

Université de Montréal

**Exploration of Implicit Theories in the Formation of Expert
Opinion in Portuguese Criminal Law**

par

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Thèse présentée à la Faculté des arts et des sciences
en vue de l'obtention du grade de docteur
en criminologie

Decembre, 2013

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Abstract

This dissertation examines different aspects involved in the formation of psychologists' expert opinion in the Portuguese criminal justice system, more precisely, as this opinion is reflected in assessment reports. The present dissertation is comprised of three qualitative studies, the first sought to provide a general portrait of a sample of 106 forensic psychological reports as to their overall quality as measured in terms of relevance and coherence. Results show that the formal markers of quality are present in the sample analysed, a certain number of weaknesses have been observed, notably concerning the internal coherence of the reports as well as the relevance of the information reported on. The second study explored the opinions of 17 Portuguese judges and state prosecutors concerning the use they make of this type of forensic report. It appears that they consider these reports to be useful and very credible, specially so when they have been produced under the auspices of the National Institute of Legal Medicine and Forensic Sciences, which is the state forensic institution. Furthermore, it appears that judges and prosecutors were particularly interested in data that allowed for a personalised portrait of the assessee. The third study sought to better comprehend the conceptual bases on which psychologists construct their reports. To this end, an exploratory study was undertaken with a sample of key-actors; the analysis of their interviews shows that they define their judicial mandate as well as the basic concepts that are associated to this mandate in different ways. A theoretical framework provided by an implicit theories model was used to help understand these results.

Keywords: Expert opinion, forensic psychological report, forensic psychology, Portugal, criminal law, qualitative methodology, decision-making, implicit theories, forensic institution.

Résumé

Cette thèse présente trois études qualitatives qui concernent différents aspects de la formulation de l'opinion experte chez des psychologues forensiques, tel que cette opinion se révèle dans leurs rapports d'expertise psycho-légale. La première étude porte sur la qualité d'un vaste échantillon de rapports d'expertise en se concentrant sur des critères de pertinence et de cohérence comme mesures de leur qualité générale. Cette étape a permis de dresser le portrait de 106 rapports forensiques produits au Portugal et d'établir qu'ils rencontrent les critères de qualité formelle établis tout en présentant certaines faiblesses en ce qui concerne la pertinence des informations utilisées et la cohérence interne du rapport. La deuxième étude explore les opinions de dix-sept juges et procureurs de la République portugaise et s'interroge plus particulièrement sur leurs perspectives concernant l'utilité ce type de rapports d'experts dans leur travail en cour criminelle. Il appert que ces derniers leur accordent une grande crédibilité en particulier lorsqu'ils ont été produits par les experts de l'Institut portugais de médecine légale et sciences forensiques, l'institution forensique nationale affiliée au Ministère de la Justice. De plus, il se dégage des entretiens que les juges et les procureurs sont particulièrement intéressés par les données qui permettent de dresser un portrait individualisé de la personne évaluée. La troisième étude vise à mieux saisir les bases conceptuelles sur lesquelles les psychologues experts construisent leurs rapports. Pour ce faire, une étude exploratoire auprès d'un échantillon d'acteurs-clés a été menée qui a permis de dégager un certain nombre de constats, notamment que ceux-ci définissent leurs mandats judiciaires ainsi que les concepts fondamentaux qui y sont associés de manière différente. Un cadre théorique basé sur le modèle des théories implicites a été utilisé pour mieux comprendre ces résultats.

Mots-clés : opinion d'expert, rapport forensique, psychologie légale, Portugal, cour criminelle, méthodologie qualitative, prise de décision, théories implicites, institution forensique.

Table of Contents

Abstract	i
Résumé	iii
List of Tables	x
List of Appendices	xi
List of Abbreviations	xii
Acknowledgements	xiii
Introduction	1
Literature Review.....	3
Pitfalls in Translating Psychological Knowledge in the Courtroom.....	3
Paradigm differences.....	4
Training.....	7
Bias in clinical judgment.....	7
Professional Standards of Practice.....	11
Empirical Studies on Forensic Report Writing.....	14
Theoretical Framework.....	20

Methodological Approach.....	25
Portuguese Context.....	25
Criminal Procedural Code.....	25
National Institute of Legal Medicine and Forensic Sciences.....	26
Sources of data.....	27
Forensic psychological reports.....	27
Key-actors: Judges and prosecutors.....	28
Key-actors: Psychologists.....	30
Methods of Analysis.....	32
Coding grid.....	32
Content analyses.....	35
Interpretation of results.....	36
Structure of the Dissertation.....	38

First Chapter: Relevance and Coherence as Measures of Quality in Forensic

Psychological Reports.....	41
Abstract.....	42
Introduction.....	43
Theoretical Context.....	44
Method.....	47
Dataset.....	47
Judicial Context.....	47
Coding Grid.....	48
Preliminary study.....	51
Inter-coder reliability.....	52
Formal Characteristics.....	54
Procedures.....	54
Data Analysis.....	54

Results.....	55
Formal Characteristics.....	55
Relevance.....	56
Coherence.....	59
Discussion.....	61
Concluding Remark.....	67
Acknowledgements.....	67
References.....	67
Second Chapter: The Use of Psychological Reports in the Portuguese Justice System: Judges' and Prosecutors' Viewpoints.....	72
Abstract.....	73
Introduction.....	74
Review of the Literature.....	75
The Portuguese Context.....	80
Method.....	82
Sampling Procedures and Participants.....	82
Interviews.....	83
Data Analysis.....	84
Coding scheme.....	84
Results.....	86
1. The Characteristics Attributed to Assessment Reports.....	86
1.1. Objectivity.....	86
1.2. Impartiality.....	87
2. The Use of Assessment Reports.....	88
2.1. Dangerousness.....	88
2.2. Responsibility.....	89
2.3. Juste sentence.....	90
2.4. Intuition.....	91
2.5. Meaning.....	92

Discussion.....	93
Concluding Remarks.....	97
Acknowledgement.....	97
References.....	98

Third Chapter: Reporting Forensic Psychological Assessments Results:

The Role of Implicit Theories.....	103
Abstract.....	104
Introduction.....	105
Review of the Literature.....	107
Variability in Forensic Reports.....	107
Implicit Theories Model.....	109
Method.....	110
Participants.....	110
Portuguese Context.....	111
Interviews.....	112
Data Analysis.....	113
Results.....	115
Judicial Mandate.....	115
Defining Personality Assessment.....	117
Personality defined as a psychiatric concept.....	117
Personality defined as a non-pathological concept.....	117
Dangerousness defined as a legal concept.....	118
Dangerousness defined as risk factors for violence.....	119
Dangerousness defined as an equivalent to psychopathy.....	119
Degree of socialization defined as a legal concept.....	120
Degree of socialization defined as an approximation.....	121
Discussion.....	112
Present Studies.....	123
Implicit Theories Model.....	124
The judicial mandate.....	124

Definitional variability.....	124
Limitations.....	125
Concluding Remarks.....	127
References.....	127
General Discussion.....	133
Main Research Findings.....	134
First study.....	134
Second study.....	136
Third study.....	138
Formation of Psychologists' Expert Opinion: The Relevance of Conceptual Research about Implicit Theories.....	139
Individual dimension.....	139
Interpersonal dimension.....	141
Limitations and Future Research Directions.....	143
Conclusion.....	148
References.....	151
Appendices.....	162

List of Tables

Table 1. Results for relevance.....57

Table 2. Results for coherence.....60

List of Appendices

Appendix A. Ethics Certificate.....	162
Appendix B. Coding grid used in the first study.....	164
Appendix C. Interview Protocol: Judges and Prosecutors.....	166
Appendix D. Interview Protocol: Psychologists.....	167
Appendix E. Consent form: Judges and Prosecutors.....	168
Appendix F. Consent form: Psychologists.....	171
Appendix G. Manuscript Accepted for Publication at Psychiatry, Psychology and Law.....	174
Appendix H. Acknowledge of Receipt: Applied Psychology in Criminal Justice.....	176
Appendix I. Acknowledge of Receipt: Penal Field.....	178
Appendix J. Authorization to write dissertation in English.....	180

List of Abbreviations

APA – American Psychological Association

NILMFS – Portuguese National Institute of Legal Medicine and Forensic Sciences

IPA – International Psychoanalytical Association

OPQ – Ordre des psychologues du Québec

PCPC – Portuguese Criminal Procedural Code

*To my children, born researchers, for the
feeling of continuity. To my dear wife Inês,
for making it all possible.*

Acknowledgments

Entering into a doctorate in a foreign country and trying to write a dissertation in a foreign language¹ over a period of four years with a family that doubled in size during that time is challenging at best, and I am truly indebted to countless individuals and institutions who have supported me along the way; without them my dreams and aspirations may never have been realized. Thank you to the following individuals and institutions that played an instrumental role in this journey and in this research endeavour:

Firstly, I would like to express my extreme gratitude to Dr. Dianne Casoni, my doctoral supervisor and mentor for the last four years who contributed knowledge, rigor and direction, both in thinking and in writing that I will build on for the rest of my career. Also to Dr. Jorge Costa Santos, my doctoral supervisor, for your confidence in my abilities and for facilitating the access to people and data that made this dissertation possible.

This research would have not been possible without a doctoral grant awarded by the Fundação para a Ciência e a Tecnologia, I.P. I also wish to thank to Centre international de criminologie comparée, Faculté des études supérieures et postdoctorales and last but not least, Fundação Calouste Gulbenkian, for their financial support. I'm grateful to the Scientific Board of the Portuguese National Institute of Legal Medicine and Forensic Sciences, I.P. (NILMFS) for granting me access to forensic reports in the three main branches and for authorizing the interviews with their staff members. I am also grateful to Dr. Fernando Vieira and Dr. Fernanda Rodrigues and all the generosity of the

¹ Authorization to write dissertation in English in Appendix J.

NILMFS's administrative staff of the three branches for helping me to navigate through the hundreds of thousands of pages of archives. I wish to thank both the Conselho Superior da Magistratura and Procuradoria-Geral da República for authorizing the interviews with judges and state prosecutors, respectively. I also want to thank the Centro de Estudos Judiciários for authorizing the collection of Portuguese legal literature.

I wish to express my gratitude to all the participants of this research: forensic psychologists, judges and public prosecutors who taught me through the passion and dedication to their professions more about forensic psychology and the Portuguese justice system than I could have ever learned in the literature.

I'm very grateful to the dedication and the assistance of Eliana Vilaça and João Ferreira who were gracious enough to agree to aid in my dissertation, persevering through meeting after meeting without being discouraged by the pile of reports to code.

Finally, many thanks to my dear parents, brothers and sisters, parents-in-law and brothers-in-law for their encouragement and love on this long journey.

Introduction

The goal of this dissertation is to study different facets involved in the formation of psychologists' expert opinion in the Portuguese criminal justice system, as this opinion is reflected in assessment reports. Forensic report writing is a core skill forensic psychologists must master since it constitutes the main vehicle through which their expert opinion is communicated. As such, according to many authors and professional associations, the report can be viewed as an important indicator of the quality both of the assessment process and of the expert opinion that follows (Duits, van der Horn, Wiznitzer, Wettstein, & Beurs, 2012; Griffith, Stankovic, & Baranoski, 2010; Grisso, 2010; Lander & Heilbrun, 2009; Ordre des psychologues du Québec, 2002; APA, 2013).

Forensic psychological reports are indeed considered to be the essential product of the expert's work notably because such reports are at the centre of the exchanges between psychologists and legal decision-makers (Goodman-Delahunty & Dhami, 2013; Griffith & Baranoski, 2007). In this sense, reports have the potential of impacting the lives of those assessed in a decisive way since their "shelf-life" is particularly long, furthermore the various uses they are made to serve might even present the risk of stigmatizing individuals in ways that were not intended (Melton, Petrila, Poythress, & Slobogin, 2007).

My interest in the study of forensic psychological reports originated in an earlier research related to moral judgment and to issues associated to delinquent and criminal behaviour. This led to a study of forensic psychological reports in the aim of identifying which theories of moral judgement were used in forensic psychological assessment reports of

offenders in Portugal. Results of this pilot study revealed that explicit theories of moral judgement were hardly discernable in the sample of reports studied, rather concepts from one theory were sometimes amalgamated to others from another theory, or loosely connected one to another in an incoherent manner. Such observations led to a certain broadening of the object of the present research, as well as to a better definition of its aim. The main goal henceforth became to study the formation of psychologists' expert opinion in the forensic context, as their opinions are reflected in assessment reports.

The present research project consists of three studies, the first sought to provide a general portrait of forensic psychological reports under the Portuguese justice system. More precisely, it focuses on their quality manifest through two main dimensions: coherence and relevance. The second study explores the use of forensic psychological reports in the Portuguese justice system from the viewpoints of judges and prosecutors. The third study follows from the analysis of forensic psychological reports and was conducted in order to better understand research results that showed that reports tended to present much variability as to their content. A group of forensic psychologists were interviewed and results show that they held different definitions of the main concepts involved in these assessments, as well as of their judicial mandate. A theoretical framework provided by an implicit theories model is used in this third study to comprehend the conceptual bases on which psychologists construct their reports (Canestri, 2006; Dreher, 2000).

In order to situate this research project in a broader context, some pitfalls in translating psychological knowledge in the courtroom will be discussed first. This will be followed by a critical review of the literature on forensic report writing. This includes the present-day professional standards of practice concerning forensic report writing and an overview of

empirical studies on this topic. The implicit theories model will then be presented. In the two last sections of this introductory chapter, the methodological approach used in the three studies comprised in this research project will be presented. This will be followed by the overall plan of the dissertation.

Literature Review

Pitfalls in Translating Psychological Knowledge in the Courtroom

Forensic psychology has evolved as a broad field that includes any application of psychology to the legal realm. It generally refers to all forensic practice by any psychologist working within any sub-discipline of psychology (e.g., clinical, developmental, social, cognitive) (APA, 2013). The range and frequency of expert testimony by psychologists increased dramatically in the past two decades, and it is only likely to continue in the years to come (Krauss, Cassar & Strother, 2009). Two major factors contributed to this growth according to Costanzo, Krauss and Pezdek (2006): the rapidly expanding research base conducted in areas of interest for the courts, and the changes introduced in the legal standards governing the admissibility of scientific evidence on the other. In this section, we will present how psychological theories in forensic psychology are translated into practice. More specifically, what challenges do experts face when they try to apply psychological theories to address courts' referral questions, namely the psycho-legal questions herein (e.g. criminal responsibility, fitness to stand trial). The theories we are interested here are mainly clinical theories.

Indeed, the debate between theory and practice is particularly up-to-date in forensic psychology. In their vision for the field, Heilbrun and Brooks (2010) argue that a sustainable expansion of this discipline implies the development of specialty tools, and training skills that strongly emphasize the link between science and practice. Living up to this goal of strengthening the link between theory and practice raises important issues that according to Heilbrun and Brooks (2010) are still not sorted out in forensic psychology. Literature from different active research trends in forensic psychology that share the same concern for translating psychological theories into practice will be presented in the following order. First, it will be discussed to what extent the differences in the nature of the law and of psychology make difficult the transposition of psychological theories to the forensic realm. Secondly, it will be stressed the importance of training in judicious forensic assessment. At the end of this section, some known biases in clinical judgment and decision-making will be presented. Literature will be reviewed according to which these biases undermine the proper application of theories in forensic psychology.

