



# Remote Forensic Psychological Assessment in Civil Cases: Considerations for Experts Assessing Harms from Early Life Abuse

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## Abstract

The COVID-19 pandemic has brought to the fore the question of whether psycho-legal assessments can be executed remotely in a manner that adheres to the rigorous standards applied during in-person assessments. General guidelines have evolved, but to date, there are no explicit directives about whether and how to proceed. This paper reviews professional, ethical, and legal challenges that experts should consider before conducting such an evaluation remotely. Although the discussion is more widely applicable, remote forensic psychological assessment of adults alleging childhood abuse is used as an example throughout, due to the complexity of these cases, the ethical dilemmas they can present, and the need to carefully assess non-verbal trauma-related symptoms. The use of videoconferencing technology is considered in terms of potential benefits of this medium, as well as challenges this method could pose to aspects of interviewing and psychometric testing. The global pandemic is also considered with respect to its effects on functioning and mental health and the confounding impact such a crisis has on assessing the relationship between childhood abuse and current psychological functioning. Finally, for those evaluators who want to engage in remote assessment, practice considerations are discussed.

**Keywords** Admissibility · Civil litigation · COVID-19 · Expert assessment · Childhood abuse · Psychological injury · PTSD · Remote psychological assessment · Videoconferencing

The COVID-19 pandemic and ensuing public health measures have precipitated urgent consideration of alternatives to psychological services delivered in-person. Remote psychological assessment is not a new practice and debate about its suitability is not likely to be transitory or end with the pandemic. The current paper examines issues related to remote psychological assessment in civil litigation. The assessment of adult plaintiffs seeking reparations for harms from allegations of abuse as a minor is used as an example, throughout. Although some of the issues raised are specific to the assessment of sequelae of early life abuse, the majority of issues are generally relevant to remote psychological assessments conducted in the context of civil litigation.

For the purposes of this paper, remote psychological assessment refers to the use of synchronous audio–video connection on devices such as computers or tablets to

allow psychological evaluation from a distance in lieu of traditional in-person methods. There are a number of other terms that are related to this methodology in the literature, for example, “psychological tele-assessment,” “telemental health,” “telepsychology,” “videoconferencing,” and “videoteleconferencing” (Batastini et al., 2013; Luxton et al., 2014, 2019; McCord et al., 2020).

A body of literature suggests that remote psychological assessment could prove advantageous when people cannot attend an in-person assessment due to economic, geographical, and other logistical reasons (Kois et al., 2020; OPA/CAPDA, 2020; Wright, 2020). Research suggests that remote assessment could be suitable across referral types and demographics, for example, neuropsychological evaluations of the elderly (Castanho et al., 2016; Harrell et al., 2014), and psychoeducational testing with children (Wright, 2018, 2020). Other studies suggest that remote psychological assessments have the potential to demonstrate parity with in-person assessments trans-diagnostically, and there is some support for the remote assessment of autism spectrum disorders, (Dahiya et al., 2020) and PTSD among veterans (Litwack et al., 2014).

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Studies on remote technology used in the criminal justice system have also yielded promising results (Batastini et al., 2020; Luxton & Lexcen, 2018; Luxton et al., 2019). In their 2016 meta-analysis, Batastini et al. found that telopsychology outcomes, including the assessment of mental health symptoms, therapeutic processes, program engagement, program performance, and service satisfaction were largely comparable to in-person services for criminal justice and substance-abusing defendants. Referring specifically to forensic mental health assessment (i.e., assessments completed by a range of mental health professionals) in the criminal forensic realm, Manguno-Mire et al. (2007) and Lexcen et al. (2006) found that there was good inter-rater reliability between commonly used measures to assess competency to stand trial when comparing in-person to remote assessment.

Findings are not equivocal, though, and Farmer et al. (2020) cite methodological issues with research on remote psychological assessment and they warn “psychologists to be wary of the danger of good intentions during uncertain times.” (p.4). Using remote assessment methods in cases that come before the courts requires careful consideration. The pandemic not only brings to the fore how advancing technologies can impact psychological services, but it also raises broader questions about how rapid methodological changes will be navigated in the legal system, wherein significant decisions are made based on expert reports (Adjorlolo & Chan, 2015). Psycho-legal assessment findings can have significant impact; for example, on sentencing (in criminal matters), on families and children (in child custody and parenting capacity evaluations) and financially (in personal injury cases and other civil matters). Forensic psychological assessments, which provide relevant clinical and scientific data to a legal decision-maker (Heilbrun et al., 2003) differ from clinical service delivery not only in purpose, but also in terms of the scrutiny to which such assessments are subjected. Evaluators are expected to conduct professional work at the highest standards and can be questioned about their training, qualifications, methods, and the adequacy, reliability, and validity of the information upon which their opinions are based (Foote et al., 2020). The case law is currently limited with respect to the admissibility of remote forensic psychological assessment (RFPA) in the courts. To assess the evidentiary reliability of expert testimony, courts must evaluate the scientific methodology. This is assessed by establishing whether the theory or technique employed by the expert is generally accepted in the scientific community; whether it has been subjected to peer review and publication; whether it can be and has been tested; and whether the known or potential rate of error is acceptable (*Daubert v. Merrell Dow Pharmaceuticals Inc. & 509 U.S.579.*, 1993). The research on using remote assessment in the forensic realm is in its nascence (Kois et al., 2020). With respect to the growing use of remote forensic mental health assessment

during the pandemic, Drogin (2020) cautions, “Currently, attorneys and the mental health witnesses they retain are doing whatever they can to maintain services during a time of unprecedented confusion. That does not mean, however, that counsel on either side of the aisle will refrain in the future from alleging procedural and other substantive inadequacies...” (p. 2). Concerns about admissibility in terms of a *Daubert* challenge could be particularly relevant given recent scrutiny around experts’ methods and psychometric testing and whether there is the admission of “junk science” in the court (Neal et al., 2019). Although there is a constant evolution in terms of technology and research, in this challenging moment in history when public health measures are curtailing the capacity to meet evaluatees in person, experts must carefully consider whether they should proceed remotely with high-stakes forensic psychological assessments.

