruption in the workplace
- Boundary violations or sexual harassment
- Bullying, harassment, and other threatening behaviours
- Aggression (including threats of violence or violence)
- Self-injury or suicide attempts
- Emotional dysregulation (anger, tearfulness, anxiety)
- Possible symptoms of a major mental illness
- Potential cognitive impairment
- Possession of drugs
- Substance intoxication
- Arrest or contact with the police outside of the workplace
- Admissions to psychiatric hospitals or contact with emergency rooms
- Unreasonable accommodation requests
- Misconduct or malpractice concerns

FITNESS-TO-WORK ASSESSMENTS

Referral Sources

The retaining party may be a professional licensing body or equivalent, a union, an employer (a private business, the city, or the province), or legal counsel. Counsel for individual members or representatives of insurance companies for members, such as the Canadian Medical Protective Association (CMPA), may retain an expert to evaluate a member.

Medical licensing boards, commonly referred to as colleges, are covered under the HPA of each province or territory. They are mandated to protect the public and are, therefore, concerned about the impact of a member's disability on the safe practise of each profession. Colleges have both disciplinary streams and health (capacity) streams to which a member with an illness or injury may be diverted. Similarly, hospital boards, physician practice groups, and analogous organizations may be concerned about the health and safety issues noted above. In some contexts, unions refer a member in order to prepare a case for negotiation or litigation.

Referral Question(s)

The referral question is clarified with the referral source prior to starting the assessment. Other than capacity to work, assessments of risk to self or others can be requested (see the *Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Violence Risk Assessment* for workplace risk assessments). As with disability assessments, the referring party can request information about any limitations, restrictions, or changes to conditions that could facilitate a return to work.

The Assessment

Fitness-to-work assessments include such parameters as clinical interview(s); a mental state examination; a review of collateral information, including details about the concerns leading to the assessment; a job description (or familiarity with the duties); job performance data; rating scales or psychological testing, as indicated; and medical investigations, as indicated.

The Assessment Setting

As with other civil assessments, fitness-to-work evaluations are often performed in private offices or outpatient clinics. The assessor considers the same safety precautions as in any other forensic psychiatric evaluation.

Collateral Sources of Information (Including Collateral Interviews)

Collateral information is critical to a comprehensive fitness to work assessment. Before the interview, it is helpful if the assessor has access to a summary of the statements, the full reports, or an agreed statement of facts regarding the complaints that triggered the referral, and any other collateral information. This usually includes the written disclosure from the workplace about any concerns, as well as the evaluee's job description; psychiatric, mental health, and general practitioner records; and any legal history. Collateral interviews involve family members, friends, acquaintances, co-workers and supervisors.

The Interview Process

Informed consent is required at the start of any assessment (see the *Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: General Principles*). The forensic assessor ensures that the evaluee understands the reason for the assessment at the outset of the interview. Informed consent also includes an explanation of the limited confidentiality of the assessment and report and the parameters of its release, the role of the assessor, and the voluntary nature of the assessment. Another significant preliminary issue is whether there are any conflicts of interest. In particular, the assessor ensures they have no personal or professional relationship with the evaluee. In certain circumstances, the evaluation may be urgent, for instance, if the evaluee recently had a psychotic episode. Gold and Shuman suggest that the assessor defer the assessment until the evaluee has stabilized; however, it may be possible to do a preliminary evaluation, which could include a recommended referral to hospital or a treating professional, with the final report and evaluation being conducted sometime after stabilization. (6)

In the interview, the assessor will review the reported concerns with the evaluee. They will also evaluate their occupational status and function; symptoms; background history (including personal and family histories); education, employment, and relationship histories; full psychiatric and medical history; and mental state examination. Other areas include a review of any interventions and changes over time. For risk assessments, see the *Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: Violence Risk Assessment*.

At times, the data collected can be personal and sensitive, and the assessor should take care when releasing these data. For instance, if the evaluee is a physician and the report is for a hospital board or practice group, many of the members might have a personal relationship with the physician; the assessor should be considerate in limiting sensitive data. Anfang and colleagues suggest including a clause that generally states that personal, family, and social histories were collected but omitted from the report and that these details could be provided in greater detail if requested. (4) Similarly, a sexual history would likely only be relevant if there are questions of sexual harassment or boundary violations.

Evaluees may be compelled to attend the assessment, setting the stage for animus, hostility, and limited cooperation. The assessor must be purposeful in demonstrating neutrality and conveying respect for the evaluee. One interview strategy is for the assessor to start with less emotionally laden material, such as the evaluee's personal history, education, and previous employment, followed by a psychiatric history, before moving to discuss the behaviour of concern. The assessment covers the evaluee's insights, explanations, and suggestions of how mental health issues might have contributed to their behaviour. Neutrality can be conveyed by phrases such as, "What do they allege you did?" "Do you agree?" or "How do you explain?" An agreed statement of facts can support this process, though the evaluee may still want to provide additional information. Areas of inconsistency can be reviewed towards the end of the interview. This can be stressful for the evaluee, as confrontation and clarification, even when done with professional equanimity, can impact the interview process.

Self-Report Reliability

Malingering and dissimulation are considered in every forensic psychiatric evaluation. Dissimulation, defined as "the concealment of genuine symptoms of mental illness in an effort to portray psychological health," can occur in assessments where the evaluee's goal is to return to work. (7) The assessor needs to be alert to these issues, as well as to conscious or unconscious minimization, positive impression management, and control of the flow of information. (3) Unlike in disability assessments, there may be a greater propensity to consciously or unconsciously exaggerate wellness, motivated by a wish to appear capable in order to return to work.