Paradigm differences. Starting by the more fundamental issues, namely the differences between the nature of law and psychology, Faigman (2008) is of the opinion that one of the major pitfalls in applying psychological theories to courts is in essence a matter of perspective between science and the trial process: science being aimed at uncovering the universals hiding among the particulars, whereas courts are attempting to discover the particulars hiding among the universals. However, as Faigman (2008) notes, psychologists under these circumstances frequently seek to comment not only on general research findings, but whether an individual case is an instance of that general phenomenon. In other words, “in the packaging of science

for courtroom use [expert testimonies are] more helpful than the data allow” (Faigman, 2008, p. 303). Moreover, this leap between statistical research data and knowledge applied to a given individual remains a blind spot for many psychologists, according to Faigman (2008). Canter (2007) shares this opinion: “law and psychology do have different traditions and worldviews that are commonly neglected – with a nuance: courts pressure psychologists to inappropriately translate research conducted at the group level and apply it to personal agency” (Canter, 2007, p. 2). The translation of theory and research in psychology to courts can follow one of two basic models according to Faigman (2008); “the limits model”, which would prohibit experts from testifying on matters not supported by data, and the “no-limits model” which would allow them to do so even though data is insufficient. The latter model would leave to the individual scientists the discretion of offering his opinions.

Although these two models of using psychological research in court are presented in the form of criticism (cf. also Faigman, 1999), the fact is that they appropriately embody current practices (cf. Ogloff & Douglas, 2003). For instance, experts who testify regarding the reliability of eyewitness identification usually fall under the limits-model. As Faigman (2008) underscores in the field of eyewitness testimony, experts provide Courts with general research results, leaving to the court, the task of applying those general findings to the particulars of the case (Faigman, 2008). This practice, referred to as a “theoretical testimony”, is also used in cases of other issues, but are not necessarily welcomed by Courts who fear that experts might present research findings in a biased way (Casoni, 1999, 2007).

The no-limits model is the more prevalent model in psychology for two reasons: validity and necessity (Faigman, 2008). In the former, it is argued that, despite the absence of systematic research on the validity of particular psychological instruments, experts will have

greater insights and experience on the subject, than the fact finders do (e.g. “trust me, I’ve been doing this for 30 years” (Canter 2008, p. 312). In the case of necessity, the argument of Faigman (2008) is revisited, i.e., it is the judicial system that forces the translation from the universals to the particulars. In other words, given that the judicial system focuses on personal agency, and construes defendants as reason-driven individuals, the general data “must” be brought down to particular cases, and experts in psychology usually participate in it.

Faigman’s (2008) criticism about this leap between research conducted in groups and its application to individual cases should be explored further, considering its implications for the topic under discussion. The first issue that Faigman’s comment raises, consists of the wild application of research conducted with groups to a particular individual, simply because this individual shares some characteristics with the members of that reference group. This wild application often assumes the form of causal statements, and is at the basis of flawed conclusions in forensic psychology (Arkes, 1989).

A second issue raised Faigman’s (2008) criticism is related to paradigm conflicts (Melton, Petrila, Poythress & Slobogin, 2007) between law and psychology. Psychologists are mainly interested in the perception of causations, whereas the law focuses on the determination of causation itself (Arkes, 1989). In other words, behavioural sciences are oriented toward an explanation or prediction of the factors determining behaviour.

Law, on the other hand, holds individuals responsible for their behaviours, unless the behaviour is either the product of a “will overborne by external pressure or internal compulsion, or of a mind so irrational as to raise questions about the individual’s capacity to function” (Melton et al., 2007, p. 8).

Training. Another known pitfall in the translation of psychological knowledge in courtroom is the lack of training in forensic psychological assessment and risks of partisanship. The issues of qualifications, certification and accreditation of forensic psychologists are some of the top priorities in the reviews and in the projection of this discipline (Heilbrun et al. 2002; Heilbrun & Brooks, 2010; Otto & Heilbrun, 2002). Indeed, for Ogloff and Douglas (2003) “chief among the problems [...] is the fact that many of the psychologists who are making their way into the forensic field, frankly, are poorly trained and inexperienced and do not do a good job overall” (Ogloff & Douglas, 2003, p. 359). Moreover, regardless of legal systems in question (i.e. adversarial – Canada, U.K., Australia, U.S.; and inquisitorial or civil legal tradition countries – Netherlands, France, Portugal), Malsch and Freckelton (2005) warn against the risks of bias and partisanship in different degrees. According to these authors, experts are inclined toward the party by whom they are being called and paid (partisanship), intentionally or unintentionally distorting the information to favour that party (resulting in bias). Research conducted on evaluator bias described how experts score the PCL-R (i.e. Hare's Psychopathy Check-list) differently whether they are appointed by the defense or prosecution (Murrie, Boccaccini, Turner, Meeks, Woods, & Tussey, 2009). In other words, experts yield to what Appelbaum designates by the “seduction of advocacy” (Appelbaum, 2008, p. 198).

Bias in clinical judgment. Another pitfall in translating theory into practice in forensic psychology is, by definition, the most entrenched in the expert's mind, and refers to biases affecting clinicians' judgment and decision-making processes. From all the issues that affect

transposing theory into practice reviewed so far, i.e., differences in perspective; training and risks of partisanship, this is perhaps the subtlest one. The question of how well clinical psychologists make diagnostic judgments has a long history and originated a vast literature (cf. Harding, 2004 Lopez, 1989 for a revision). In the context of forensic psychology, this issue has also been studied (Borum, Otto & Golding, 1993). We will elaborate here on how experts are exposed to error while forming their clinical judgments, exploring the dangerousness assessment, referred to today as risk assessment.

In the absence of a clear definition of dangerousness, both in different branches of the law, and in forensic psychology, clinicians may develop approaches based on their own values and representations about this construct when they are asked to predict future behaviour (Melton et al., 2007). Whereas in civil commitment, an individual is labeled dangerous if he has the potential for emotional harm or harm to property, in criminal law, by contrast, the reasons for affixing that vary from evidence collected in treatment records where the patient has allegedly expressed anger toward others; to the results of a psychological assessment where some tests purportedly suggest “explosive and infantile features.” (Melton et al, 2007, p. 300). In forensic psychology, despite the abundance of studies about dangerousness and violence risk assessment, there is no consensus about the best way or even about the legitimacy for providing judgments about dangerousness (Tillbrook, Mumley & Grisso, 2003). The emphasis in risk assessment is to ascertain risk factors associated with recidivism, generally static individual differences such as previous criminal records or age (e.g. Static-99, Doren, 2004). These and other variables are defined, operationalised and quantified in scores that form the basis for assessing the risk of future offending behaviour. This issue is beyond the scope of the present review of the literature, yet much of the current debate revolves

around core assumptions of actuarial risk assessment instruments. In that vein, Lussier (2010) argues that actuarial methods such as Static-99, for instance, assumes a linear relationship between static variables and the risk of recidivism. This assumption ignores the dynamic issues associated with offending behaviour, i.e. acceleration or crime desistance based on a longitudinal perspective. In a study conducted with 310 individuals (30 years old and older) convicted of sex offences, Lussier (2010) questions the aforementioned assumption. His study stresses that the relationship between prior criminal records and recidivism is more complex than what the actuarial methods take for granted. By centring his analysis on dynamic patterns of criminal careers, the author identifies different criminal trajectories with various recidivism rates that call into question the assumption of actuarial methods – namely, the assumed linear/one-way association between the scores on a set of static and previously defined variables and the risk of recidivism.

We will consider four common biases known in the literature associated to dangerousness's assessment, drawing on Melton's et al. (2007) account. The first bias that Melton and his associates highlight is designated as "fundamental attribution error" which consists of the tendency mental health professionals in this context have to focus on the individual's characteristics, and to handle dangerousness as a personality trait (Melton et al., 2007). For instance, rather than attributing violence to environmental and situational factors, or an interaction between contextual and individual issues, clinicians in their assessment of risk factors for violence would resort to the bias of construing dangerousness as a character feature. A second bias that mental health professionals can resort to in this context is related to cognitive heuristics, in other words, "mental shortcuts commonly used in decision making that

can lead to faulty [clinical] reasoning or conclusions” (Elstein, 1999, p. 791). In practical terms, it consists of clinician’s biased way of selecting and weighing particular variables that they construe as predictors of future violent behaviour. Empirical studies on this issue have demonstrated how psychiatrists rely almost exclusively on the defendant’s charges rather than on additional information about the individuals assessed (Borum et al., 1993). Similar results have been reported in the studies on recidivism among sexual offenders where clinical judgments are likely to be more influenced in their conclusions by data that is rather recent (current charges of the examinee) and salient (i.e. crime severity). A third bias that is likely to affect risk assessments are “illusory correlations” that results from the belief that a relationship between two variables exists despite the lack of empirical data to sustain it. For instance, an individual may be considered dangerous because he or she suffers from a mental disorder. It is well documented that violence and mental health disorders are not highly correlated as it is socially construed (Link & Stueve, 1994).

The forth type of common bias in risk assessment are the clinician’s personal bias and attitudes toward examinees. For example, cultural differences between examiner and examinee² can lead to errors in judgments about dangerousness (Levinson and Ramsay, 1979). In sum, considering the risk assessment only, it is possible to identify several biases that can affect the psychologist’s decision-making process. Furthermore, the biases presented above are applicable to other types of evaluations, other than risk assessment. What we presented above is a relatively small number of biases in clinical judgment compared to what is well documented in the psychological literature on bias (cf. Arkes, 1989; Borum et al., 1993 and

² Persons of colour stemming from low-income families tend to be overrepresented among assessees in contrast with the white, middle- to high-income families overrepresented among assessees (Levinson & Ramsay, 1979).

Harding, 2004, for a contextualization of these biases on a more broader revision). We decided to present these biases in the context of risk assessment because there is no consensus in this discipline about the best way to address it, or about the legitimacy for doing it in the first place. The abundance of literature on this issue is described in forensic psychology as overwhelming and disjointed (Melton et al., 2007). Hence, the application of psychological theories on violence risk prediction in the courtroom is problematic.

Consequently, this is a construct that lends itself to be misrepresented among forensic psychologists, and as noted above, leading experts to use their own value judgments (Ogloff & Douglas, 2003). This last observation is paramount to the formation of psychologists' opinion in forensic contexts, as it is reflected in their assessment reports. This particular aspect can be best understood, at a theoretical level, through the lens of the theoretical framework provided by an implicit theories model, which will be presented in a latter section. In the next section, the professional standards of practice regarding forensic report writing will be critically reviewed, followed by an overview of the empirical studies in forensic report writing.

Professional Standards of Practice

With the attractiveness of forensic psychology and the growing participation of psychologists in legal decision-making processes have come the need to define standards and guidelines for improving the quality of forensic psychological services (APA, 2013; Heilbrun & Brooks, 2010; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007; Heilbrun, Rogers, & Otto, 2002).

Amongst these services, the way psychologists write forensic reports has been identified as being paramount in assuring quality professional practice. The Speciality

Guidelines for Forensic Psychology emanating from the division of the American Psychological Association (APA) devoted to matters of law and psychology (Division 41 of the APA) offers the most recent, specialized and internationally recognized set of guidelines pertaining to the practice of forensic psychology. In view of orienting psychologists in the preparation of forensic psychological reports, these guidelines highlight psychologist's duties regarding the assessee such as, the importance of providing accurate and relevant information about the assessee. For instance, guideline 11.04 encourages forensic psychologists to limit the discussion of background information that does not bear directly upon the legal purpose of the assessment; which purpose should appear clearly identified in the report (APA, 2013, p. 17).

Psychologists are also encouraged to identify in a clear fashion the methodology employed in their assessments, as well as a concise description of the activities executed, as well as the results and interpretation thereof. For rendering the account fairer, according to APA's guidelines, forensic psychologists ought to analyse the psycho-legal issues at hand from different perspectives and seek information that will differentially test rival hypotheses (APA 2013, p. 15). Advice regarding the need to disclose all the sources of information used in the preparation of the report, or the need to present the bases for expert opinions in the report is also present in APA's guidelines. Psychologists acting as forensic experts are also reminded of their duties in keeping their reports secured and, when asked to provide information contained in the report, how to maximize accuracy and fairness and avoid deception (APA, 2013, p. 16).

In Quebec, the guidelines emanating from psychologists' professional association, i.e., Ordre des Psychologues du Québec (OPQ) (2002) places emphasis on the forensic psychological report as a self-sufficient document in that all the conclusions and recommendations provided by the expert ought to be preceded in the report by all the steps that have lead the experts to come to their conclusions and recommendations. The steps of the scientific method are presented here as way of guiding experts on the order in which the information should be presented in the report, that is: the formulation of a question; data collection; construction and testing of hypotheses; data analysis; discussion of the results in line with the previously formulated hypotheses and, finally, the presentation of conclusions. Conceptualizing the forensic psychological report as a self-sufficient document is also necessary according to OPQ guidelines considering that experts are often not called to testify orally. This places the report at the centre of exchanges between the psychologist and the referral source. In the writing of forensic reports psychologists are also advised to take into consideration the tension that often characterize legal disputes which calls for a particular sensitiveness in the presentation of the assessment results. The fact that the forensic report is typically read by legal actors that do not share the expert's frame of reference should also be considered in the preparation of forensic reports, namely, by avoiding the use of jargon.

In Portugal, despite the fact that there are no specific guidelines to orient psychologists in the preparation of forensic reports, psychologists' code of conduct issued by the Portuguese psychologists' professional association, Ordem dos Psicólogos Portugueses, gives important recommendations regarding the preparation of psychological reports in general (Ordem dos Psicólogos Portugueses, 2011). These recommendations consist, for instance, of the duty of

informing the assessee about the confidentiality limits pursuant to proper subpoenas or court orders; or the importance of staying within the bounds of the questions that motivated the assessment request (article 1.2.3.2.).

Empirical Studies on Forensic Report Writing

The outcomes of the empirical research on forensic reports that will be reviewed in this section often constitute the empirical material of the professional standards of practice literature reviewed above (Goodman-Delahunty & Dhimi, 2013), as well as of an abundant literature for professional psychologists that in one or more stages of their professional lives are required to write a report or to provide follow-up assessment with forensic implications (e.g. Ackerman, 2006; Brunet & Casoni, 1999; Conroy, 2006; Doyle, Ogloff, & Thomas, 2011; Gagliardi & Miller, 2007; White, Day, & Hackett, 2007; Witt, 2010).

Three main approaches have been used in the empirical study of forensic psychological reports. The first asks psychologists about the importance of reporting certain types of content (Borum & Grisso, 1996; Ryba, Cooper, & Zapf, 2003). For instance, experts are asked to rate on a scale that goes from “contraindicated” to “essential” whether, for instance, it is contraindicated to include in their reports the defendant’s description of the alleged offense, or if they consider this to be essential. Important differences have been noted between forensic psychologists as pertains to what information should be included or avoided in a forensic report. Borum and Grisso (1996) showed that, while some experts consider essential to present opinions about the issue of criminal responsibility, others consider this to be contraindicated arguing that the question of responsibility should be addressed by the court rather than by the

forensic expert. Differences between forensic psychologists have also been noted in regards to the importance of reporting on results of psychological instruments. For example, while some experts are of the opinion that using psychological instruments in competency to stand trial assessments is essential, others refer not reporting on results of psychological instruments in this type of assessments (Ryba et al., 2003).

These research results show that forensic psychologists have different views about what sources of information should be taken into consideration; whether psychological instruments should be used or not; and what should be included or avoided in their reports. The issue of variability in forensic report writing raised by these research findings is an important one for Ogloff and Douglas (2003) who are of the opinion that variability introduces biases that have the potential of undermining the judicial process by presenting an assessee in a manner which is not reflective of him.