Batastini et al. (2020) sought to explore how remote forensic mental health assessments were perceived by forensic psychologists, psychiatrists, and legal professionals. Though quite small in scale, this study could be useful in considering *Daubert* criteria in terms of this methodology’s acceptance within a relevant scientific community (*Daubert v. Merrell Dow Pharmaceuticals Inc. & 509 U.S.579.*, 1993). These researchers found that evaluators’ perceptions regarding the use of remote forensic assessments across a number of referrals were mixed. Among the respondents, 1/3 were already undertaking remote forensic assessments. Mental health professionals completing assessments related to adjudicative competency and violence risk reported the greatest use of remote methods (at a rate of 25.9% and 27%, respectively). These methods were reported to be used the least often in personal injury evaluations (3.7%). Evaluators expressed a number of concerns about completing forensic assessments remotely, some of which included the lack of capacity to properly administer psychological tests, a lack of control over the test environment, the potential for technical difficulties, loss of important behavioral data, difficulty establishing rapport, breaches in confidentiality, and lack of adequate guidelines to inform this practice. Interestingly, the least cited concern was future admissibility in court. Participants saw the potential benefits of this methodology to be related to reducing costs for all parties, reducing wait times, and the capacity to increase productivity. Batastini et al. (2020) also sought to examine attorney and judges’ opinions about the use of remote assessment methods; however, their sample size limited them from drawing firm conclusions. They cited a trend in their research indicating that of the respondents surveyed, judges were more amenable to the use of remote assessments than attorneys. Ultimately, though, a number of legal personnel who were surveyed expressed rather negative views about the use of remote technology in the absence of having much first-hand experience.

In terms of the current milieu, then, there seems to be conflicting opinions about how to proceed. For example, Young (2020) warns that there is little research on the comparability of assessment procedures in the two modes (i.e., remote versus in-person) but highlights that psychologists are being placed under external pressure to “lower the minimum criteria for undertaking valid assessments in mandated arenas in high-stakes cases requiring immediate evaluations.” (p. 5). By contrast, in speaking specifically about child custody evaluations, Dale and Smith (2020) ultimately conclude “...courts, attorneys, evaluators, and families—should accept RCCEs [Remote Child Custody Evaluations] as a valid alternative that, when properly done, can help resolve custody disputes.” (p. 12).

### Civil Litigation and Assessing Sequelae of Childhood Abuse Remotely

Forensic psychological assessments for the purpose of civil litigation can present unique challenges as compared to other psycho-legal referrals. This is due to stringent and rigid rules of civil procedure, the adversarial nature of proceedings, and the money involved (Wygant & Lareau, 2015). Assessing psychological injuries can be contentious in court as there is the potential for exaggeration, feigning, or malingering for external gain often related to financial compensation for the alleged damages (Young, 2015, 2019). Forensic assessment in civil law covers a wide swath of referrals, including personal injury and tort claims, disability and workers’ compensation, employment discrimination and harassment, and cases under the Americans with Disabilities Act (Wygant & Lareau, 2015). Assessment related to psychological injury as a result of childhood abuse is used as an example in this paper. These evaluations are highly complex and while some of the issues covered are specific to the assessment of sequelae of childhood abuse, the majority of issues are also relevant to other personal injury cases.

Psychologists are regularly retained as experts in civil litigation cases to assess the impacts of early life (childhood or adolescent) abuse, e.g., sexual assault, physical assault, and/or neglect on adult plaintiffs. They are asked to provide opinions to assist the trier of fact to determine (a) the nature and severity of the plaintiff’s psychological injuries; (b) related impairment; (c) the evolution of the plaintiff’s functioning over time including pre-morbid functioning; (d) the relationship between the plaintiff’s current mental health condition and the defendant’s alleged wrong-doing; (e) the likely prognosis, and recommendations for treatment (Piechowski-Drago, 2020; Wygant & Lareau, 2015). These assessments require the careful consideration of a multitude of factors across a plaintiff’s entire developmental trajectory (Barnes & Josefowitz, 2014a, b; Wolfe et al., 2010).

A plaintiff’s functioning predating the alleged abuse must be explored, including their strengths, vulnerabilities and preexisting mental health and trauma history. The plaintiff’s peritraumatic and posttraumatic reactions during and immediately following the alleged abuse must be examined and a chronology of their academic, vocational, relational, physical, and psychological functioning should be explored in order to evaluate the impact of the alleged abuse on these domains (Barnes & Josefowitz, 2014b). Ultimately, evaluators are tasked with providing opinions about the nature and severity of the psychological injuries and functional consequences of the historical abuse, and also must render an opinion about causation, i.e., the degree to which the event that is the basis of legal action contributed to the plaintiff’s symptoms and impairments (Wolfe et al., 2010). These evaluations are made more challenging when abuse occurred decades earlier, due to the impact of subsequent trauma and life events, and reduced availability of collateral information. Although not unique to the remote forensic psychological assessment of childhood abuse (RFPA-CA), now, the widespread and profound impact of the COVID-19 pandemic on mental health and general functioning (Mental Health America, 2020; Statistics Canada, 2020) necessitates additional consideration when rendering opinions about symptom etiology, functional impairment, and causality. Most salient to this paper, changes in methodology, and specifically the use of remote assessment, must be considered in terms of how this modality affects the assessor’s ability to execute these comprehensive and complex evaluations in a manner that is both ethical and adequate.

Before examining some of the potential differences between in-person and remote forensic psychological assessment of childhood abuse, it is first worth noting the similarities between these two modalities. The Specialty Guidelines for Forensic Psychology (SGFP; APA, 2013a) state that opinions must be based on sufficient and appropriate information and techniques. Forensic assessments, then, rely on collecting data through multiple methods, thereby allowing the evaluator to compare information across sources (Bornstein, 2017). Using a multi-method approach enhances the evaluator’s ability to triangulate, or cross-reference data (Dale & Smith, 2020). As Neal and Brodsky (2016) assert, this approach can combat claims of bias.

Both forms of assessments usually involve extensive file reviews that are unaffected by remote technology. File information often includes academic, medical, and financial records, psychological reports, treatment records, and work performance reviews (Foote et al., 2020). These records help corroborate information obtained from the interview about a plaintiff’s pre-morbid functioning, preexisting conditions, diagnoses, the course of symptoms over time, and treatment efforts. Other forms of data include collateral interviews with people who can speak to the plaintiff’s functioning

over time, and a review of relevant research literature. These aspects of the assessment process, both in terms of the content of the data reviewed and the methods used to gather data, are likely to remain unaffected by remote assessment methods.