The stakes are high in fitness-to-work assessments. A person's career, livelihood, and very identity could be compromised. Individuals commonly define themselves by their profession, and a negative evaluation, for example, could lead to the loss of their licence to practise. In addition, the evaluee could lose social support since much of a person's support comes from the workplace. This has been highlighted in the literature on law enforcement officers in such situations. (3,8)

Adjunctive Testing

If the issue centres on cognitive deficits or if there are concerns about malingering, psychometric testing can be considered. In addition, inquiry and possible testing for physical illnesses, such as endocrinological testing and neuroimaging, can enhance the examiner's understanding of potential contributors to impulsive behaviour or cognitive deficits. (1) If the question revolves around the safety of others in the workplace, such as other members of the team, patients or consumers, then the assessor may find the structured professional judgement risk instruments to be helpful. Some instruments have credible validity and reliability in assessing the risk of violence, such as the Historical Clinical Risk Management-20V3 (HCR-20, version 3) although they were not specifically developed for workplace use. (9) Other instruments, such as the Workplace Assessment of Violence Risk (WAVR21v3) and Employee Risk Assessment (ERA-20), were specifically developed for use in the workplace. (10,11)

Recording/Video

For more information on recording and video practices, refer to the *Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: General Principles*.

Table 1. Sample Fitness-to-Work Report Template

- Reason for assessment (specific questions to be answered) and referral source
- Summary of expertise and acknowledgement of duty to provide opinion evidence that is fair, objective, nonpartisan, and related only to matters within the assessor's area of expertise (wording will depend on the jurisdiction)
- Sources of information
  - Date and place of interviews
  - Adjunctive testing
  - Collateral interviews
  - Collateral information
- Informed consent and confidentiality limits
- Identifying information
- Concerns identified
- Onset and course of current symptoms
- Review of systems and function
- Recent occupational status in relation to symptomatology
- Typical day
- Medical and psychiatric history, including previous psychiatric and mental health treatments
- Personal history
- Occupational history
- Family history
- Mental state examination
- Collateral information
- Adjunctive tests or investigations, including rating scales
- Opinions and recommendations
  - Diagnosis and (or) symptoms and formulation
  - Fitness-to-work / practise evaluation
  - Risk and threat evaluation and risk mitigation (as applicable)
  - Confidence in evaluee's credibility and any concerns about malingering
  - Special considerations (e.g., gender, culture)
  - Recommendations
- Signature block

THE FITNESS-TO-WORK REPORT

The written fitness-to-work report follows the standard guidelines described in the *Canadian Guidelines for Forensic Psychiatry Assessment and Report Writing: General Principles*, with an emphasis on the behaviour(s) of concern and how it could impact the evaluee's work duties (see Table 1 for a sample template of a fitness-to-work report). This includes setting out the report parameters, basis of the opinion, evaluee's account, and mental state examination; psychiatric opinions, including a psychiatric diagnosis using the DSM-5; and a summary and formulation of the case. In completing the report, it is helpful if the evaluator includes a list of the specific questions asked and answers provided. The reader must be able to follow the logical clinical connections among the illness, symptoms, and behaviours and how they affect the evaluee's specific job duties. (4) The summary and formulation help to explain the nexus between the psychiatric issues and the functional sequelae. Common mental health concerns can include depression, psychosis, anxiety, maladaptive personality traits, cognitive limitations, and substance misuse.

One specific area to outline includes recommendations for a return to work. These should be as specific as possible. Some evaluees have their own health resources, such as a physician health plan, that will take responsibility for the rehabilitation plan. The following are some recommendations that can be detailed in the report:

- Treatment modality
- Treatment duration and frequency
- Consideration of supervision, a mentor, or a workplace monitor
- Scope of practice / work
- Reporting requirements
- Drug or alcohol testing
- Reasonable accommodations that would assist the person in returning to work

Author Affiliations

[1]Department of Psychiatry, University of Toronto, Toronto, Ontario, Canada.

REFERENCES

1. Langevin R, Glancy GD, Curnoe S, et al. Physicians who commit sexual offences: are they different from other sex offenders? Can J Psychiatry 1999;44(8):775–780.
2. Pinals DA, Price M. Fitness-for-duty of law enforcement officers. In: Gold LH, Vanderpool DL, editors. Clinical guide to mental disability evaluations. New York (NY): Springer; 2013. p 369–392.
3. Pinals DA. Stalking: psychiatric perspectives and practical approaches. Oxford (GB): Oxford University Press; 2007.
4. Anfang SA, Gold LH, Meyer DJ. AAPL practice resource for the forensic evaluation of psychiatric disability. J Am Acad Psychiatry Law 2018;46(1):103.
5. Anfang SA, Faulkner LR, Fromson JA, et al. The American Psychiatric Association's resource document on guidelines for psychiatric fitness-for-duty evaluations of physicians. J Am Acad Psychiatry Law 2005;33(1):85–88.
6. Gold LH, Shuman DW. Evaluating mental health disability in the workplace. New York (NY): Springer; 2009.
7. 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.
8. Anfang SA, Wall B. Long-term disability evaluations for private insurers. In: Gold LH, Vanderpool DL, editors. Clinical guide to mental disability evaluations. New York (NY): Springer; 2013. p 241–257.
9. Douglas K, Hart S, Webster C, et al. HCR-20V3: assessing risk for violence: user guide. Mental Health, Law, and Policy Institute, Simon Fraser University; 2013.
10. White S, Meloy J. WAVR-21: a structured professional guide for the workplace assessment of violence risk. San Diego (CA): Specialized Training Services; 2016.
11. Bloom H, Webster C, Eisen R. ERA-20, employee risk assessment: a guide for evaluating potential workplace violence perpetrators. Toronto (ON): Workplace.Calm Inc; 2002.