The second approach to the empirical study of forensic psychological reports consists of surveying judges, prosecutors and attorneys about the reasons for requesting a forensic report, its adequacy and their preferences regarding different types of data usually present in forensic psychological reports. The research findings show that legal decision-makers manifest concerns about insufficient arguments presented in forensic reports to sustain their conclusions (Hecker & Steinberg, 2002; LaFortune & Nicholson, 1995; Redding, Floyd, & Hawk, 2001). Enquiring legal decision-makers into their opinions about forensic reports has also lead to the identification of other shortcomings in report writing such as the perceived lack of specific information about the defendant's characteristics (LaFortune & Nicholson, 1995; Redding et

al., 2001); as well as overreliance on single source of data to substantiate the psychologists' expert opinions in reports (Bow & Quinnell, 2001; Grisso, 2010).

Finally, the third main approach to the empirical study of forensic psychological reports consists in determining the presence in reports of content items. In some studies, peers were asked to evaluate the logic and the reliability of the arguments presented in reports written by fellow forensic psychologists (Skeem & Golding, 1998; Skeem, Golding, Cohn, & Berge, 1998). Results show that reports fail to link clinical data collected about the assessee with the legal issues that motivated the assessment request (Skeem et al., 1998) and in explaining the reasoning for the experts' opinion (Skeem & Golding, 1998). Examining the contents in forensic psychological reports resorting to raters has also led to the observation that expert opinions are often presented without sufficient explanation or without the reasoning that substantiates such expert opinions (Grisso, 2010). The presence of irrelevant data from the clinical point of view or from the viewpoint of the questions that motivated the forensic assessment has also been detected (Heilbrun & Collins, 1995; Robbins, Waters, & Herbert, 1997).

Other studies have examined the content of forensic reports drawing on a set of principles anchored in legal, ethical, scientific and professional criteria identified as high quality principles in forensic report writing (Heilbrun, 2001; Heilbrun et al., 2007; Lander & Heilbrun, 2009). The principles used in these studies as backdrop to analyse the reports draw heavily on the professional standards of practice overviewed above (Committee on Ethical Guidelines for Forensic Psychologists, 1991 later updated on APA, 2013). Reports have been analysed from principles such as “principle 1: identify relevant forensic issues;” principle 26

“use plain language, avoid technical jargon.” Results show limited consistency between what is stated in the principles and the reports’ content. The three most common shortcomings identified in the study of Lander and Heilbrun (2009) were the omission of historical information about the assessee; failure to attribute information to sources and the reporting of expert opinions without being based upon reliable and valid methods.

Despite the knowledge about forensic report writing that the above empirical studies have brought in the last three decades, more recent research indicates difficulties in translating this knowledge into actual improvements in the reports (Christy, Douglas, Otto, & Petrila, 2004; Doyle et al., 2011; Grisso, 2010). Nicholson and Norwood (2000), for instance, argue that although the quality of forensic reports appears improved relative to earlier characterizations, knowledge about forensic psychological reports is still needed to tackle the gaps between what constitutes the characteristics of an optimal forensic psychological report according to professional standards of practice and the actual practice of forensic report writing. Results of two most recent meta-analyses conducted on forensic report writing indicate that this gap may decrease if more research is conducted in three key areas that will be described as follows. Firstly, if forensic report writing is studied using qualitative research methods; secondly if more attention is given to the expert’s decision-making processes and thirdly if more studies are conducted in different justice systems (Nicholson & Norwood, 2000; Wettstein, 2005).

In fact, most of the research in this area has mainly been empirical and has concentrated on the adequacy of forensic reports to professional standards guidelines (Nicholson & Norwood, 2000; Wettstein, 2005). This has left unexplored other issues such as the function of

forensic reports, or their distinctive features compared to clinical reports (Wettstein, 2005). This has led Wettstein (2005) to suggest that more descriptive, naturalistic and analytic data about forensic report writing is needed to allow for a more in-depth understanding of the multiple issues that may take part in the formation of expert opinion as it relates to forensic reports. A second key research area that has been identified as capable of addressing the gaps noted between what constitutes the characteristics of an optimal forensic psychological report according to professional standards of practice and the actual practice of forensic report writing is the need to conduct more research on the expert's decision-making processes (Wettstein, 2005). The argument to call for research that goes beyond the study of report content lies in the fact that forensic reports are said to portray only a limited component of what is involved in a forensic psychological assessment (Wettstein, 2005). In Wettstein's (2005) opinion, this has resulted in a very limited knowledge about the expert's clinical judgment, heuristics and memory and their role, the case being, in the content of forensic assessment reports and expert decision-making.

A third key area identified in the recent meta-analyses as having a potential to enhance the knowledge about forensic report writing and, in doing so, to decrease the gap between what constitutes the characteristics of an optimal forensic psychological report according to professional standards of practice and the actual practice of forensic report writing is the need to conduct studies in different justice systems (Nicholson & Norwood, 2000; Wettstein, 2005). Most of the empirical research on forensic reports have been conducted in North America drawing on reports written in different settings such as hospitals or community-based centres and authored by experts of various disciplines including social workers, psychiatrists and psychologists (Wettstein, 2005). This means that the small sample size of the reports studied,

the variability introduced by their authors' training and the fact that reports were produced in different jurisdictions with specific legal rules or statutes governing expert witnesses limit the generalizability of its results for other North American jurisdictions as well as to civil legal tradition countries (Nicholson & Norwood, 2000; Wettstein, 2005). This has led the authors of the two meta-analyses to call for more research on different justice systems to assess if the research findings of the empirical studies conducted in North-America are observable in countries with different jurisdictions in order to refine suggestions regarding guidelines and possible standards of practice in forensic report writing (Nicholson & Norwood, 2000; Wettstein, 2005).

To better address these key areas, a qualitative approach was chosen to study the formation of psychologists' opinion in the forensic context, as this opinion is reflected in assessment reports. In this aim, three studies were conducted which will be reported in three separate chapters of this dissertation. The theoretical framework of implicit theories used in the third study will be described in the next section. A description of the methodological approach used in the three studies will be presented after that, followed by the structure of this dissertation.

Theoretical Framework

According to a model of implicit theories, these constitute one's own way of giving meaning to shared concepts and theories that appear to fit certain clinical situations (Canestri, 2006; Canestri, Bohleber, Denis, & Fonagy, 2006, Dreher, 2000). First coined in psychoanalysis by Joseph Sandler in 1983, the concept of implicit theories refers to ideas, models, experiences, and concepts of which therapists are not necessarily aware, but which impact their work. Such private theories provide some guidance regarding observations, inform one about technique, and influence how interpretations might best be formulated (Hamilton, 1986). Implicit theories are less articulated than formulated, and hence public, theories; in other words, theories that are widely accepted by a given intellectual community, and that would be at the forefront of the collective thinking about theory and technique in psychoanalysis (Silvan, 2005).

Sandler (1983) introduced the concept of 'implicit theories' with the aim of making it a conceptual tool that appeared necessary to him seeing the ongoing development of psychoanalytic theory. In the context of discussions concerning theoretical divergences in psychoanalysis and a search for what was termed "common ground," Sandler (1983) advocated for a dynamic view of psychoanalytic theory, according to which, development in one area of theory puts pressure on other aspects of theory, resulting in concepts whose meaning is stretched (Sandler, 1983). This would not be possible without psychoanalysts developing their own "implicit theories, concepts and definitions that differ from an 'official' or 'public' formulation" (1983, p. 43). In Sandler's view, implicit theories are presented as a facilitator of the theoretical development of psychoanalysis. Each user of this theory having to

re-elaborate publicly formulated concepts and theories in order to use them in their practice. In Sandler's (1983) opinion, practicing analysts are seen as catalysts of theoretical developments in psychoanalysis. Sandler's (1983) initial contribution was later developed by Dreher (2000, 2003) as well as by Leuzinger-Bohleber and Fischman (2006) who designated this avenue of study as conceptual research, that is the "systematic investigation of the meanings and uses of psychoanalytic concepts, including their changes in relation to both clinical and extra-clinical contexts" (Dreher, 2003, p. 110). Sandler's (1983) input also led to a few empirical studies, notably by Hamilton (1996). She asked a sample of 65 analysts from various theoretical orientations practicing in Los Angeles, New York, San Francisco and London to describe their use of different technical concepts. A total of 27 dimensions, including interpretations and transference were studied. Preconscious thoughts, or "cluster of beliefs, neither unconscious nor fully conscious were the object of scrutiny. In addition to these interviews, she distributed a questionnaire to determine how this group of analysts had been influenced during their training and in their current practice by a number of theoretical schools in psychoanalysis. Results show the analysts stated theoretical influences and/or theoretical affiliations are not mirrored in their way of practicing. A gap was identified between what they had been taught, or felt they believe and their clinical experience. Hamilton (1996) hypothesized that analysts diverge from what is publically accepted by their theoretical schools in order to respond to their clinical exchanges: "what matters [to the interviewees] is intimately tied up with what works in the consulting room, as well as personal experiences with their own analysts, supervisors, and colleagues" (Hamilton, 1996, p. 309). By means of cluster analysis, Hamilton (1996) also found that individuals, working within a same group, appeared to hold shared descriptions. This aspect was also prominent in Dreher's (2000) results. She further elaborated

the model of implicit theories by proposing the more general term of “implicit knowledge” to encompass: firstly a set of socially shared implicit theories held by analysts belonging to a same psychoanalytical milieu where they were trained, and that constitutes their collegiate environment. Secondly, implicit knowledge is constituted by a mix of explicit theories and tentative reflections that mirrors the creative potential in Sandler’s (1983) definition; such implicit knowledge is formed according to Dreher by “unconscious ideas, motives, and values embedded in the analyst’s personality and personal history” (Dreher, 2000, p. 171). A major aim of Dreher’s research is the elucidation of the implicit, but often contradictory dimensions of psychoanalytic concepts. She argues that a more precise description of the theoretical basis for a given concept would become possible if various concepts were made explicit. Furthermore, inner contradictions that come up in clinical work are a basis for implicit theories (Wurmser, 2000).

The most recent example of the lively intellectual debate around conceptual research about implicit theories was the appointment in 2009 of a Project Committee on Conceptual Integration by the International Psychoanalytical Association (IPA). The purpose of this committee is to enable IPA members to contribute to integration of psychoanalytic theory drawing on current and reliable knowledge without diminishing critical questioning, in an effort to avoid ideological orthodoxy or authoritarianism regarding the use of theories and concepts in psychoanalysis. This committee has developed a five step method that allows comparison between different versions of concepts, their underlying theories and basic assumptions and has been recently applied to the psychoanalytic concept of enactment, referring to the effects of actions of both therapist and patient in the course of psychoanalytic therapy (Bohleber, Fonagy, Jimenez, Scarfone, Varvin, & Zysman, 2013). The first step

proposed by this systematic way of conducting conceptual research in psychoanalysis is the gathering of information about the history of the concept. The second step addresses the phenomenology of the concept of enactment, enactment as phenomenon that is analysed in close relation to the clinical practice. The third step consists in studying whether the concept of enactment is an attainable one according to a set of criteria such as relevance, falsifiability, internal consistency, etc. In the fourth step, the authors explore different uses of the concept of enactment in the clinical practice. Finally, in step five a discussion about if and to what extent an integration of different versions of the concept of enactment is possible (Bohleber et al., 2013).

In sum, conceptual research about implicit theories in psychoanalysis has evolved in the last three decades drawing on different methodologies, i.e., interviews with experts about the use of concepts in their clinical practice, group discussions, comprehensive literature reviews about selected concepts, etc. Three arguments are put forward to justify the relevance of using the theoretical framework of implicit theories described above in the study of formation of psychologists' expert opinion as it is revealed in the quality of their reports. The first argument relates to the nature of conceptual research about implicit theories. Both psychologists working in a therapeutic setting, as well as those in a forensic one, are driven by a 'need to know' the individual they are assessing; they need to make sense of what emerges in a context that is not necessarily adapted to this task. Hence, their encounter with assessees raises a paradox wherein the different nature of the forensic encounter and the therapeutic one must be addressed by the psychologist in order to be able to allow the "need to know" to express itself without however crossing the line that would transform the encounter in a therapeutic one.

Both forensic and therapeutic assessments thus require flexibility on the psychologist's part (cf. Melton et al., 2007, p. 46).

The second argument for using the implicit theories framework in the formation of psychologists' expert opinion is that it allows for the exploration of relationships between concepts within a conceptual field. By virtue of their mandate, forensic psychologists are asked to address forensic issues drawing on clinical concepts and using most often clinical psychological instruments that were developed outside the legal realm (Ogloff & Douglas, 2003). This requires the ability to deal with the conceptual differences that result from paradigm differences between law and psychology (Canter, 2008; Casoni, 2007; Faigman, 2008). Conceptual research allows for the exploration of both the meaning of the legal and psychological concepts from the vantage point of each individual expert. To what extent are these concepts in tension or indeed overlap, and what practical consequences does this have for the conduct of the assessments are questions that are worth exploring and to which conceptual research about implicit theories may contribute.

The third argument assumes that the way in which a concept is used appears to be determined by the context wherein this concept is used and the subjectivity of its user. Among other distinctive features of forensic psychological assessments is the fact that they usually unfold in an intricate context where multiple actors interact. Beyond the dyad psychologist-assessee, other fellow psychologists or psychiatrists may intervene, as well as one or more judges, prosecutors, victim(s), lawyers, and in some instances, the media or the court audience. In the next section, the methodological approach used in the three studies comprised in this research will be presented. This includes, a short description of the setting in which this research has been completed, the sources of data used and how they were analysed.

Methodological Approach

In this section, methodological considerations will be examined; firstly by a description of the context where the three studies were conducted, then by a presentation of the sources of data and the methods used to collect and analyse the data.

Portuguese Context

Criminal Procedural Code. According to Carmo (2005), the objects of both forensic psychological and psychiatric assessments are defined by the Portuguese Criminal Procedural Code (PCPC). Psychologists may participate either in the determination of criminal responsibility, as co-authors of forensic psychiatric assessments according to article 159 of the PCPC, or independently in what are designated as “personality assessments” under article 160 of the same code. In the first case, issues of criminal responsibility related to the potential presence of mental illness are examined by psychiatrists with the aid of a psychologist according to article 20 of the Portuguese Criminal Law (Gonçalves, 2007). In the second case, *personality assessments* are mainly the responsibility of psychologists. Assessments produced under article 160 are said to evaluate the “non-pathological psychological features [and] degree of socialization” of alleged offenders in view of describing issues of “personality and dangerousness” (Antunes, 2011, p. 80). The opinions presented in these assessment reports have implications for the assessee in that they concern most often issues of guilt adjudication and severity of sentences, but also of preventive detention, (Antunes, 2011; Carmo, 2005).

It is important to add that, under the PCPC, results of a *personality assessment* are not only considered as evidence, but moreover the judge is bound to its results once the assessment report has been duly validated (Silva, 2002). It is only in cases of self-evident errors, or if the observations on which the expert based his or her conclusions are thought to be invalid, that the judge may reject the results of a forensic assessment (Carmo, 2005; Lopes, 2011). Such a rejection however has to be justified by the judge; only under those circumstances may he or she order a new assessment (Silva, 2002).

National Institute of Legal Medicine and Forensic Sciences. Another specificity of the Portuguese justice system is the existence of a state forensic institution under which forensic psychological assessments are conducted. The Portuguese National Institute of Legal Medicine and Forensic Sciences (NILMFS) is a semi-public Institute that is both financially and administratively autonomous. Its activities are overseen by the Ministry of Justice and it is considered as the institution of reference for forensic expertise in the Portuguese justice system (article 1, Decree-Law 166/2012, July 31. 2012; Vieira, 2012). Its mission is to provide scientific forensic assessments in all disciplines requested, be it by courts, state prosecutors, police agencies specialized in criminal affairs and, in some instances, private citizens (Vieira, 2012).