What is distinctly different, though, is the evaluator's method of interfacing with the plaintiff *during* the interview and assessment. Of particular interest is the impact of remote assessment on interview dynamics, on the ability to conduct accurate clinical assessments with limited observational data, and on the ability to conduct valid and reliable psychological testing, remotely.

## Consideration of the Impact of Remote Assessment Methods

### Interpersonal Aspects of RFPA-CA: Data Quality and Ethical Considerations

Plaintiffs being assessed for harms related to childhood abuse can be particularly vulnerable (Wolfe et al., 2010). These individuals commonly experience difficulties with trusting, especially people in authority. Further, plaintiffs can struggle with emotional regulation and be at risk for maladaptive coping including increased rates of suicidal ideation and risk for self-harm (Barnes & Josefowitz, 2014b; Wolfe et al., 2010). The forensic evaluator is often faced with competing ethical priorities: for example, (a) being adequately empathic in order to ensure a necessary degree of rapport and trust while maintaining role clarity and boundaries appropriate for the forensic context, and (b) being able to observe the plaintiff's full range of symptoms, which at times might include traumatic reactions and distress, while attempting to do no harm and ensure the plaintiff's well-being, capacity to engage in the evaluation, and ultimately their safety. Navigating what at times can appear to be conflicting priorities can be challenging during in-person assessments, and some of these dynamics must be considered anew when conducting these assessments remotely.

The quality of the data in forensic assessment interviews is dependent upon the plaintiff's willingness to share highly personal information within a relatively short time frame compared to therapy. A plaintiff's comfort and capacity to share such information is at least in part dependent upon the relationship with the interviewer.

Ethically, a tension exists between being appropriately empathic and staying within a forensic (versus clinical) role. The literature on the role of various forms of empathy towards evaluatees by forensic mental health professionals has wavered between explicit detachment as ethically preferable (Shuman, 1993) and moderate and nuanced empathy as the favored path (Brodsky & Wilson, 2013; S. Brodsky, personal

communication, December 16, 2020). Although it is still considered important not to mislead the plaintiff into thinking that the forensic evaluator is working in a therapeutic role (Foote et al., 2020; Greenburg & Shuman, 1996), the capacity to express accurate empathy is held to be essential to develop adequate rapport required to conduct a reliable assessment (Dale & Smith, 2020). Rapport is deemed to be particularly critical and facilitative when evaluating plaintiffs alleging childhood abuse due to aforementioned issues with distrust, as well as the interview demands (Brand et al., 2017b; Mulay et al., 2018).

Questions remain about the impact of using remote methods on the evaluator's ability to sufficiently demonstrate accurate empathy. Zaki et al. (2009), examined the neural and sensorimotor basis for empathy and found that empathic accuracy increases when the person perceiving the information has reliable access to both auditory and visual information. Wiederhold (2020) suggests that remote methods are not entirely synchronous and even small lags in time impact people's interactions. As such, it is unclear to what extent remote interactions will affect the evaluator's empathic acuity.

Reese et al. (2016) found that there was no difference between empathic accuracy and therapeutic alliance when comparing telehealth to in-person treatment. In referring more broadly to rapport, research generally suggests that remote treatment formats do not differ significantly with respect to the clinician and plaintiff's capacity to build rapport and develop a working alliance (Berger, 2017; Germain et al., 2010; Kocsis & Yellowlees, 2018; Morgan et al., 2008; Varker et al., 2019). As previously highlighted, forensic psychological assessments differ from treatment in both nature and purpose, as well as the requirement to disclose highly personal information within a very short time period. If one is to extrapolate from the treatment literature, though, extant studies suggest that remote methods do not negatively impact the capacity to develop adequate rapport.

### Balancing Role Clarity with Ensuring Plaintiff Safety and Well-being

Observations of non-verbal manifestations of traumatic reactions (e.g., dissociation, hypoarousal, and hyperarousal) can give the evaluator corroborating evidence to support a plaintiff's verbal reports. Evaluators, though, also need to be mindful that engaging in these assessments can be overwhelming and dysregulating for the evaluatee (Rocchio, 2020). There is still some debate about the degree to which forensic mental health professionals should use clinical skills to assist plaintiffs in regulating their emotions. Brand et al. (2017b) suggest that the evaluator is sometimes required to use their clinical skills to assist the plaintiff in remaining sufficiently emotionally regulated to participate in the process,

thereby improving the quality and accuracy of the data being obtained. By contrast, Dalenberg et al. (2017) caution that evaluators need to remain clear about their role and remain vigilant to not mislead the plaintiff or re-enact dynamics that create role confusion or blur boundaries.

Remote assessment of individuals who have significant trauma symptoms potentially poses some unique safety challenges in that a distressed evaluatee can get cut off due to technology or could volitionally disconnect. These unique concerns could make the evaluator more vigilant and could foreseeably affect the evaluator's behaviors and stance when conducting an assessment remotely, e.g., the evaluator might be more inclined to use clinical skills and intervene, which could implicitly create some confusion for the evaluatee about the evaluator's non-partisan role. Although the degree to which the evaluator uses clinical skills to help regulate distressed evaluatees during in person evaluations might be equivocal, what is not equivocal is a psychologist's obligation under both the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (2017) and the Canadian Code of Ethics for Psychologists (CPA, 2017) to prioritize the plaintiff's safety. Safety planning is discussed further in the "[Practice Considerations Moving Forward](#)" section.

## Behavioral Observations

An important aspect of forensic assessment is the capacity of the evaluator to observe a plaintiff's behaviors. Throughout the assessment process, the evaluator typically observes the plaintiff's speech, facial expressions, and bodily movements (Martin, 1990). Accurate behavioral observations are used to assess the plaintiff's mental status and psychological state, to develop diagnostic impressions, and to help to identify inconsistencies with verbally presented material (Rogers & Bender, 2018; Wygant & Lareau, 2015).

The remote format inherently changes the setting, and it can also change the observer's visual field and the quality of visually presented information. As stated by Luxton et al. (2014), "The lack of physical presence may limit the range of information available or how it can be observed." (p. 28). They also highlight that the capacity to assess behaviors can be influenced by the screen size, camera angle, lighting, and other technical factors. These changes can impact the evaluator's ability to make certain observations that could be done in person; for example: (1) it is not possible to assess remotely whether the plaintiff has the ability to leave home, find the assessment location, and arrive on time for an appointment; (2) observations related to hygiene and attire could also be more limited, and as noted by Dale and Smith (2020), olfactory information that can provide information about hygiene as well as the use of alcohol or others

substances is lost; (3) direct eye contact cannot be used well as an indication of psychological state when evaluator and plaintiff are interacting by means of images on a computer screen; (4) it could also be harder to assess motor movement which can provide useful diagnostic data; and finally, (5) it could be more challenging to observe certain affective states as clearly, especially if technology is not functioning optimally. A lesser ability to observe these cues could limit the data that are available for determining mental status, diagnosis, and interview validity.

## Assessing Traumatic Reactions

Assessment of adults alleging childhood abuse requires a plaintiff to recount details of the abuse and it also involves a rigorous assessment of trauma symptoms (Wolfe et al., 2010). Survivors of abuse that occurred within close personal relationships sometimes demonstrate difficulty retelling their story and articulating their symptoms for a number of reasons including feelings of shame and self-recrimination, interpersonal distrust, fears about not being believed and/or treated fairly, and a desire to avoid emotionally laden memories (Brand et al., 2017b). These challenges can impede some plaintiffs from being able to verbally convey the full extent of their difficulties. Further, some trauma symptoms have a somatic manifestation including hyperarousal, hypoarousal, and dissociation (Van der Kolk et al., 1996). This makes observing a plaintiff's non-verbal presentation essential, and Brand et al. (2017a) note the importance of recording behavioral observations when assessing individuals who have complex trauma histories, as these observations can serve to corroborate diagnosis. These authors also suggest that some forensic evaluators have a knowledge gap in terms of their understanding of and capacity to recognize non-verbal manifestations of trauma, particularly dissociation. They stress the importance of evaluating dissociation in personal injury cases due to the link between this phenomenon and a range of impairments, including the association with lower quality of life, higher health care costs, poorer prognosis, and specialized treatment requirements. A full review of dissociative experiences, which can include flashbacks, depersonalization, derealization, and dissociative amnesia (DSM-5, APA, 2013) is beyond the scope of this paper; however, Brand et al. (2017b) make a number of suggestions about assessing these symptoms. These authors note the importance of watching for "... prolonged blank staring, particularly with a glazed, absent appearance; repeatedly losing track of the conversation or needing questions to be re-stated; excessive eyelid flutter; denial of information already reported earlier in the interview; and suddenly becoming 'spacey' or 'sleepy,' particularly when discussing emotionally difficult topics."

(p. 301). Although there is no known research to date, it is possible that having the camera fixed on a plaintiff's face could allow for more focused observations of shifts in affect. On the other hand, as with other behavioral observations, some of these subtle non-verbal changes in arousal that could be more readily noticeable in an in-person interview could be more challenging to assess remotely, due to time-lags and video quality.

Hyperarousal is also a common manifestation of PTSD (DSM-5, APA, 2013) and can be seen in a plaintiff's increased startle response, increased motor movement, or increased rate of speech. Some of these physiological responses might be readily observable in the remote format, while other signs might be missed. For example, the remote format could make it difficult or impossible for the evaluator to observe certain motor movements occurring outside the range of the camera, such as foot tapping, fidgeting or other signs of agitation.

### Impacts of Technology on the Plaintiff and Examiner

One potential benefit of using videoconference technologies is the ability to record the assessment. Doing so could create a more complete examination record and allow the evaluator to review the interview and further observe behaviors that might have been missed in the moment. Although recording could confer some benefits, Kois et al. (2020) highlight that videorecording could impact evaluation dynamics and performance and could also raise concerns over confidentiality.

Videoconference technology typically allows participants to see themselves on screen. This ostensibly renders the evaluator and plaintiff to be both participants and observers of the interview (Fosslien & Duffy, 2020). This is significant deviation from in-person assessment and a noteworthy one, as it is not uncommon for survivors of abuse to already have some degree of self-consciousness (Didie et al., 2006; Lewis, 2020).

It is also important to consider "Zoom Fatigue." Research suggests that videoconference technology is mentally and neurologically taxing as remote mediums are not actually synchronous, and even if the delay is in milliseconds, the human brain notices the delay and attempts to "correct" this lag (Wiederhold, 2020). This added cognitive burden can render prolonged use of videoconferencing technology more tiring than in-person communication, with a greater potential to induce anxiety, and irritability (Wiederhold, 2020). It will be important, then, to consider the incremental impact of using videoconference technology as it related to symptom presentation and capacity to tolerate the assessment.

### Psychological Testing

In keeping with a multi-method approach, psychologists are uniquely positioned to augment their interview findings with data from psychometric tests. Although no one psychological measure or scale should individually inform the results of an assessment (Foote et al., 2020), supplementing clinical interview with psychological testing bestows benefits due to many tests' standardized methodology, normative data, and available information about the reliability and validity of the instrument (Wygant & Lareau, 2015). For plaintiffs who have suffered from childhood abuse, psychological testing has the potential to provide them with some degree of privacy and dignity by offering item choices that may help them to identify or describe symptoms that they might not have the language to formulate. Testing can also elucidate additional symptoms or behaviors that may not be reported during an interview and it can corroborate symptoms that were observed and/or reported. Testing related to a plaintiff's response style and symptom validity is also an important component of these assessments due to the potential for secondary gain (Young, 2015).

There are several standard domains of assessment when evaluating adult plaintiffs alleging childhood abuse. These include a broad assessment of personality functioning and psychopathology, a more direct assessment of trauma-related symptoms, the assessment of response style and symptom validity, and intellectual assessment (Wolfe et al., 2010). Several measures are reviewed, including those that fall under self-report measures, standardized interviews, and intellectual assessment. These are discussed in terms of their utility and their suitability for remote administration. There are other measures that are not mentioned here that could be used on a case-by-case basis depending on the plaintiff's presentation.