The request for a psychological or psychiatric assessment is usually made to the NILMFS by letter or fax, which contains information about the identity of the person accused, a reference to his or her judicial file, the current accusation and specification about the type of assessment requested (article 154, PCPC). Requests either for *personality assessments* (article 160) or forensic psychiatric assessments (article 159) are sent to one of the three branches of

the NILMFS that assigns the case to one of its psychologists and psychiatrists. These requests may also be sent to professionals working outside the NILMFS, but will be then supervised by its personnel (article 160-A, PCPC). This means that forensic psychological assessments can either be conducted in one of the three main branches of the NILMFS or in one of the 27 affiliated Medical Legal Offices typically located in major public health-units across the country; they might also, albeit less frequently, be referred to external institutions or individual professionals. In Portugal, between 2010 and 2012, 18,408 requests for psychiatric and psychological assessments were made to the NILMFS (NILMFS, 2010, 2011, 2012), which is indicative of the high demand for these assessments (Vieira, 2012).

Sources of data

Three sources of data were used in the studies comprised in this research project and will be described in the present section. These include a dataset of forensic psychological reports, interviews conducted with judges and state prosecutors, as well as interviews with forensic psychologists.

Forensic psychological reports. The forensic psychological reports used in this study were collected from archival records in the three main branches of the NILMFS. The NILMFS' Board granted access to its archives further to the approval of the research protocol by the Research Ethics Review Board of the Université de Montréal (cf. Appendix A). The dataset consists of all the forensic psychological reports written between 2006 and 2011 in the three main branches of the NILMFS and concern individuals charged for criminal offences for whom either a judge or a state prosecutor had asked for a forensic assessment. All reports

were produced by a psychologist licensed to practice in Portugal and who is affiliated with one of the three main branches of the NILMFS; forensic psychologists affiliated with the NILMFS usually have between five and 20 years of experience. A total of 142 reports were produced during the time frame set for this study, 74 were written under article 159 (forensic psychiatric assessment) and 62 under article 160 (personality assessment). The majority of reports concerned individuals accused of crimes against persons ($n=73$); a good proportion were about crimes against property ($n=25$), and the remaining concerned crimes of various nature. A coding grid was developed to analyse the reports and will be described in a further subsection. The coding grid used and its preparatory stages will be described in a further subsection.

Once the preparatory stages were completed, the remaining 106 reports were randomly assigned to each of the three coders who then coded them independently one of the other. This dataset was comprised of 57 reports produced according to article 159, and 49 according to article 160. All research material was identified with a code name during the coding process and the reports with code names are kept in a locked file cabinet accessible only to the principal researchers. To ensure the anonymity of the dataset, all identifying information was deleted from the material given to coders.

Key-actors: Judges and prosecutors. To examine the use made of forensic psychological reports in Portuguese criminal justice system from judges' and prosecutors' viewpoints, a convenience sample of 17 key-actors were interviewed. Seven judges and ten state prosecutors participated in our research. Their average age is 46 years old and they have, a mean of 18 years of professional experience. The first inclusion criterion consisted of having worked as a judge or a state prosecutor in one of the three Portuguese major cities where the

three main branches of the NILMFS are located, i.e., Lisbon, Oporto and Coimbra. The second inclusion criterion concerned the number of years of experience in the practice of criminal law, 10 years experience was determined to be necessary to be included in this study. There were no further criteria for exclusion. Authorization to interview key-actors was granted by the Supreme Judicial Council (Conselho Superior da Magistratura) and by the Attorney General's Office (Procuradoria-Geral da República), after the approval of the research protocol by the Research Ethics Review Board of the Université de Montréal (Appendix A). Formal consent was sought; a consent form was presented to the participants, questions were answered and all those who felt comfortable with the guarantees of anonymity given, signed the consent form (cf. Appendix E).

Semi-structured qualitative interviews were conducted. Qualitative interviewing has been described as a suitable method for collecting rich and complex data about the everyday experiences of interviewees (Brinkmann & Kvale, 2008; Patton, 2002). The reason for choosing a semi-structured interview protocol was twofold; firstly it permitted to give a general direction to the interviews so as to guide the participants and ensure that all aspects were covered. Interviews lasted approximately one hour. The theme of the interviews was well defined, and well known to the participants since their daily work is set within the confines of the legislation that defines forensic psychological assessments.

After the presentation of the study and of the informed consent form, a general question was asked: "In your experience, how would you describe the use you make of forensic psychological assessments reports in your work?" Participants were encouraged to present examples from their practice to illustrate their responses and follow-up questions were asked

in order to encourage participants to elaborate further on their answers from the viewpoint of their experience (cf. interview protocol in Appendix C).

All the interviews were conducted between January and February 2012; they were held in private rooms in the interviewees' work place. Interviews were audiotaped and transcribed verbatim. Each interview transcript was stored securely and all nominal information was excluded from the interview transcripts. Any material that would allow the identification of interviewees was excluded from the data analysis to ensure anonymity.

Key-actors: Psychologists. The goal for interviewing psychologists consisted of studying how the main concepts comprised in “personality assessments” are defined. Only the psychologists that practice “personality assessments” according to the criteria defined by PCPC were selected amongst the group of 29 forensic psychologists that compose the staff of the NILMFS. The remaining staff mainly conduct assessments for civil-law Courts. NILMFS' Board granted authorization to contact the six psychologists that participated in the research further to the approval of the research protocol by the Research Ethics Review Board of the Université de Montréal (cf. Appendix A). All the psychologists selected worked at the three main branches of the NILMFS and were chosen because of their experience as forensic experts. They have 12 years of professional experience on average and their mean age is 43 years old. They are respected professionals in their field, being called on to give conferences in graduate programmes in forensic psychology, and to supervise interns in forensic psychology at the NILMFS. A consent form was presented and discussed with each participant and signed when consent was reached (Appendix F).

A semi-structured interview protocol was chosen for it is well suited for the aims of this research, it being a recommended method for collecting rich and complex information about everyday experiences (Brinkmann & Kvale, 2008; Patton, 2002). The interview protocol aimed at eliciting information from the participants as to their own definitions of the main concepts involved in article 160 of the PCPC, said to be a *personality assessment* (cf. Appendix D). This type of forensic report evaluates aspects of an individual that rest on three concepts, which are designated in article 160 as: *personality*, *degree of socialization* and *dangerousness*. Besides these three concepts, article 160 also mentions “non-pathological psychological features,” which is intended to distinguish “personality assessments” (article 160) from forensic assessments conducted under article 159 in which a psychiatrist, sometimes aided by a psychologist, address the question of criminal responsibility by evaluating issues of *pathological psychological features*, i.e. the diagnosis of mental illness according to a psychiatric framework (Carmo, 2005). In this sense, reference to “non-pathological psychological features” was not deemed useful to include in the interview protocol, which is limited to asking participants to define in their own words each of the three concepts associated to *personality assessments*: *personality*, *degree of socialization* and *dangerousness*.

The interviews were semi-structured and proceeded through open questions, the first one being: “Can you speak about the concept of personality you use (in the context of article 160)?” This type of interview was chosen because it was expected that the key actors would experience no difficulty in elaborating on the themes proposed since these were important concepts used in their everyday work. Encouragement to continue, expressions of interest and follow up questions were used to help participants elaborate on

the research themes.

Each participant was interviewed in a private room at his or her place of work. This was convenient for the participants and allowed all the interviews to be done in a relatively short time frame. Interviews lasted between 45 and 60 minutes, were audio taped and later transcribed verbatim. Interview material was stored securely and all nominal information was excluded from the interview transcripts. Any material that might allow the identification of interviewees or of people they referred to was excluded to ensure anonymity.

Methods of Analysis

Coding grid. A coding grid was developed to study relevance and coherence as these dimensions manifest in forensic psychological reports (cf. Appendix B). The choice of relevance and coherence as criteria to evaluate the quality of reports stems from our literature review, namely on the nature and quality of forensic report writing (e.g. Nicholson & Norwood, 2000; Wettstein, 2005). The coders were in addition asked to collect data on the formal characteristics of reports. This included whether the report was structured in well-identified sections, whether experts attribute information to sources; whether they employed a clear language, or psychological jargon, for instance. These formal features are associated to the quality of forensic reports according to many authors (Grisso, 2010; Heilbrun, 2001; Lander & Heilbrun, 2009; Nicholson & Norwood, 2000; Witt, 2010).

The grid consists of statements describing elements associated to coherence and relevance. The choice of presenting these elements in short sentences was made to ensure ease of use for the coders whose task it was to determine the presence or the absence of each

element as it was described in the related sentence. Three criteria were used to examine relevance as a dimension of quality; these three criteria were further detailed through seven elements, all related to relevance. The same method was used to examine the dimension of coherence, which was divided into two criteria that were further specified into five elements. The final version of the coding grid in Appendix B was the result of two preparatory stages that will be described as follows.

First, a preliminary study was done based on six reports randomly taken amongst the dataset in order to verify the construct validity, and to establish if the grid was easy to use by the three coders that analysed the reports. This preliminary study led to a number of observations, notably that the criteria needed to be further defined, which led to the development of *elements* describing more precisely the features associated to the criteria used to define relevance and coherence. A glossary was constructed, once all modifications to the grid have been made, to ensure that coders shared their understanding of the dimensions, criteria and of the elements used to evaluate relevance and coherence. This glossary contains the definition of all the terms used in the grid; it also provided coders with examples taken from the preliminary study for the coding of the 12 elements described in the grid. The coder's task was to evaluate the presence, the case being, of each of the elements that were comprised in the grid. These elements were presented as sentences written in the form of *statements concerning the presence* of each element analysed. Coders were asked to confirm the presence of each element (yes) or state its absence (no). The six reports used in the preliminary study were not included in the final dataset.

Secondly, further to the preliminary study, the inter-coder reliability was evaluated. The two coders who participated in the analysis of the reports were two licensed clinical psychologists from Portugal, respectively with four and 10 years of experience in psychological assessments. They were trained by the author to use the grid and become familiar with the coding manual containing the glossary of terms, illustrations of criteria and examples of certain elements. The author also acted as the third coder for the remainder of the research once all three agreed with the meaning of each dimension, criteria and elements and each felt familiar with the grid.

Inter-coder reliability was first calculated based on the results of a sample of 15 reports randomly selected. The inter-coder reliability was found to be unsatisfactory in this first attempt (i.e. a minimum ICC of .60 per element; Sim & Wright, 2005). An analysis of the coded reports was thus undertaken by the three coders with the collaboration of the second author (study 2) in order to identify the problems hindering the reliability of coding. This analysis led to the establishment of clearer definitions of the coding criteria, the creation of a glossary of meanings that was completed by examples and illustrations taken from other reports than the ones comprised in the preliminary study. As a result, a better operationalisation of the grid was achieved and the working definition of each element of the grid proved satisfactory to each coder.

Following the revision of the coding grid and the supplemental training of the coders, a second sample of 15 randomly selected reports was coded by all three coders. Inter-coder reliability then proved satisfactory for all the elements on the grid. Out of the 15 reports analysed, the average inter-coder reliability was 74.7 per cent, with a range between 65.1 to

100 per cent. The 30 reports used to establish inter-coder reliability were not included in the final dataset.

Content analyses. To analyse the interview transcripts of judges, prosecutors and psychologists, a qualitative content analysis was used. The content analysis proceeded in four stages, first, transcribed interviews were read through a few times to gain a general picture of the interview material. Secondly, one interview transcript was coded in order to develop a coding scheme focusing on the issues raised in the interview protocol. In the case of the interviews with judges and prosecutors, the focus was on participants' views on the use of forensic psychological reports in their work as legal decision-makers. In the interviews with psychologists the coding scheme was focused on how they define the concepts they use in "personality assessment" as defined in article 160 of the PCPC. More specifically, the focus was on the concepts of "personality", "dangerousness" and "degree of socialization."

In order to ensure its validity, in a third stage, this coding protocol was the object of discussion between authors, which led to its revision and the development of definitions for each theme of the coding protocol. Discrepancies in the coding were further discussed until a consensus was achieved. For instance, it was necessary to adapt the coding scheme to accommodate for dimensions that emerged during the data analysis that went beyond the research questions. In the fourth stage, the resulting coding scheme was used to code the remaining interview transcripts. Following Stake's (1995) recommendations, analytic memos were written all along this preparatory stage and were later used not only to refine the analytic categories which emanated from the analysis, but also to document insights made about specific interviews and the dataset as a whole.

The type of categories the content analysis tried to establish regards key dimensions of the use made of forensic psychological reports according to legal decision-makers, and the definitions of the three concepts that psychologists use in “personality assessment.” However, it should be noted that, in using a qualitative content analysis, the potential emergence of other issues from the reading of the data was left open (Baxter, 2009). For instance, beyond the views of legal decision-makers regarding the use made of forensic reports, during the coding process, a second issue emerged pertaining to the characteristics legal decision-makers’ attribute to forensic psychological reports.

Interpretation of results

The presence, or absence, of each element comprised in the grid was assessed by each of the three coders for the final dataset of 106 reports. The frequencies for each of the seven elements associated to the presence of relevance were calculated, then the overall score for each of the three criteria was determined. The same type of analysis was followed for coherence, which was assessed by two criteria that were further divided into five elements.

As for the content analysis of the interview transcripts, findings relative to each interview were entered into a cross-case data matrix (Miles & Huberman, 1994). This gave an overview of the data and enabled the identification of differences and similarities between participants. This procedure thus facilitated the organization of the data. The cross-case data matrix also helped to determine relationships between different interview excerpts and identify overlap between codes and between different categories. Resulting categories were generated using a constant comparative method (Strauss & Corbin, 1990) that consists in trying out

tentative categories for the data from different interviewees, adjusting categories several times until the interview material of each interviewee fit smoothly into one category.

To keep track of all emerging codes, excerpts, thoughts and ideas during the content analysis, the software Atlas.ti (Muhr, 2004) was used. The advantages of using this software have been reviewed in various studies (Lewins & Silver, 2007; Mühlmeyer-Mentzel, 2011; Muhr, 2000; Zhang & Wildemuth, 2009). Of particular relevance for this study was its capacity to establish semantic relationships between codes in a workflow fashion while simultaneously keeping track of the original interview transcript.

Structure of the Dissertation

The present dissertation is comprised of three studies that will be presented in following chapters; these seek to explore some of the questions raised in the review of the literature. Each study is presented in article form in a separate chapter. The first chapter consists of a study conducted on 106 forensic reports produced in the context of the Portuguese criminal justice system. Beyond the general portrait of forensic psychological reports in Portugal that it provides, an analysis of their quality was undertaken, which was operationalised in terms of relevance and coherence. Relevance in this study is defined in relation to the legal criteria that frame the assessment mandate, and in relation to the accuracy of the opinions as they identify the assessee in a specific manner. A coherent report in the context of this study is one that integrates information about the assessee pertaining to different sources in a logical manner, and if incongruent information appears, this is discussed in the report. The choice of relevance and coherence as criteria for quality of forensic report writing stems from two meta-analyses that aimed to identify strengths and weaknesses of forensic mental-health evaluation (Nicholson & Norwood, 2000; Wettstein, 2005). The results of the research presented in the first chapter show that, while mostly meeting formal characteristics such as adequate organization, most of the reports surveyed fell short of meeting the criteria defining relevance and coherence. These results suggest that research on the quality of forensic psychological reports should direct more attention to the internal coherence of the reports and to the importance of reporting on assessment findings that regard the uniqueness of the individuals assessed in view of optimizing reports' role as informational aids for legal decision-making.