### Self-Report Measures

When considering whether to administer self-report measures remotely, there is substantial evidence as to the equivalence of remote administration and in-person administration of self-report measures. There is research that suggests the similarity between paper-and-pencil administration and computer administration (Luxton et al., 2014) especially when steps are taken to ensure the integrity of tests (Corey & Ben-Porath, 2020). A number of specific self-report measures commonly used in the assessment of FPA-CA are discussed in [Appendix](#), and requisite steps to ensure test integrity are discussed in the "[Practice Considerations Moving Forward](#)" section.

## Standardized Interviews

Standardized interviews follow a strict sequence and have the potential to improve the reliability and validity of an assessment (Rogers & Bender, 2018). Research supports the equivalence of data quality between in-person and remote methods using structured interviews (e.g., Hyler et al., 2005). The Clinician Administered PTSD Interview (CAPS-5; Weathers et al., 2018) can be used to assess plaintiffs alleging early life abuse. This measure assesses current and lifetime PTSD and aligns with DSM-5 criteria. This instrument also provides a measure of symptom intensity. A study by Litwack et al. (2014) showed the CAPS-5 yielded equivalent results when administered remotely and in-person.

As aforementioned, standardized interviews are also used in the assessment of symptom validity. The Structured Interview of Reported Symptoms (SIRS-2; Rogers et al., 2010) and the Miller Forensic Assessment of Symptoms Test (M-FAST; Miller, 2001) query improbable symptom combinations and they also include behavioral observations which help to identify inconsistencies between plaintiffs' reported symptoms and behavior during the evaluation. This latter facet (i.e., comparing behavioral observations with verbally presented material) could potentially result in the same cited difficulties with respect to other challenges in observing behavior remotely during interviewing, namely, that some behavior could be out of the range of the camera or poor video quality could diminish the evaluator's capacity to adequately observe nuanced shifts in affect.

## Assessment of Intellectual Functioning

Evaluating adult plaintiffs alleging childhood abuse often involves assessing their current intellectual functioning for the purpose of estimating their potential had it not been for the alleged abuse and to examine the possible impact of the early life abuse on certain domains of cognitive functioning (Barnes & Josefowitz, 2014a; Wolfe et al., 2010). The Wechsler Adult Intelligence Scale-IV (WAIS-IV; Wechsler, 2008) is typically the instrument of choice to evaluate cognitive functioning in forensic assessments (Frumkin, 2006). Most subtests from the WAIS-IV can be modified and used remotely and test companies have now produced digital stimuli. Screen sharing features and auxiliary cameras enable the administration of most subtests; however, there are still subtests that benefit from on-site assistance (e.g., block design).

Although burgeoning research on the administration of a number of neuropsychological and cognitive tests shows some equivalence across mediums, tests with both verbal and visual stimuli demonstrate small but significantly significant differences and examinees performed less well when these subtests were administered remotely (Brearly et al.,

2017). It is notable that most of the research relating to the equivalence of cognitive tests have been task-based, rather than using a full measure-based approach (Wright & Raiford, 2021). There is less research on assessing full cognitive ability. Further, as stated by Wright and Raiford (2021) the majority of the research on equivalence has been conducted in controlled environments. Forensic evaluators conducting RFPA-CA might be less likely use an assistant, especially when assessing a plaintiff during the COVID-19 pandemic.

## A General Caution About Remote Psychological Testing

Although psychological testing can be advantageous, remote administration of psychological tests designed for in-person use has the potential to affect the psychometric properties of the test, and consequently the results obtained. As highlighted by Adjorlolo and Chan (2015) even subtle differences between remote and in-person assessments could alter the validity and reliability of assessment instruments that were not originally developed to be administered remotely. Despite some findings about equivalent results between remote and in-person testing, the capacity to use measures remotely in a standardized manner, that is reliable and valid and that complies with test security, remains equivocal. Corey and Ben-Porath (2020) underscore that "some forensic or other evaluations conducted in an adversarial environment may be ill-suited for remote test administration" (p. 203).

## Considering the Effects of a Pandemic on Mental Health

The COVID-19 pandemic has been a significant precipitant for considering remote methods of psychological service delivery and assessment. It has also precipitated what has been deemed to be a global mental health crisis (e.g., Jakovljevic et al., 2020). Such a crisis has the potential to impact the findings of most psychological assessments irrespective of their purpose or the modality by which they are completed.

Multiple surveys across nations suggest a significant increase in mental health difficulties (CAMH, 2020; Czeisler et al., 2020; Mental Health American, 2020; Statistics Canada, 2020; Xiong et al., 2020) and a recent article by Bridgland et al. (2021) suggests that the COVID-19 pandemic is, itself, a traumatic stressor. Among the representative sample of the American population, Czeisler et al. (2020) found that 40.9% of respondents reported at least one adverse mental or behavioral health condition, and that 26.3% of the respondents were reporting symptoms of traumatic stress related to the pandemic. They also found 13.3% of respondents were

endorsing increased substance use to cope with COVID-19-related stressors. The COVID-19 pandemic has also been shown to significantly worsen mental health symptoms in those who have pre-existing psychiatric conditions (Neelam et al., 2020).

The pandemic and its consequences have the potential to exacerbate preexisting psychological symptoms or diminish already weak coping strategies. It could also contribute independently to a plaintiff's current psychological presentation; for example, COVID-19 has the potential to be traumatic and the virus itself could lead to residual impacts on neurocognitive functioning (De Felice et al., 2020). More broadly, many people's social, occupational, relational, and recreational functioning have necessarily become restricted due to social distancing measures. The effects of the pandemic, then, have the potential to further complicate the task of rendering opinions about causality and the impact of early life trauma on a plaintiff's functioning.

Bearing in mind the potentially profound psychological and functional consequences of the pandemic, pre-pandemic functioning will need to be carefully assessed to tease out the effects of the pandemic from the impact of the childhood abuse. Ultimately, the evaluator will need to render an opinion as to whether any current distress and functional impairment is likely to be transient. This task could be challenging given current health and economic uncertainties and a lack of clear trajectory about return to "normalcy." As with other aspects of the assessment, assessing pre-pandemic functioning should rely on multiple methods, some of which would not be impacted by remote assessment; for example, a careful review of all file information and collateral interview. While collateral information can be helpful, the evaluator will also need to rely on the plaintiff's accounts. As such, and consistent with gathering other data, rapport will continue to be important in terms of the plaintiff's willingness to disclose pre-pandemic functioning and the validity of the data obtained in the interview.

## Practice Considerations Moving Forward

It is premature to speak to the general acceptance of remote forensic psychological assessment methods in the mental health and legal community. There is no consensus about whether and how to proceed in civil litigation cases, and decisions whether to proceed will have to be made on a case-by-case basis (Young, 2020).

RFPA is likely to be a rapidly changing landscape. For evaluators actively engaged in remote assessments, it will be crucial to stay up to date in terms of knowledge related to professional standards and guidelines, ethical principles, professional literature, and case law (Heilbrun et al., 2020). Some of these guidelines include national

recommendations (APA, 2020; CPA, 2020), American Telemedicine Association Guidelines (Turvey et al., 2013), and recommendations by test developers (Corey & Ben-Porath, 2020), and there are also guidelines set out by the state or provincial bodies in the geographical area in which assessors are delivering services (e.g., OPA/CAPDA, 2020). As Young (2020) points out, though, general guidelines do not adequately consider issues specific to forensic evaluations. Although at the time of writing, this document has yet to become available, Kois et al. (2020) note that the American Psychology-Law Society has developed a taskforce to develop and disseminate more specific guidelines related to remote assessment for those who are practicing in the forensic field.

For those evaluators who are engaging in or are considering remote psychological assessment that is likely to come before the courts, suggestions are made with respect to (1) preparation, (2) interviewing, (3) testing, and (4) documentation.

## Preparing for the Assessment

### Training, Technology, and Setting

APA Guidelines (2013) highlight that psychologists are responsible for monitoring their own technical and clinical competencies when undertaking work using this medium. It may be necessary for assessors to seek out additional training and consultation in both the use of technology and other issues related to remote assessment (Wright & Raiford, 2021).

A detailed discussion of the technological requirements needed to securely conduct remote psychological assessment is beyond the scope of this paper. The reader is referred to Adjorlolo and Chan (2015) and Wright and Raiford (2021) for a more complete discussion of this topic. Although many evaluators will not have specialized information technology (IT) skills, they are ultimately responsible for ensuring that plaintiff information is transmitted and stored with adequate reliability, security, and privacy before undertaking a remote assessment. The evaluator should take reasonable steps, including perhaps hiring an IT consultant, in order to ensure that their own equipment and systems are adequate in relation to video and audio quality (Adjorlolo & Chan, 2015) and protected from viruses, hackers, and other potential disruptions or breaches. Measures also need to be taken to ensure the security of data transmission and storage, including compliance with relevant laws, for example, the Health Insurance Portability and Accountability Act (HIPAA) in the United States, the Personal Information Protection and Electronic Documents Act (PIPEDA) in Canada, and state or provincial law in the jurisdictions where the evaluator is providing service (Heilbrun et al., 2020).



Although precautions can be taken to safeguard privacy and confidentiality of their own technology, evaluators cannot control the privacy and confidentiality of data on the plaintiff's system and network. As outlined further below, this issue of privacy and confidentiality needs to be explained to the plaintiff as part of obtaining informed consent.

Logistically, evaluators must also consider not only their own setting but also the plaintiff's setting. Specifically, forensic practitioners are advised to strive to conduct evaluations in settings that provide adequate comfort, safety, and privacy (APA, 2013b). Based on these recommendations, it would be prudent to ensure that the plaintiff has a space that is private, free from distractions and other individuals who could interfere with the process. Further, the evaluator needs to be conscious that the plaintiff can see the context in which they are working. Adjorlolo and Chan (2015) recommend that the evaluator conduct the interview in a quiet, visually simple, neutral office or office-like setting. Such arrangements could help ensure that remote assessments approximate the conditions of a standard in-person assessment completed in a professional office.

### Pre-assessment Meeting

Due to the scope of RFPA-CA and other types of forensic referrals, these evaluations often require a great deal of preparation and multiple days of assessment (Foote et al., 2020). For these reasons, assessments are sometimes scheduled months in advance. Among other benefits, a brief meeting with the plaintiff in advance of the assessment could allow for a swift determination as to whether a remote assessment is likely to be feasible. Such a meeting would enable the evaluator to assess the plaintiff's suitability with respect to their technology, technological knowledge, setting and privacy. It is also a preliminary opportunity to assess whether the plaintiff is sufficiently emotionally regulated and not currently at risk for self-harm. The plaintiff should be advised to attend the screening meeting using the equipment and location that they would use during the evaluation. This would allow the evaluator to gauge whether the equipment and systems used by the plaintiff are reasonably free from distortion or time lags and thus suitable for the future assessment. Evaluators can also address some of the privacy issues such as the ability for the plaintiff to be in a private space where they cannot be overheard.

Meeting briefly in advance of the assessment also allows the examiner to assess additional barriers to participation. Remote evaluations might not be appropriate for certain populations such as some older adults who might have less experience with technology or who might have added issues with vision, hearing, or motor dexterity (Gitlow, 2014). Language barriers could be magnified when evaluating

plaintiff's remotely. While the impact of culture requires careful attention in all assessments (Yellowlees et al., 2008), it might require even more judicious consideration when conducting a RFPA-CA. A plaintiff's culture and worldview could impact their relationship with technology and their comfort (or discomfort) in sharing over a remote platform highly personal, emotionally evocative information.

The plaintiff should also be screened for safety-related concerns. A screening questionnaire, like the Ask Suicide Screening Questions (ASQ; Horowitz et al., 2020) could be administered. Evaluatees who are expressing suicidal ideation, have a history of self-harm, and who lack personal or professional support would not be suitable candidates for a remote assessment (Wright & Raiford, 2021).

Provided the plaintiff is a suitable candidate, the informed consent process can be initiated during the pre-assessment meeting. Doing so ideally provides the plaintiff with enough information for them to decide whether they would like to proceed. Brand et al. (2017b) note that plaintiffs who have experienced trauma are more likely to feel safe and share personal information if they know what to expect. As such, a thorough informed consent with explicit information about the remote assessment process and its limitations is essential.