The second chapter presents the results of the analysis of interviews with 17 Portuguese judges and state prosecutors as to their opinions concerning the use they make, in their work, of forensic psychological assessment reports. Many interesting results emerged from this study, notably that legal decision-makers expect reports to provide objective responses regarding legal issues, and dangerousness in particular. Highly specific information about the accused and his milieu appears also to be of importance on how forensic reports are used according to the specific needs of the judges and prosecutors interviewed. The setting where the assessments are produced, i.e., the state forensic institution, appears to be crucial on how results of forensic psychological reports are valued in the Portuguese criminal justice system. Results are discussed in the light of previous surveys and future research avenues are explored.

The third chapter presents the results of a series of interviews with six key actors who act as forensic psychological experts in the Portuguese context. This exploratory study sought to better understand research results described in the first chapter that showed that forensic psychological reports produced under article 160 of the PCPC tended to present much variability as to their content. The results suggest that participants held different definitions of the three main concepts involved in these assessments as well as of their judicial mandate, thus indicating that issues of variability seem to relate to fundamental differences in the very definitions of their forensic and professional mandates. It follows that the quality of forensic reports varies. A theoretical framework provided by an implicit theories model was used to help understand these results (Canestri, 2006; Dreher, 2000; Sandler, 1983).

The fourth chapter presents the discussion of these results that will be examined first through the perspectives offered by the authors whose work was reviewed in the introduction and for each of the papers produced. They will be examined, secondly, through the lens of the implicit theory model. Some of the limitations of the results reported in this dissertation will be examined and avenues for future research are also proposed. The fifth and final chapter presents concluding remarks that summarize the main results of this dissertation.

First Chapter

Relevance and Coherence as Measures of Quality in Forensic Psychological Reports

by

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Article accepted for publication in:

*Psychiatry, Psychology and Law*³

December 2013

³ The e-mail accepting the manuscript for publication is presented in Appendix G.

Abstract

The goal of this research is to provide a general portrait of forensic psychological reports under the Portuguese justice system. An analysis of 106 forensic psychological reports in terms of their relevance and coherence was conducted since these two dimensions appear to be key in better understanding some of the specific characteristics that are related to the overall quality of forensic psychological reports. A grid was constructed to identify elements related to these two dimensions and its application to the reports show that, while mostly meeting formal characteristics such as adequate organization, most of the reports surveyed fell short of meeting the criteria defining relevance and coherence. These results suggest that research on the quality of forensic psychological reports should direct more attention to the importance of reporting on assessment findings that regard the uniqueness of the individuals assessed and to the internal coherence of the reports in view of optimizing reports' role as informational support for legal decision-making. Possible implications of these research findings for enhancing the effectiveness of forensic reports and improving the professional training of forensic psychologists are discussed. Particularly, in countries of civil-law tradition where there is an identified need for more knowledge about report writing.

Key-words: Coherence, forensic psychological report, qualitative analysis, quality, relevance.

Introduction

The last two decades have given rise to a number of interesting studies concerning forensic psychological reports. Many of these address ethical issues or questions related to professional standards (Conroy, 2006; Grisso 2010; Heilbrun, 2001; Heilbrun & Collins, 1995; Lander & Heilbrun, 2009; Michaels, 2006; Nguyen, Acklin, Fuger, Gowensmith, & Ignacio, 2011). These studies have led authors to a certain consensus regarding what characterizes a quality forensic psychological report, which is determined, in large part, by the formal characteristics these reports present (Wettstein, 2005, 2010; Nicholson & Norwood, 2000). As a consequence, a number of guidelines have been suggested for forensic report writing in psychology (Ackerman, 2006; APA, 2013; Grisso, 2010; Heilbrun, 2001; Lander & Heilbrun, 2009; Witt, 2010). These guidelines include: an optimal organization of the content, quality of writing and of the language used, depth of the information conveyed, and quality of the links established between the source material and its interpretation (Nicholson & Norwoord, 2000; Melton, Petrila, Poythress, & Slobogin, 2007; Wettstein, 2005).

When these formal characteristics are not met, shortcomings ensue; hence failure to establish links between different aspects reported on, a lack of logical organization of the contents of the report, superficiality or still inadequate use of language and poor writing skills constitute the types of weaknesses that are mostly noted when examining the quality of forensic psychological reports (Grisso, 2010; Lander & Heilbrun, 2009; Nicholson & Norwood, 2000; Skeem & Golding, 1998; Skeem, Golding, Cohn, & Berge, 1998; Wettstein, 2005). Wettstein (2005, 2010) notes however that most studies of forensic reports draw on data from restricted geographical areas and have focused only on their formal characteristics,

which might not always be generalizable neither to other social contexts nor to different justice systems around the world, as other authors have also noted (Duits, van der Horn, Wiznitzer, Wettstein, & Beurs, 2012; Lander & Heilbrun, 2009). Thus the conformity to formal guidelines in forensic report writing appears insufficient to guarantee the quality of forensic psychological reports (Wettstein, 2005).

The present study seeks to address these observations. Its main objective is to provide a general portrait of forensic psychological report writing under the Portuguese criminal justice system. Further, in order to determine their general quality, their analysis in terms of relevance and coherence will be presented. A short theoretical context describing the main concepts used to frame this study will be presented next, then a methodological section will follow, after which the results will be presented and then discussed in the following section. Concluding remarks will follow.

Theoretical Context

The choice of relevance and coherence as criteria to evaluate the quality of reports stems from Wettstein's (2005) meta-analysis on the nature and quality of forensic report writing. (cf. Nischolson & Norwood, 2000) In a research that aimed to identify the strengths and weaknesses of forensic mental health evaluation, Wettstein (2005) argues that one of the main shortcomings of forensic psychological reports is the failure to establish links between the data collected during the forensic assessment and the psycho-legal issues that experts are called on to address, whether competency to stand trial, criminal responsibility, or child custody issues. More specifically, in four out of six studies considered, psychologists struggled to establish logical connections between the clinical data they presented and their conclusions (Wettstein,

2005). Moreover, the reasoning behind these experts' opinion was not only absent, it was not even implicit in many of the reports analysed. For instance, in a study conducted by Skeem et al. (1998), experts provided data or reasoning to describe how defendants' psychopathology compromised their competency to stand trial in only ten of the 100 reports analysed. In contrast, experts in the same sample typically presented sufficient reasoning to support their clinical conclusions (n=87). Wettstein (2005) argues that forensic psychologists must be able to show that the findings of their psychological assessments are relevant to the judicial file under scrutiny and that their methods are relevant according to judicial, as well as to clinical criteria. Otherwise, their reports might fail to play the role of informational support they should in the judicial decision-making process. Thus a relevant report, in the context of this study, is one where the various sources of information are weighed in view of portraying the distinctive characteristics of the assessee. Relevance, for instance, would be achieved in the case in which methods used are clearly identified. It would also be noted in the case where the logic used to weigh different information is solid and the assessee is described in a specific way. Relevance, in this study, is defined both in relation to the legal criteria that frame the assessment mandate, and in relation to the accuracy of the opinions as they identify the assessee in a specific manner.

With regard to coherence, Wettstein (2005) suggests that forensic psychologists must not only take into account all of the information they have at their disposal, but that they must also use the data in their understanding of the person and the situation at hand. Difficulties arise when data is presented but is left uninterpreted in a report. Indeed, when no logical connections are made between different parts of a report or when various data are presented

without interpretation of their meaning, this leaves information uninterpreted and thus open to different meaning by each reader. Thus a coherent report in the context of this study is one that integrates information about the assessee pertaining to different sources in a logical manner, and if incongruent information appears, this is discussed in the report. Implied in this definition of coherence is a logical sequence in the way the information is presented in that the explanations offered in the report for assessee's behaviour, for instance, follow from the assessment data such as interview material or from results of psychological tests.

This study addresses for the first time the dimensions of relevance and coherence as possible determinants of quality forensic psychological report writing. Indeed, these two dimensions have been alluded to in the literature (Grisso, 2010; Lander & Heilbrun, 2009; Nicholson & Norwood, 2000, Wettstein, 2005), but have not been specifically addressed. A quality forensic report has been determined in large part by criteria based on the formal characteristics of the reports, such as the organization of content or the clarity of the language employed. In order to understand how these formal characteristics relate to the dimensions of relevance and coherence, information about formal characteristics were also collected in this study. This consisted of examining whether the content in the report was structured in well-identified sections, whether experts attribute information to sources, or define psychological terms, when these were used in the report. The information collected about these formal characteristics was used to see in which way they relate to coherent and relevant reports as defined above. Furthermore, this allowed the comparison between the dataset of reports used in this study and previous ones documented in the literature.

Method

Dataset

Data for this study was collected from archival records in the three main branches of the Portuguese National Institute of Legal Medicine and Forensic Sciences (NILMFS), which is the forensic state institution responsible for the production of forensic psychological assessments in Portugal. The dataset consists of all the forensic psychological reports written between 2006 and 2011 in those three main branches of the NILMFS and concern individuals charged for criminal offences for whom either a judge or a state prosecutor had asked for a forensic assessment. All reports were produced by a psychologist licensed to practice in Portugal and who is affiliated with one of the three main branches of the NILMFS; forensic psychologists affiliated with the NILMFS usually have between five and 20 years of experience. A total of 142 reports were produced during the time frame set for this study. After having been scanned, the names of the author and of the assessee were erased in each report and a code number was assigned to each in order to render them anonymous. The NILMFS' Board granted access to its archives further to the approval of the research protocol by the Research Ethics Review Board of the Université de Montréal (cf. Appendix A).

Judicial Context

Forensic psychological assessments in criminal law are produced in Portugal mainly under two articles of the Portuguese Criminal Procedural Code (PCPC), namely articles 159

and 160 (Carmo, 2005, Silva, 1993). Although both types of forensic reports used in this study are most often requested at the pre-trial stage of judicial procedures, they may also be required for trial (Carmo, 2005). Article 159 of the PCPC refers to *forensic psychiatric assessments* aimed at determining issues of criminal responsibility (Antunes, 2011). In these assessments, psychologists mainly assist psychiatrists as co-authors of psychiatric assessments. They usually sign their own assessment report, which is joined to the forensic psychiatrist's report (Silva, 1993). As for the assessments produced under article 160, these are said to evaluate the “non-pathological psychological features [and] degree of socialization” of alleged offenders in view of describing issues of “personality and dangerousness” (Antunes, 2011, p. 80). The opinions presented in these reports may be used to decide upon issues of preventive detention, guilt adjudication and/or the severity of a sentence (Antunes, 2011; Carmo, 2005). It is important to add that, under the PCPC, the results of these assessments are not only considered as evidence, but furthermore the judge is bound to their results, when the assessment report is duly validated as evidence before the court (Silva, 2002).

Of the 142 reports of this study, 74 were written under article 159 (forensic psychiatric assessment) and 62 were produced in accordance with article 160 (personality assessment).

Coding Grid

A coding grid was developed to study relevance and coherence as these dimensions manifest in forensic psychological reports (cf. Appendix B). Its description will be followed by a brief overview of the preliminary studies aimed at testing its construct validity and its ease of use by coders. In the following sub-section inter-coder reliability will be presented.

The grid consists of statements describing elements associated to coherence and relevance. The choice of presenting these elements in short sentences was made to ensure ease of use for the coders whose task it was to determine the presence or the absence of each element as it was described in the related sentence. Three criteria were used to examine relevance as a dimension of quality: R1) “a clear methodology is employed;” R2) “various sources of information are used and their relative importance is taken into account” and R3) “assessment goals [associated to articles 159 or 160 of the PCPC] are addressed.” These three criteria were further detailed through seven elements, all related to relevance.

In regards to element R1.1., coders looked for whether the methodology used in the assessment is presented at the beginning of the report, whereas element R1.2. aimed at determining the presence of methodological consistency. That is, if the methodology defined on at the beginning of the report is followed through. Methodological consistency, as an element related to relevance is rather difficult to assess since the absence of explicit references to interview or test material does not necessarily mean that such information was not used in the production of the report. This element was coded positively if, for instance, “interview” is referred to in the report as a method used in the assessment, and data from interview is clearly identified therein. Element R1.3 was considered present if the scores presented in the report, nomothetic and/or idiographic scores, were contextualized in reference to types or other categorizations, for example, to a type of intelligence, or a type of disorder. A nuance is introduced by element R1.4.: “test data is discussed in relation to the individual assessed.” This element was considered present in the report if the meaning of a particular test score was elaborated on for the person evaluated. This refers to a more highly developed ability to

explain test results. In such instances, particular aspects of the person's trajectory, or of his narrative might be used as examples of particular ways of thinking, or of being, or of acting that stood out during the assessment or in test results. The capacity to communicate what is specific and personal about a given individual is expected from "*personality assessments*" not only in the Portuguese context, but also in other assessment contexts around the world (Duits et al., 2012; Grisso, 2010; Silva, 1993). Indeed, relevance in a written report, in its ideal form, might consist in successfully bridging a person's idiosyncrasies and personality traits with his test results and his behaviour.

The second criterion used to identify relevance as a dimension concerns how information from different sources is weighed and if its relative importance is taken into account in the report (R2). This criterion was assessed in the grid by the use of two elements. A distinction was established between observations about individuals, through interviews or psychological test results, and the presence of interpretations about these observations in element R2.1. Element R2.2. was used to identify whether material from quantitative and qualitative sources was discussed and integrated.

The third criterion used to address the dimension of relevance consisted of evaluating whether the information presented in the reports corresponded to the goals set for these assessments according to either article 159 or article 160 of the PCPC.

The same method was used to examine the dimension of coherence, which was divided into two criteria: C1) "the presence of coherent information about the assessee across different sections of the report" and C2) "Explanations for behaviour follow from information presumably reported."

As for the elements related to the first criterion, three elements were coded, the first, considered whether information about the assessee is presented in a logical way, that is, not contradictory or incoherent (C1.1.). Incoherent and contradictory information about the assessee may be reported in a forensic psychological report without this resulting in an incoherent report. What is critical according to the literature on forensic report writing is that this incoherence is acknowledged and discussed in the report (Grisso, 2010; Ogloff & Douglas, 2003). The distinction between incoherence in the information reported on, on the one hand and the discussion of incoherent information, on the other, was taken into consideration in element C1.2. The third element pertaining to the first criterion to study coherence (C1.3) consisted in ascertaining whether there was a logical sequence between report sections. For instance, if information reported at an early section of the report is taken into account in the interpretation of test results.

As for the second criterion concerning coherence, two elements were coded, the first identified the presence of explanatory hypotheses (C2.1), whereas the second relates to the use of assessment material to offer explanations of the alleged criminal behaviour.

Preliminary study. A preliminary study was done based on six forensic reports randomly taken amongst the dataset in order to verify the construct validity, and to establish if the grid was easy to use by coders. This preliminary study led to a number of observations, notably that the criteria needed to be further defined, which led to the development of *elements* describing more precisely the features associated to the criteria used to define relevance and coherence. As concerns relevance, it was deemed important to be able to distinguish between reports wherein only general descriptions provided by test manuals are reproduced from those

wherein the meaning of test scores are elaborated on specifically for the individual assessed. This distinction was translated into the grid in the form of the two following elements: 1) “Test data is presented in reference to their normative meaning” (R1.3), and 2) “Test data is discussed in relation to the individual assessed” (R1.4). Another example of an observation that prompted adjustments to the grid concerned coherence, more specifically, the presence of incongruent data that was not elaborated nor discussed in the report. This was translated into the grid in the form of the following element: “Incongruent data is discussed” (C1.2).