In addition to providing a detailed description of the substantive elements of the assessment process and standard disclosures about the evaluator's non-partisan role, limitations around confidentiality and how and where the report might be used (American Psychological Association, 2013b; Foote et al., 2020), the evaluator should also operationalize what remote assessment is, why it is being used in lieu of in-person assessment (Young, 2020). Remote assessments easily enable evaluators to record the interview. If recording is agreed upon, then there should be explicit consent obtained for this procedure. Perhaps most important, the evaluator should take reasonable steps to inform the plaintiff of currently known risks, limitations, and benefits of remote assessment as compared to in-person assessment (CPA, 2020).

With respect to risks and limitations, the plaintiff should be advised that (1) this method of assessment might affect the quality of the interview and observations due to fewer visual cues and the potential for technological challenges; (2) psychological testing will be limited to what can be completed online; (3) potential privacy limitations including the possibility of interception of communications are possible (CPA, 2020); and (4) although there is burgeoning research that supports the use of remote assessments across certain referral types and plaintiff demographics, this mode of evaluation has not been well established in the courts, and the use of this procedure could potentially have an impact on their case. The evaluator should also outline the steps they have taken to mitigate these risks (Young, 2020).

The possible benefits should be explained. These include access to an assessment that is timely and safe with respect to public health concerns related to the pandemic. Other benefits include convenience and potentially cost savings in the cases where travel is involved.

In keeping with the APA Guidelines for Telepsychology (2013), safety planning is essential. Provided the plaintiff is both suitable for and amenable to the evaluation, it is important to plan for alternate means of connecting should they become unexpectedly cutoff during the assessment. It would also be important to have the address where the plaintiff will be assessed as well as a phone number of an emergency contact. Wright and Raiford (2021) aptly point out the need to plan for worst case scenarios in advance of the assessment and suggests that securing information about mobile crisis units or local mental health services can be important in these instances.

## Conducting the Assessment Interview

As consent is a fluid process, it should once again be obtained and documented at the commencement of the assessment, even if consent has been secured at the pre-assessment meeting. Brand et al. (2017b) note that when working with plaintiffs who have suffered childhood abuse, rapport and emotional regulation can be enhanced by allowing the plaintiff some degree of personal control over the process. An evaluator might wish to be upfront about the potential distress caused by such an evaluation due to the need to recall and disclose trauma-related information over a short period of time (Dalenberg et al., 2017). Facilitating a plaintiff's sense of agency not only involves being explicit about what is involved in the process, but it could also include encouraging plaintiffs to take breaks, as needed, so that they can have some control over pacing, and, in turn, their emotions.

## Assessing the Plaintiff's Non-verbal Presentation

Given the importance of behavioral observations in RFPA-CA, it would be critical to have as clear an image of the plaintiff as possible with the capacity to see as much of their body as possible. This would allow the examiner to note shifts in affect, posture, and motor movement. The evaluator should stay attuned to symptoms of hyperarousal and dissociation (Brand et al., 2017b). When certain aspects of a plaintiff's non-verbal presentation are hard to observe or hard to interpret, the evaluator might wish to query the plaintiff directly about the possible thoughts or emotions the non-verbal behavior reflects (Dale & Smith, 2020). Given the possibility of missing cues with respect to changes in arousal, an evaluator might wish to

ask the plaintiff about their somatic experiences, e.g., "what's going on in your body as you talk about this?"

As Brand et al. (2017b) suggest, it is important to be aware of the plaintiff's level of emotional arousal, as both hypoarousal and hyperarousal can be signs of trauma symptoms. Although observing these symptoms can substantiate assessment findings, a plaintiff's well-being is also a concern. The evaluator might use non-verbal signs of traumatic stress to pace the evaluation, in order to balance the ability to observe pertinent symptoms with avoiding undue distress and dysregulation in the plaintiff.

## Other Considerations Related to Technology

As noted, knowing that one is being recorded could impact the process. It is also possible that viewing oneself throughout the process could affect comfort and performance and is a distinct difference from in-person assessment. Bearing this in mind, having both the evaluator and plaintiff disable the view of themselves could make this process more consistent with in-person assessments.

It would be prudent for the examiner to consider the impact of Zoom fatigue. Fosslie and Duffy (2020) suggested methods to avoid Zoom fatigue, including making non-verbal cues more obvious by putting one's camera at face height, having proper lighting, and ensuring one's head and shoulders are fully visible while speaking. They further suggest reducing stimuli by using plain or uniform backgrounds, avoiding multitasking on the computer, and enforcing breaks to mitigate against fatigue from this medium. Practically speaking, it would be important to observe the plaintiff for signs of frustration or fatigue and take breaks accordingly. Multiple breaks could lead to longer evaluations over multiple days, which has the potential to negate some of the potential benefits of remote assessment (i.e., efficiency and cost-effectiveness).

## Obtaining the Plaintiff's Feedback

It is prudent for the evaluator to ask the plaintiff about their experience of being assessed remotely, and the degree to which the plaintiff believes that the remote format could have improved or interfered with their ability to disclose information during the assessment.

## Psychological Testing

Corey and Ben-Porath (2020) provide suggestions for the remote administration of the MMPI2-RF. These suggestions could be more widely applied to other online measures, as well. These recommendations include (1) the importance of

waiting to send the examinee the link/invitation to complete the test until the assessor is present via teleconference and is able to confirm the examinee's identity; (2) the assessor being present (remotely) with the evaluatee during the entirety of the test to observe events that occur during administration that could impact the findings, and to ensure test security; and (3) the importance of verifying that no one else is in the room with the examinee (Adjorlolo & Chan, 2015; Corey & Ben-Porath, 2020; Grosch et al., 2011). Grosch et al. (2011) warn that people in the testing environment could influence test performance, e.g., through coaching the plaintiff or accessing books or the Internet for information. It could be prudent, then, to ask the plaintiff to scan the room using their computer camera. Presumably, this would be easier to do with a laptop or tablet as compared to a desktop.

Even when implementing these precautions, there remains some skepticism about the use of remote psychological testing in forensic evaluations (Corey & Ben-Porath, 2020). Despite some evidence for test equivalence across methods, most tests are not standardized for remote use. The APA guidelines (2020) suggest psychologists do their best to approximate in-person testing conditions and widen confidence intervals to account for potential error. Young (2020), though, argues that these solutions do not consider the rigor required for forensic contexts.