A glossary was constructed, once all modifications to the grid have been made, to ensure that coders shared their understanding of the dimensions, criteria and of the elements used to evaluate relevance and coherence. This glossary contains the definition of all the terms used in the grid; it also provided coders with examples taken from the preliminary study for the coding of the 12 elements described in the grid. The coder’s task was to evaluate the presence, the case being, of each of the elements that were comprised in the grid. These elements were presented as sentences written in the form of *statements concerning the presence* of each element analysed. Coders were asked to confirm the presence of each element (yes) or state its absence (no). The six reports used in the preliminary study were not included in the final dataset.

Inter-coder reliability. Further to the preliminary study, the inter-coder reliability was evaluated. The two coders who participated in the analysis of the reports were two licensed clinical psychologists from Portugal, respectively with four and 10 years of experience in psychological assessments. They were trained by the first author to use the grid and become familiar with the coding manual containing the glossary of terms, illustrations of criteria and

examples of certain elements. The first author also acted as the third coder for the remainder of the research once all three agreed with the meaning of each dimension, criteria and elements and each felt familiar with the grid.

Inter-coder reliability was first calculated based on the results of a sample of 15 reports randomly selected. The inter-coder reliability was found to be unsatisfactory in this first attempt (i.e. a minimum ICC of .60 per element; Sim & Wright, 2005). An analysis of the coded reports was thus undertaken by the three coders with the collaboration of the second author in order to identify the problems hindering the reliability of coding. This analysis led to the establishment of clearer definitions of the coding criteria, the creation of a glossary of meanings that was completed by examples and illustrations taken from other reports than the ones comprised in the preliminary study. As a result, a better operationalization of the grid was achieved and the working definition of each element of the grid proved satisfactory to each coder.

Following the revision of the coding grid and the supplemental training of the coders, a second sample of 15 randomly selected reports was coded by all three coders. Inter-coder reliability then proved satisfactory for all the elements on the grid. Out of the 15 reports analysed, the average inter-coder reliability was 74.7 per cent, with a range between 65.1 to 100 per cent. The 30 reports used to establish inter-coder reliability were not included in the final dataset.

Formal Characteristics

Information was collected about the formal characteristics of reports to study in which way they relate to coherent and relevant reports as defined above. Furthermore, this information allowed the comparison between the dataset of reports used in this study and previous ones documented in the literature. This included whether the report was structured in well-identified sections, whether experts attribute information to sources; whether they employed a clear language, or psychological jargon, for instance. These formal features are associated to the quality of forensic reports according to many authors (Grisso, 2010; Heilbrun, 2001; Lander & Heilbrun, 2009; Nicholson & Norwood, 2000; Witt, 2010).

Procedures

Once this preparatory stage was completed, the remaining 106 reports were randomly assigned to each of the three coders who then coded them independently one of the other. This dataset was comprised of 57 reports produced according to article 159, and 49 according to article 160. All research material was identified with a code name during the coding process and the reports with code names are kept in a locked file cabinet accessible only to the principal researchers. To ensure the anonymity of the dataset, all identifying information was deleted from the material given to coders.

Data Analysis

The presence, or absence, of each element comprised in the grid was assessed by each of the three coders for the entire dataset. The frequencies for each of the seven elements

associated to the presence of relevance were calculated, then the overall score for each of the three criteria was determined. The same type of analysis was followed for coherence, which was assessed by two criteria that were further divided into five elements, the frequency of each will be presented in the next section.

Results

First, the results concerning the formal characteristics of the reports will be presented; second, the results pertaining to the two main dimensions analysed, relevance and coherence will be presented and commented upon.

Formal Characteristics

Most reports had a median length of seven pages, although a few reports were excessively long — the longest being 69 pages — and one was exceptionally short, containing only one page. The majority of reports concerned individuals accused of crimes against persons ($n=73$); a good proportion were about crimes against property ($n=25$), and the remaining concerned crimes of various nature. Reports were written in a clear language for the most part (48.1%; $n=51$) and the results were presented in well-identified sections (57.5%; $n=61$). When psychological terms were used, they were defined in close to a quarter of the reports (23.6%; $n=25$); and in about a fifth of them the information used was clearly associated to its source (21.7%; $n=23$). In more than a third of all reports, the criteria suggested by Grisso (2010, p. 108) concerning the formal presentation of reports were met (38%).

Relevance

A summary for each criterion used to code the presence of the dimension of relevance will be presented, followed by a more detailed description of the seven elements these criteria were further divided into. As pertains to relevance, the coders looked for the following three criteria in the reports: R1) “a clear methodology is employed;” R2) “various sources of information are used and their relative importance is taken into account” and R3) “assessment goals [associated to articles 159 or 160 of the PCPC] are addressed.” The overall scores for each of these three criteria are displayed in Table 1.

An overview of the results for this dimension shows that a clear methodology was used in about half of the reports (47.9%; R1); that in about a tenth of them the results were presented in a manner that shows that a certain hierarchy of importance was given to different sources of information (13.2%; R2), and finally that nearly all reports present opinions that are related to the assessment goal (90.5%; R3.1b) in the case of said *personality assessments* (article 160). However, in the case of reports produced under article 159, which are psychological assessments contained within psychiatric ones, opinions related to the aim of the assessment are not presented (0.9%; R3.1a). A detailed analysis of the elements that are comprised in these three criteria follows.

Table 1 – Results for relevance

<i>Criteria and elements related to criteria</i>	Percentage observed	<i>N</i> observed (<i>n=106</i>)
<i>R1. Clear methodology employed</i>	47.9	
R1.1. A clear methodology is employed in the assessment;	85.8	91
R1.2. Presence of methodological consistency;	26.4	28
R1.3. Test data is presented in reference to their normative meaning;	69.8	74
R1.4. Test data is discussed in relation to the individual assessed.	9.4	10
<i>R2. Various sources of information used and their relative importance is taken into account</i>	13.2	
R2.1. Observations distinguished from interpretative hypotheses;	21.7	23
R2.2. Qualitative material is integrated and discussed along with quantitative material.	4.7	5
<i>R3.1a. Assessment goals associated to article 159 are addressed (n=57)</i>	.9	
R3.1a. Assessment goals associated to article 159 are met according to two criteria:		
i) capacity to assess the situation that originated the judicial file and capacity to determine oneself accordingly;	1.8 (0) ⁴	1(0)
ii) capacity to appreciate the wrongfulness of the offense.	0 (0)	0(0)
<i>R3.1b. Assessment goals associated to article 160 are addressed (n=49)</i>	90.5	
R3.1b. Assessment goals associated to article 160 are met according to three criteria:		
i) personality assessment;	100 (100)	49(49)
ii) dangerousness;	87.8 (53.5)	43(23)
iii) degree of socialization.	83.7 (46.3)	41(19)

⁴ The assessment goals associated to articles 159 and 160 were coded as present by the coders if they detected information regarding the criteria defined in PCPC for each element. However, not all reports addressed the assessment goals in the same manner. While in some reports the goals were addressed without any information to support the opinion rendered, in other reports such opinions appeared supported. To make the distinction between these two ways of addressing the criteria previewed for articles 159 and 160, the number of reports and its percentage where expert opinions appear supported are displayed in brackets.

As table 1 shows, most reports present the methodology used in the assessment at the beginning of the report, (85.8%; $n=91$; R1.1), furthermore, about a fourth of the reports (26.4%; $n=28$; R1.2) evidence methodological consistency (R1.2) as measured by the presence of material taken from interviews or test results.

Explanations concerning standardized tests results, nomothetic and/or idiographic results, or still about categorizations associated to test results are also associated to relevance, as coded in two elements (R1.3. and R1.4) associated to relevance through criterion 1, “a clear methodology is employed.” Indeed, most reports contextualized the scores presented in reference to types or other categorizations, for example, to a type of intelligence, or a type of disorder (69.8%, $n=74$; R1.3). In a few reports, the meaning of a particular test score for the person evaluated was elaborated on (9.4%, $n=10$; R1.4), which refers to a more highly developed ability to explain test results.

The second criterion used to identify relevance as a dimension concerns how information from different sources is weighed and if its relative importance is taken into account in the report (R2). In more than a fifth of reports (21.7%; $n=23$; R2.1), clear distinctions were made between observations about the assessee and interpretative hypotheses concerning him, which means that it was clear to the coders which observations led to which hypotheses. The results suggested that few reports show links between quantitative and qualitative sources of data (4.7%; $n=5$; R2.2). Indeed, data collected from different sources, such as interview material and test scores were mostly reported as such, without links being established between them.

The third criterion used to address the dimension of relevance consisted of evaluating whether the information presented in the reports corresponded to the goals set for these assessments according to either article 159 or article 160 of the PCPC. A total of 57 reports were conducted according to article 159 amongst which only one report corresponded to the goal set for the assessment. This result was expected considering that in assessments produced under article 159, the psychologist's role consists in assisting the psychiatrist who is the main author of the report (Pais, 2004; Silva, 1993).

Nearly all the reports (90.5%; R3.1b) addressed the three assessment aims related to article 160; which are personality aspects, degree of socialization and dangerousness. Concerning personality aspects, all the reports (100%; $n=49$; R3.1bi) presented arguments taken from the information gathered during the assessment process, most commonly from test material. In the case of dangerousness, more than half the reports (53.5%; $n=23$; R3.1bii) contained arguments that sustained the assessments made of dangerousness. Finally, close to half of the opinions presented about the degree of socialization were based on arguments taken from the data gathered during the assessment process (46.3%; $n=19$; R3.1biii).

Coherence

A summary for each criterion used to code the presence of coherence will be presented, followed by a more detailed description of the five elements these criteria were further divided into. As pertains to coherence, the coders looked for the following two criteria in the reports: C1) “the presence of coherent information about the assessee across different sections of the

report” and C2) “Explanations for behaviour follow from information presumably reported.”

The overall scores for each of these two criteria are displayed in Table 2.

Table 2 – Results for coherence

<i>Criteria and elements related to criteria</i>	Percentage observed	<i>N</i> observed (<i>n</i> =106)
<i>C1. Presence of coherent information about the assessee across different sections of the report</i>	27.9	
C1.1. Information about the assessee is articulated in a logical way (i.e. not contradictory or incoherent);	48.1	51
C1.2. Incongruent data is discussed;	16.0	17
C1.3. All information presented in the report is taken into account when interpreting test results.	19.8	21
<i>C2. Explanations for behaviour follow from information previously reported</i>	7.5	
C2.1. Presence of hypotheses explaining behaviour;	10.4	11
C2.2. Use of the results of the assessment material (interview material, psychological tests, etc.) to develop hypotheses about behaviour.	4.7	5

The results presented in table 2 show that information about the assessee was coherent across different sections of the report in only 27.9% (C1) of the reports, and relatively few reports (7.5%; C2) offered explanatory hypotheses for assessee’s behaviour. As for the elements related to the first criterion, three elements were coded, the first considered whether information about the assessee is presented in a logical way, that is, not contradictory or incoherent. In about half of the reports, logical connections were found between various sources of information about the assessee (48.1%; *n*= 51; C1.1.), and it appears that less than fifth of reports presented a discussion of incongruent data (16%; *n*=17; C1.2.). The third

element pertaining to the first criterion to study coherence consisted in ascertaining whether there was a logical sequence between report sections. Results show that in close to 20% of reports, previous information was taken into account in the interpretation of test results (19.8%; $n=21$; C1.3). As for the second criterion concerning coherence, two elements were coded, the first identified the presence of explanatory hypotheses (10,4%; $n=11$; C2.1), whereas the second relates to the use of assessment material to offer explanations of the alleged criminal behaviour. So few reports evidenced such a usage of assessment results (4,7%; $n=5$; C2.2) that it might not be a very robust indicator of coherence.

Discussion

The observations that emanate from this research will be discussed firstly in terms of the main objects of this research, namely relevance and coherence as indicators of overall quality in light of existing literature. Secondly, hypotheses for future research will be suggested, followed by closing remarks.

Relevance in forensic psychological reports was defined in this exploratory study in relation to the legal criteria that frame Portuguese assessment mandates as well as to existing literature on the subject. Although most of the reports in the present dataset met the requirements inherent to their mandate since they contained conclusions pertaining to each of the three elements comprised in article 160 of PCPC, which are assessing *personality* aspects, *dangerousness* and *degree of socialization*, it appears that some specific elements were lacking. For example, many reports did not propose arguments explaining their assessments of the individual's *dangerousness*, or in other cases, the individual's *degree of socialization*.

However, it appears that in this sense, the results obtained from this study are quite in line with those of Lander and Heilbrun (2009) who have found that in about 60% of the reports analysed, the reasoning explaining the connection between the psycho-legal issues that assessments are expected to address, and the data collected during the forensic assessment was not provided in the report. A similar finding was observed in Grisso's (2010) sample ($n=62$) where the experts' opinions about key psycho-legal issues were absent in 56% of the reports. Indeed, the ability to present the source or sources in the material for one's opinions enhances both the report's credibility before the justice system as well as shows the usefulness of psychologists as forensic experts (Skeem et al., 1998; Wettstein, 2005). This highlights the importance of continuing professional training of forensic psychologists which many licensing boards have rendered mandatory (Ogloff & Douglas, 2003). It is possible that some, maybe many, psychologists would have the competence to correct this weakness if they received proper training.

Another facet to relevance explored in this study consisted in examining whether the various sources of information were weighed in the reports, and whether the information provided therein was unique to the individual assessed. Results show that in only a minority of reports considered, the data from various sources of information appears weighed (4.7%; $n=5$; R2.2), and in only 10% of the reports (9.4%; $n=10$; R1.4), the information reported goes beyond the normative meaning of test scores. Relying mainly on the results of standardized tests, as it was often observed in the dataset of reports used in this study may amount to results that are more general and in which the individuality of the assessee might be lost (APA, 2013; Griffith et al., 2010). This observation is unfortunate in the Portuguese context, since the aim of these judicial mandates is specifically to provide legal decision-makers with highly specific

information concerning the individual so as to render the judicial decision-making process more individualized (Dias, 1983). The results of this study regarding the way the various sources of information are weighed, mimic those of Lander and Heilbrun (2009) who found that in about 60% of the 125 reports analysed, experts presented their opinions based on one sole data of information. In the sample of 62 reports analysed by Grisso (2010), 22% fail to use more than one source of information to sustain expert opinions. Furthermore, experts' over-reliance on one single source of data was singled out by Grisso (2010) as one of the ten most frequent faults in forensic report writing.

Heilbrun (1990) recommends treating test results as hypotheses subject to verification through other sources of information such as an individual's history, his medical records, as well as with the help of third party observation. Some professional associations and licensing boards, both in North America and in Portugal, have supported that same recommendation (APA, 2013; Ordem dos Psicólogos Portugueses, 2011; Ordre des psychologues du Québec, 2002a, 2002b).

The dimension of coherence was explored notably by assessing whether the information presented in different sections of the report fit together in a logical fashion, without appearing incongruent. Results of this exploratory study suggest that in about half of the reports considered (51.9%; $n=55$), information about the assessee is incoherent across the reports sections and when incongruence was detected, for instance, between information reported on the assessee based on different data sources, incongruence was rarely discussed in the report (16%; $n=17$). To the contrary, reports where information about the assessee was presented in a coherent fashion and incongruence discussed, invited the reader to reason along with the

report author and amounted in that sense to a much more coherent rendition of the assessee's characteristics. This observation replicates that of Grisso (2010) who found that in a third of his sample (30%; $n=62$), although the data presented in the report allowed for alternative explanations, this was not discussed in the report. Grisso recommends in line with this observation that the meaning of inconsistencies in the information provided about the assessee should be carefully addressed by the expert, for instance, resorting to results from different sources of data to provide a more solid basis for the results' discussion. Rendering forensic reports more coherent is of importance as this may minimize the deleterious effects of data misinterpretation as information that is duly integrated avoids the possibility of leaving information open for interpretation by other judicial actors that look upon reports for informational support for their decisions. Indeed, it has been documented that legal decision makers' judgments are as exposed to errors and biases as other people and that some of these errors may be prompted by the way in which information is presented or emphasized in forensic reports (Dhami & Ayton, 2001; Goodman-Delahunty & Dhami, 2013). If information is duly integrated, potential misinterpretations can thus be prevented which contributes to a more significant participation of psychologists in the criminal justice system.

This exploratory study sought to fill the need identified in the literature for more knowledge on countries of civil-law tradition. The analysis of the relevance and coherence as a way of examining the quality of reports suggest that the characteristics identified in the dataset of reports written under the Portuguese criminal law are consistent with previous report surveys in North America. Amongst the areas that appear deficient, the need to better link the test results to observations associated to interview material and /or information from

other sources stands out, as is the need to link the results of the assessment to the forensic issues that form the basis of the referral (Lander & Heilbrun, 2009; Nicholson & Norwood, 2000; Wettstein, 2005).

The literature about forensic report writing has given much emphasis to the formal aspects of reports as markers of their general quality (Griffith et al., 2010; Nicholson & Norwood, 2000; Wettstein, 2005, 2010). It was interesting to note in this exploratory study that, although formal characteristics such as clarity of the language used, presentation of assessment findings in well-identified sections and correct attribution of information to their sources were manifest in a fair proportion of the reports evaluated, these qualities were not necessarily equated with the general coherence and relevance of their content in our study. As some authors have suggested, such formal characteristics while indicative of quality of a report do not amount to its relevance (Griffith, Stankovic, & Baranoski, 2010; Melton et al., 2007; Wettstein, 2010). To that effect, Griffith et al. (2010) argue that formal characteristics provide a structure, which is very important, but “insufficient for delineating what is necessary to create a persuasive and relevant product” (p. 33).

The survey of the reports’ characteristics presented in this study generated ideas and raised questions that could be addressed in future research in view of developing forensic psychology in Portugal. The development of a more nuanced grid based on the one used in this study is one possible research avenue. Relevance seems to have been better operationalised through the seven elements, when compared to the dimension of coherence which will require further elaboration in order to develop a better operationalization of what, at face value, appears well suited to measure quality.

The use of the grid in other settings, forensic or therapeutic, may help to better operationalise the dimensions of relevance and coherence as quality indicators of forensic psychological reports.

The findings of this study also raise the question of what are the psychologists' view on what would constitute a quality report? How do they see relevance and coherence as quality indicators of forensic report writing? Enquiring the professionals that regularly conduct forensic psychological assessments may offer new insights into whether relevance and coherence are the best concepts to study quality in forensic psychological reports and to better operationalise these two concepts.

The question of whether these two concepts are valid measures of quality in forensic report writing is important to ask in the intellectual debate about the quality of forensic psychological assessments for it goes beyond the focus on the mechanics and organization of a report that has mainly been at the centre of the literature in forensic report writing rather than considering more abstract and conceptual issues such the requirements of forensic reports which, when compared to clinical reports, need to address very specific issues (Griffith et al., 2010). If the concepts of relevance and coherence used in this exploratory study are proven valid, then one can imagine possible avenues for continuing professional training of forensic psychologists drawing on the findings of this first study, notably concerning the integration of diverse sources of knowledge about assessees, and on how to coherently weigh such information.

Concluding Remark

This exploratory research sought to contribute to the ongoing discussion about forensic psychological reports by analysing issues of relevance and coherence as indicators of the quality of forensic psychological reports as suggested by Wettstein (2005). Research that succeeds in better understanding the role played by these dimensions in the quality of reports will contribute to the improvement of professional training of forensic psychologists and other mental health experts.

Acknowledgements

We wish to express our gratitude to Ms. Eliana Vilaça and Mr. João Ferreira who were gracious enough to agree to code the hundreds of pages of reports, and to dedicate tens of hours in the preparatory work involved in this research.

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Second Chapter

The Use of Psychological Reports in the Portuguese Justice System: Judges' and Prosecutors' Viewpoints

by

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Article submitted to:

*Applied Psychology in Criminal Justice*⁵

December 2013

⁵ Acknowledge of receipt in Appendix H.

Abstract

Previous surveys conducted on legal decision-makers' expectations about forensic mental health assessments have contributed to a better understanding of the role played by these assessments in the justice system and a better definition of the experts' role in the legal decision-making. In countries of civil-law tradition, such as Portugal, there is insufficient data about the use judges and state prosecutors make of these reports despite the increase in demand for psychologist's expert opinion by these legal actors. The goal of this paper is to examine the use of forensic psychological reports in the Portuguese criminal justice system from judges' and prosecutors' viewpoints. A group of 17 judges and prosecutors was surveyed using a semi-structured interview protocol. Results of the content analysis suggest that legal decision-makers expect reports to provide objective responses regarding legal issues, and dangerousness in particular. Highly specific information about the accused and his milieu appears also to be of importance on how forensic reports are used according to the specific needs of the judges and prosecutors interviewed. The setting where the assessments are produced, i.e., the state forensic institution, appears to be crucial on how results of forensic psychological reports are valued in the Portuguese criminal justice system. The results contribute to a better understanding of the use that both judges and prosecutors make of these reports in the legal decision-making process. These results are discussed in the light of previous surveys, and future research avenues are explored.

Key-words: forensic psychological reports, forensic psychology, legal decision-makers, state forensic institution, Portuguese criminal law, qualitative study.

Introduction

The perspectives of frontline legal professionals constitute an often neglected source of information on the role played by forensic psychological assessments in the justice system (LaFortune & Nicholson, 1995). Studies documenting legal decision-makers expectations about forensic mental health reports have allowed to identify the type of information considered to be the most relevant in the legal decision-making process. Redding, Floyd and Hawk (2001) have determined that judges and prosecutors consider information based on clinical data to be the most relevant for their needs. These research findings also shed light on the challenges faced by forensic psychologists in meeting legal decision-makers' expectations, for instance, psychologists experience difficulty in providing specific information about the assessees, or in elaborating on the bases for their expert opinions in their reports (LaFortune & Nicholson, 1995; Redding et al., 2001). Legal decision-makers in these studies are typically asked their opinions on forensic psychological reports as this is often the material that they come in contact with as far as their exchanges with forensic psychologists (Griffith, Stankovic, & Baranoski, 2010; Grisso, 2010; Lander & Heilbrun, 2009).

Nicholson & Norwood (2000) note that, when compared to reports pertaining to child custody evaluations, there have been few studies that have specifically focused on judges' and prosecutors' expectations about forensic psychological reports. Very little data is available on the use of forensic psychological reports in criminal justice systems whether they have been conducted in civil or in common-law jurisdictions. Moreover, as Wettstein (2005) notes, these findings mainly concern restricted geographical regions in North America.

The main goal of this paper is to explore judges' and prosecutors' views as to the use made of forensic psychological reports in the Portuguese criminal justice system. The present research also seeks to fill the need for more research data about jurisdictions of civil-law tradition, particularly for those wherein assessment reports are ordered by judges and prosecutors to one state forensic institution, as it is the case in Portugal.

In the following section, a brief review of the literature will be presented. There are few studies documenting legal decision-makers' opinions about forensic mental health assessment, and the majority of them stems from North America. The available North American literature on this topic will be overviewed next, despite the fact that the present research was conducted in Portugal, a country of civil-law tradition. This overview will be followed by a description of the specificities of the Portuguese criminal justice system with regards to the participation of psychologists. The methods employed in this research will then be described, followed by a presentation of the results and their discussion. Concluding remarks follow.

Review of the Literature

Owens, Rosner and Harmon (1985, 1987) report that judges are generally satisfied with competency to stand trial assessment reports. The twenty Criminal and Supreme Court judges for the Borough of Manhattan interviewed for their study showed a clear understanding of what they expected of these assessments, further explaining that they used these results to

examine issues such as dangerousness and indications for treatment (Owens et al., 1987). These findings suggest that legal decision-makers' expectations concerning "competency to stand trial" mandates go well beyond what is statutorily established. LaFortune and Nicholson (1995) surveyed 17 judges and 93 attorneys about the content of forensic mental health reports; the researchers found that the participants were concerned about the insufficiency of the arguments used by mental health experts to base their conclusions. They also noted that the participants were of the opinion that the reports lacked specific information about the assessee's personal characteristics (LaFortune & Nicholson, 1995).

In addition, participants were asked to rate the quality of reports submitted by forensic mental health professionals produced either in hospital-based or in outpatient settings. Although the latter reports were rated higher on a number of elements related to quality, notably timeliness or familiarity with legal criteria, it was noted that little attempt was made, in both settings, to individualize the assessment results that were presented in the reports produced. Accordingly, no assessee-specific descriptions of personal and psychiatric backgrounds were presented in the reports studied. According to the participants, this deficiency diminished the usefulness of forensic psychological and psychiatric reports (LaFortune & Nicholson, 1995).

Redding et al. (2001) examined the preferences of judges (n=59) and prosecutors (n=46) regarding eight types of evidence often found in forensic reports and in expert testimonies. After having been given a definition of each type of evidence and been shown a brief vignette in which an expert discusses either a clinical diagnosis or an assessee's psychological portrait, participants were invited to give their opinion about each type of expert evidence they had witnessed. Results show that both judges and prosecutors were predominantly interested in evidence that consisted of clinical descriptions in which the expert discussed whether if an

assessees met the relevant criteria to determine criminal responsibility, but were also interested to hear the expert's opinions on the issues at stake. It is noteworthy that participants found statistical data on diagnostic reliability, or other such statistical information less helpful. They also preferred reports and testimonies that were descriptive and explanatory rather than those based on statistical data (Redding et al., 2001). These findings are consistent with those of LaFortune and Nicholson (1995) who showed that legal decision-makers wanted mostly to hear psychological information that was specific to given assessees. In this sense, issues of validity and reliability do not appear to be of much concern to legal decision-makers despite the recommendations of professional organizations (APA, 2013) and regardless of the fact that these issues are paramount to many scholars (Slobogin, 1989; Stone, 2007; Tillbrook, Mumley & Grisso, 2003).

Recently, Pais (2004) completed an important study concerning the participation of forensic psychologists in the Portuguese criminal justice system. She conducted a discourse analysis of some 345 forensic psychological and psychiatric assessment reports as well as of all the Portuguese judicial decisions from 1967 to 2000 related to reports she analysed. She aimed to identify the characteristics of the discourse, on the one hand, of forensic psychologists and psychiatrists and of judges on the other. She was notably interested in their discourse regarding the *personality assessment* of alleged offenders as seen through written forensic reports and judicial decisions. Pais (2004) found that, despite the fact that psychologists and psychiatrists worked in a state institution similarly to their counterparts, the judges, little exchange occurred between them. Most often, the only exchange between them consisting of a written request for a forensic assessment on the part of the judges and the

production of the said assessment report on the part of the forensic psychological and psychiatric expert.

Pais' (2004) concluded that there was a "communication void" between judges and experts owing to the fact that there were hardly ever any conclusions from forensic reports that found their way in the judicial decisions. When forensic psychological or psychiatric conclusions were present in judicial decisions, these were combined with information from other sources, such as statements by the accused or accounts by witnesses garnered during the proceedings. Expressions such as "all things considered" and "considering the facts at hand and the general characteristics of the personality" were often used as sole reference to the observations or conclusions emanating from forensic reports. Moreover, when forensic conclusions were present in judicial decisions, they were mainly used to lend support to other evidence. This led Pais (2004) to raise the hypothesis of a confirmatory bias in the way judges weighed the various information reported during trial. The alternate hypothesis she presented consisted of viewing the results of assessment reports as being in such synchronicity with other sources of information so as to render them redundant and thus absent in judicial decisions.

Another way of discussing Pais' (2004) conclusion is to remark that her sample contained reports produced before the law reform of 1987, that is a 20-year period during which forensic psychiatric and psychological expertise had not been clearly defined. This is especially true for psychological assessments since psychologists were introduced as independent forensic experts into Portuguese criminal justice system only through the criminal procedural law reform of 1987. Before then, their participation was limited to a section within the psychiatric assessment report that presented psychological testing results in an occasional

fashion. Additionally, it is only with the reform of 1987 that the psychologist's role as an expert on personality issues was defined. Hence the importance of personality issues, as distinct from mental illness issues, and as relevant data for judges appears in the procedural code only in 1987. The information contained in the reports produced between 1967 and 1987 might not have been very precise as to personality issues, the very information Pais (2004) was looking for in the judicial decisions she examined in her research.

Nonetheless, although some 18,408 requests for psychiatric and psychological assessments were made to the main state institution between 2010 and 2012, no data exists on their use in written or spoken judicial decisions, nor have the perspectives of legal decision-makers about the role such assessments play in their decision making process been studied (Annual Report of the NILMFS, 2010, 2011, 2012). Pais's (2004) perplexing observation concerning the limited exchange between judges and state prosecutors, on the one side, and psychologists and psychiatrists, on the other, also warrants further study. The present paper consists of a first step in the attempt to understand the following question: what is the use of forensic psychological reports in the Portuguese Criminal Justice system from the viewpoint of judges and state prosecutors.

A description of the context in which psychologists participate in the criminal justice system in Portugal will be presented next as a background for the discussion of the results. This description will provide information on the institution where most forensic psychological assessments are produced, as well as on the procedural code that defines them.

The Portuguese Context

A distinctive characteristic of the Portuguese justice system is the existence of a state institution, the *Portuguese National Institute of Legal Medicine and Forensic Sciences* (NILMFS), whose mandate it is to provide the country's judges and state prosecutors with forensic assessment reports of all kinds, notably of psychological nature. The NILMFS is a semi-public institution, similar in nature to a state forensic laboratory; it is both financially and administratively autonomous, receiving independent funding from the state (article 1, Decree-Law 166/2012, July 31. 2012), nonetheless, the Ministry of Justice oversees its activities. The NILMFS' mission is to provide quality forensic reports in response to requests made by courts, the state prosecution as well as by the police. Requests for forensic psychological and psychiatric assessments are most often sent to one of three branches of the NILMFS who, in turn assigns a staff psychologist and/or psychiatrist to conduct the assessment. These are conducted either in the institution's main branch, or in one of the 27 medical legal offices affiliated with the NILMFS, which are located in public health units (Vieira, 2012).

According to Portuguese Criminal Law, the objects of both forensic psychological and psychiatric assessments are defined by the PCPC, psychologists participating in both types of assessments (Carmo, 2005). Firstly, psychologists can act as co-authors of forensic psychiatric reports in view of determining *criminal responsibility*, according to article 159 of the PCPC. Carmo (2005) explains that Portuguese criminal law (article 20) foresees that questions concerning an assessee's criminal responsibility as related to "personality" issues, and/or to mental illness, are examined conjointly by a psychiatrist and a psychologist, as was further developed in article 159 of the procedural code (PCPC). Secondly, psychologists act

independently of other professionals as sole authors of *personality assessments*, which are further defined by article 160 of the procedural code (PCPC).