Wright and Raiford (2021) expands on these concerns, stating, "psychologists do not use individual test scores as if they are perfect; data are contextualized and integrated with a great many other pieces of information before making conclusions. However, in legal matters, the precision and validity of even small pieces of data within a larger picture can be scrutinized and used to "poke holes" in psychologists' conclusions. Thus, forensic psychologists should take caution with tele-assessment work." p. 22. For the reasons noted above, it is likely that performance-based measures could be particularly vulnerable to scrutiny during cross-examination and as such use of these measure might not be prudent at this time. Although they have yet to be adequately validated for use, cognitive measures have been developed and standardized entirely online and such measures could be a way forward in the future (Wright & Raiford, 2021).

## Documentation

Psychologists taking part in RFP-CA will be diverging from traditional in-person practices in several fundamental ways and these differences need to be documented. Section 10.06 of the Specialty Guidelines for Forensic Practice (APA, 2013b) states that "Forensic practitioners are encouraged to recognize the importance of documenting all data they consider with enough

detail and quality to allow for reasonable judicial scrutiny and adequate discovery by all parties" (p. 13). Thorough consideration and documenting of this process would, at minimum, allow evaluators and the trier of fact to consider the adequacy of the evaluation, ways in which the technology may have affected the evaluation, the suitability of the plaintiff, and would provide a record of the methods used, including limitations of the same.

Some of the limitations might be uniform across assessments, e.g., lack of test standardization, inability to administer tests that are unsuitable to the remote format, and a restricted view of the evaluatee. Other limitations could be distinct to each plaintiff and relate to quality of technology, unexpected disruptions or environmental facts, and the plaintiff's personal comfort engaging in the assessment remotely.

## Summary and Conclusions

The COVID-19 pandemic has fueled interest in using remote assessment methods across a number of different referrals. As Young (2020) highlights, there are potential benefits of remote psychological assessment and some pressure to change with the times; however, there are also practical, legal, clinical, and ethical challenges an assessor could face when using remote methods. The complexities involved in forensic psychological assessment of adult plaintiff's alleging childhood abuse could make the use of remote methods extra challenging, particularly with the confounding effect of a pandemic on the assessment of causality.

If forensic evaluators do choose to embark on remote assessments despite their potential limitations, they would be well-served to carefully prepare for this work, have adequate training on the use of remote assessment and stay up to date with research, case law and technological advances. It is suggested that plaintiffs (1) be screened, (2) that informed consent includes changes in methodology, (3) that safety plans be created, and (4) that the evaluator remain mindful of the impact of using videoconference technology on the process (i.e., on their capacity to develop rapport, maintain role clarity, observe pertinent symptoms and behavior, and conduct psychometric testing). Finally, in keeping with the SGFP (APA, 2013b), evaluators should meticulously document their entire process. Although remote assessments are increasingly becoming an accepted means of offering cost effective services with the potential to provide greater access for underserved populations, the forensic evaluator must remain wary, as the jury is still out about how these assessments will be received in court in high-stakes civil cases.

## Appendix

To extend the discussion of psychological testing, we provide further information on several self-report measures and their use in FPA-CA. We offer the proviso that this appendix is in no way sufficient for achieving regulatory competency in this area of civil forensic practice and does not supplant formal training including how to administer testing remotely in a manner that meets all professional, legal, and ethical guidelines.

### Assessment of Personality and Psychopathology

Several personality measures can be administered by computer and thus could be administered remotely through an email link that can be sent to the examinee. The Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF; Ben-Porath & Tellegen, 2008) its predecessor MMPI-2 (Butcher et al., 1989), and the Personality Assessment Inventory (PAI; Morey, 1991, 2014), are commonly employed in personal injury cases, due to their capacity to evaluate a broad range of symptoms as well as underlying personality psychopathology. The MMPI-3 (Ben-Porath & Tellegen, 2020) is now also available for remote use. Validity scales are embedded within all iterations of the MMPI and the PAI. The MMPI-2-RF has shown promise in being able to differentiate between feigned and genuine PTSD (Marion et al., 2011). The PAI has the advantage of an embedded trauma scale. It is not uncommon, however, for highly distressed and traumatized individuals to have elevations on clinical and validity scales of the PAI and MMPI-2. These elevations have the potential to be incorrectly interpreted as being demonstrative of symptom exaggeration or feigning when in fact such elevations often reflect bona fide symptoms and distress (Brand et al., 2017a, b; Calhoun et al., 2010; Diesen & Koch, 2016).

### Trauma Specific Self-Report Measures

There are also self-report trauma measures that can be administered by computer and hence remotely, the Trauma Symptom Inventory (TSI-2, Briere, 2011) and the Detailed Assessment of Posttraumatic Stress (DAPS; Briere, 2001). The TSI-2 (Briere, 2011) has two built-in validity scales, and it assesses a wide range of trauma-related symptoms, some of which are related to complex trauma and the experience of childhood abuse. For example, in addition to measuring more classic PTSD symptoms identified in the DSM-5 (i.e., re-experiencing, hyperarousal and avoidance), the TSI-2 has scales that measure dissociation, attachment-related difficulties, sexual difficulties, and externalizing behavior. The DAPS focuses on a single traumatic event, and

provides information about current and lifetime exposure and the severity of the examinee's symptoms, and also provides information about the examinee's peritraumatic responses. Although not yet released at the time of writing, the DAPS-2 (Petri et al., 2020), which aligns with the DSM-5 PTSD criteria has shown promising results in recent validation studies (Petri et al., 2020).

### Assessment of Response Style and Symptom Validity

Examining the presence of symptom exaggeration or malingering can be undertaken using a variety of methods of assessment, including stand-alone measures to augment the validity indicators in other self-reports measures and structured interviews which are discussed below. One such stand-alone self-report measure of response style that could be administered remotely is the Paulhus Deception Scale (PDS; Paulhus, 1998). The PDS is a well-validated instrument that assesses a respondent's degree of impression management and also the degree to which the evaluatee might be engaging in self-deception. The Inventory of Problems (IOP-29; Vigliano et al., 2017) is a newer self-report measure that can be administered remotely and has demonstrated validity in detecting feigned psychiatric and cognitive complaints.

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