Assessments produced under article 160 are said to evaluate the “non-pathological psychological features [and] degree of socialization” of alleged offenders in view of describing issues of “personality and dangerousness” (Antunes, 2011, p. 80). The opinions presented in these assessments have implications for the assessee in that they concern issues of preventive detention, guilt adjudication and severity of sentences (Antunes, 2011). According to Carmo (2005), prosecutors and judges are most often interested in understanding the psychological issues pertaining to the latter two, which concern culpability and sentence severity.

Under the PCPC, not only are the results of *personality assessments* considered as evidence, but furthermore the judge is bound to its results, when the assessment report has been duly validated by the judge (Lopes, 2011; Silva, 2002). Thus, as Silva (1993) states, *personality assessments* made under article 160 aim at: “providing some meaning to the act, to the genesis of the offending behaviour” (p. 30). In this sense, the psychologist is expected to provide an explicative hypothesis, rather than a medically informed diagnosis, specifically aimed at the enlightenment of the presiding judge. Pais (2004) argues that the notion of personality, as defined in article 160, was introduced in the last reform of the PCPC in view of translating the ideals of re-socialization that were valued at the time of its inception in 1987. This reform of the criminal justice system saw the introduction of psychologists as autonomous professionals whose role it is to inform the court of psychological aspects, notably explanations based on an individual’s personality, socialization and dangerousness, that might render the sentencing process more personalized, thus more just (Dias, 1983, 2009).

Method

Sampling Procedures and Participants

The participants of this study consist of a convenience sample of 17 legal decision-makers, more precisely of seven judges and ten state prosecutors. The authorization to interview the judges and prosecutors was granted by the Supreme Judicial Council (Conselho Superior da Magistratura) and by the Attorney General's Office (Procuradoria-Geral da República), after the approval of the research protocol by the Research Ethics Review Board of the Université de Montréal (Appendix A).

The average age of the participants is 46 years old and they have, on average, 18 years of professional experience. The first inclusion criterion consisted of having worked as a judge or a state prosecutor in one of the three Portuguese major cities where the three main branches of the NILMFS are located, i.e., Lisbon, Oporto and Coimbra. The second inclusion criterion concerned the number of years of experience in the practice of criminal law, 10 years experience was determined to be necessary to be included in this study. There were no further criteria for exclusion.

All the interviews were conducted between January and February 2012; they were held in private rooms in the interviewees' work place. Each interview lasted between 45 and 60 minutes. Interviews were audiotaped and transcribed verbatim. Each interview transcript was stored securely and all nominal information was excluded from the interview transcripts. Any material that would allow the identification of interviewees or assessees was excluded from the data analysis to ensure anonymity. Formal consent was sought; a consent form was

presented to the participants, questions were answered and all those who felt comfortable with the guarantees of anonymity given, signed the consent form (cf. Appendix E).

Interviews

To examine the use made of forensic psychological reports in Portuguese criminal justice system from judges' and prosecutors' viewpoints, semi-structured qualitative interviews were conducted. Qualitative interviewing has been described as a suitable method for collecting rich and complex data about the everyday experiences of interviewees (Brinkmann & Kvale, 2008; Patton, 2002). The reason for choosing a semi-structured interview protocol (cf. Appendix C) was twofold; firstly it permitted to give a general direction to the interviews so as to guide the participants and ensure that all aspects were covered. Secondly, it helped researchers respect the time frame allotted, which was relatively short. However, since the theme of the interviews was not only well defined, but also well known to the participants who work daily within the confines of the legislation that defines forensic psychological assessments, it was deemed possible to respect the conditions set for the interviews.

After the presentation of the study and of the informed consent form, the first author asked a general question: "In your experience, how would you describe the use you make of forensic psychological assessments reports in your work?" Participants were encouraged to present examples from their practice to illustrate their responses and complementary questions were asked in order to encourage participants to elaborate further on their answers from the viewpoint of their experience (cf. interview protocol in appendix C).

Data Analysis

Coding scheme. The content analysis of the interview transcripts proceeded in four stages. First, transcribed interviews were read through a few times to gain a general picture of the interview material. Secondly, one interview transcript was coded in order to develop a coding scheme focusing on the issue raised in the interview protocol, namely, the interviewees' views on the use of forensic psychological reports in their work as legal decision-makers. In order to ensure its validity, in a third stage, this coding protocol was the object of discussion between authors, which led to its revision and the development of definitions for each theme of the coding protocol. Discrepancies in the coding were further discussed until a consensus was achieved. For instance, it was necessary to adapt the coding scheme to accommodate for dimensions that emerged during the data analysis that went beyond the research question. In the fourth stage, the resulting coding scheme was used to code the remaining interview transcripts. Following Stake's (1995) recommendations, analytic memos were written all along this preparatory stage and were later used not only to refine the analytic categories which emanated from the analysis, but also to document insights made about specific interviews and the dataset as a whole.

Findings relative to each interview were entered into a cross-case data matrix (Miles & Huberman, 1994), which gave an overview of the data and enabled the identification of differences and similarities between judges on the one hand and state prosecutors on the other. Each of these two legal actors plays a different role in the Portuguese criminal justice system and it was therefore expected that they would make a different use of reports. This procedure

thus facilitated the organization of the data. The cross-case data matrix also helped to determine relationships between different interview excerpts and identify overlap between codes and between different categories. Resulting categories were generated using a constant comparative method (Strauss & Corbin, 1990) that consists in trying out tentative categories for the data from different interviewees, adjusting categories several times until the interview material of each interviewee fit smoothly into one category. The type of categories this content analysis tried to establish regards key dimensions of the use made of forensic psychological reports according to legal decision-makers. However, it should be noted that, in using a qualitative content analysis, the potential emergence of other issues from the reading of the data was left open (Baxter, 2009). For instance, beyond the views of legal decision-makers regarding the use made of forensic reports, during the coding process, a second issue emerged pertaining to the characteristics legal decision-makers' attribute to forensic psychological reports. In the next section, this question and its respective dimensions will be described and illustrated together with the main issue considered in this study, namely the use made of forensic reports from legal decision-makers' viewpoints.

To keep track of all emerging codes, excerpts, thoughts and ideas during the content analysis, the software Atlas.ti (Muhr, 2004) was used. The advantages of using this software have been reviewed in various studies (Lewins & Silver, 2007; Mühlmeier-Mentzel, 2011; Muhr, 2000; Zhang & Wildemuth, 2009). Of particular relevance for this study was its capacity to establish semantic relationships between codes in a workflow fashion while simultaneously keeping track of the original interview transcript.

Results

The analysis of the interview material permitted to establish that, although the participants mostly focussed on the research question, which pertains to the use made of forensic psychological reports in their work, many participants also gave their views on the characteristics attributed to forensic psychological reports in their work. Accordingly, this section will be divided in two parts, firstly the two dimensions that concern the participants' views on the characteristics attributed to reports will be presented and illustrated with interview excerpts. In the second part of this section, five other dimensions will be presented and accompanied with excerpts that illustrate how the participants view the use that is made of the reports.

1. The Characteristics Attributed to Assessment Reports

The first two dimensions that will be presented emanate from the analysis of the participants' interview material and have been designated as objectivity and impartiality. Both dimensions refer to what interviewees view as tokens of quality towards which all forensic psychological reports should aspire.

1.1. Objectivity. The analysis of the interview material shows that, for all participants, an essential dimension towards which all forensic psychological reports should tend is objectivity. Participants express this quite clearly, notably by stating that the definition given to *personality assessment* by article 160 of the PCPC should act as guideline that favours an

objective account of an assessee's personality, dangerousness and degree of socialization. In the following excerpt, Judge B's views illustrate the importance given to objectivity:

It is important that the expert analyses the issues previewed in the code with objectivity and avoid... we in Law have a certain difficulty with clichés or undetermined concepts. Experts often resort to undetermined concepts that make our job more difficult. [...] Obviously if we had a more objective and concrete response like “this is it!” that would render our decision easier. *Judge B*

This participant is suggesting that some psychologists resort to psychological concepts that result in uncertainty, which this participant does not see as being compatible with the legal decision-making process. What also seems to transpire in this excerpt is that forensic psychologists are expected to meet the jurisprudential criteria defined in the PCPC for *personality assessments*, which implies providing information that helps the court seize the uniqueness and the individual characteristics of the assessee.

1.2. Impartiality. A second characteristic that most of the judges and prosecutors (6 judges; 7 prosecutors), view as a token of quality is the impartiality that they attribute to reports written under the auspices of the state forensic institution, the NILMFS. The impartiality of the reports produced by psychologists employed by the NILMFS was often put in contrast with those signed by what was termed “private experts” who were portrayed as lacking impartiality. This view is shared in such a manner that many participants were of the opinion that the fact of a report being associated to the NILMFS avoided procedural objections linked to the absence of neutrality and the presence of partiality. Judge D expressed this dimension in following manner:

According to my experience, the NILMFS' experts are very specialized in the conduction of these assessments and ensure us, as well as the defendant and all the parts involved, a level of impartiality that is by all means convenient. Even more so, the appointment of a NILMFS' expert avoids other procedural objections related to expert refusals. *Judge D*

The question of impartiality attributed to psychologists affiliated to the NILMFS is an important one since it means that, on the onset, their reports are considered to be not only of a higher quality, but of having an assumed added value from the viewpoint of procedural efficiency.

2. The Use of Assessment Reports

The following five dimensions concern the principal object of this study, that is the participants' views on the use of forensic psychological reports in their work. While the previous dimensions concerned general characteristics attributed to reports, the following five concern how the participants put assessments reports to use. They have been designated with the following terms: dangerousness, responsibility, just sentence, intuition and meaning; they will be described and illustrated in the following paragraphs.

2.1. Dangerousness. All but one participant (7 judges; 9 prosecutors) viewed the role of forensic psychological assessment reports as having to shed light on the potential dangerousness of assessees. This point of view was expressed in a clear manner by Prosecutor G:

Is he dangerous or not? That is the only thing I care about. Sometimes they [psychologists] say that he is one of those persons that can easily explode. That can be important in determining whether I should ask for preventive custody... if they are talking about a more calm personality, an isolated episode... my decision will be different. *Prosecutor G.*

In this excerpt, the psychologists' opinions about issues of dangerousness appear to be the most relevant outcome to be drawn from forensic psychological assessment reports. To the point where such opinions are described as having direct implications for the legal decision-making process. This point of view is shared by many participants who see dangerousness as an individual attribute that is to be understood according to other features of an assessee's personality such as impulsivity, for example.

2.2. Responsibility. A majority of participants, including all the prosecutors (4 judges; 10 prosecutors) viewed psychological assessment reports as a tool to evaluate an individual's responsibility in the commission of a crime. The fact that all prosecutors identified this dimension is not unusual since this use of psychological reports is made mostly at the stage of the inquiry. The prosecutor in the following excerpt uses a colleague's vignette to illustrate how the results of a psychological assessment report were useful in the writing up of the indictment of a person accused of murder:

I would have written that after delivering her grandchild, the accused strangled the newborn in an unidentified way and fed it to the animals. Then I would describe her level of guilt and intentionality: "acting as described, the accused showed an absolute

indifference for the life of a new born.” She didn’t do this out of post-partum stress! This was not her baby. If it had been, this might have led to infanticide charges. *Prosecutor A*

Forensic psychological reports are clearly viewed, in this excerpt, as an informational tool used for describing individual aspects in psychological terms, in this case, the intentionality of the accused. This use of psychological reports raised concern since the report is used, in a way, as a sort of psychological lie detector test. A certain involuntary collusion between the NILMFS affiliated psychologist assessing an accusee and a state prosecutor having to write up an accusation in a convincing manner might occur all the more easily, in certain circumstances, that both might have the impression of working for the “same side,” that is the justice administration.

2.3. Just sentence. Most participants (7 judges; 4 prosecutors) consider that an important use of forensic psychological assessment reports consists of rendering the sentence more just. Participants, most often judges, consider using forensic psychological assessment reports in situations where they need to substantiate a sentence reduction or decide on its suspension. For example, a participant reports the case of a first time offender that was “socially integrated” and explains that the understanding of the asseessee’s personality was necessary for the court to modulate his sentence. The use made of the report hence appears to be very specific:

We sentenced him to five years and five months for four counts of aggravated robbery in a sentence that we, under normal circumstances, would go as high as 15 years. For me, it was absolutely fundamental to have a report with a description of the personality traits of that individual. *Judge E.*

In this excerpt, the use that is made of the report is clearly linked to the wish to render a just sentence that is justified by individual traits and an understanding of personality issues. This use of forensic psychological assessment reports corresponds to one of the basic principles of the Portuguese criminal law reform, which aims at rendering the sentencing process more just by personalizing it through a better understanding of the individuals brought before the courts (Dias, 1983, 2009).

2.4. Intuition. A majority of participants (4 judges; 7 prosecutors) seem to have an intuition of the underlying issues that seem to characterize certain individuals brought before them. In such cases, it is as if the results that are presented in the forensic psychological reports appear to be used to confirm, or disconfirm their intuitions. In the following excerpt, Judge C explains this view: “It [the report] was unacceptable! I heard the defendant that was before me, I listened to him, and I did an informal report; on what kind of person I had there.”

Judge C

In this excerpt, a sense of knowing the psychological make-up of the person accused better than the psychologist who proceeded to his assessment clearly stands out. Although such a point of view does not represent the point of view of other participants, it nonetheless illustrates, through its very exceptionality, how convincing such intuitions can become. It must be noted furthermore that prosecutors and judges not only have a different vantage point than do forensic psychologists when it comes to their interactions with the accused, they also have a different type of experience. Often on their best behaviour with the psychologist, persons accused of a crime might appear much more defensive to the legal decision-makers, to the

point of appearing cunning sometimes. Thus, on occasion, giving different representations of themselves to different actors of the Portuguese criminal justice system.

2.5. Meaning. A majority of participants (3 judges; 6 prosecutors) view forensic psychological reports as being critical in enlightening them as to the meaning of an assessee's behaviour, and more precisely his deviant behaviour. Participants were interested in understanding motivations for criminal behaviour, especially when an assessee's social milieu does not provide evident answers to his deviant conduct. Amongst the examples given, participants expected assessment reports to shed light on homicides cases, wanting to know what might lead an individual to commit such a crime. In such cases, understanding the individual's particular characteristics did not seem sufficient if a meaning for his act was not provided by the report. Prosecutor B illustrates this in the following excerpt:

He was not a low-life, he had a family and a career and I asked myself "why did he do that?" The motivation for me was an enigma, and the Code instructs me to add to the accusation the motivation to the crime when the prosecutor knows it. *Prosecutor B*

It is striking to observe that the fact that the accused does not correspond to the expected type of individual accused of violent crimes seems to render understanding the meaning of his act more pressing. However, participants also expressed their expectation that by understanding the meaning of his offense, the court might be better able to predict future violent behaviour.

Discussion

This section is divided in four parts, first, the characteristics attributed by legal decision-makers to assessment reports will be discussed, namely their views about the impartiality of reports written by NILMFS' psychologists will be addressed. In the second part, the observed differences and similarities between judges and prosecutors as far as the use they make of forensic psychological reports will be addressed. The third part deals with some limitations of this present study and in the fourth part the use made of forensic psychological reports from legal decision-makers' viewpoints in the Portuguese criminal justice system will be summarized.

An important dimension that emerged in the content analysis related to the characteristics attributed to forensic reports is the impartiality ascribed to reports produced at the state forensic institution. Interviewees consider reports produced at the NILMFS to be more neutral and regard them as high quality reports in contrast to reports written by "private" experts. The assumed qualities attributed to reports written by "state-experts" warrant discussion as they appear to be important in the legal decision-makers' decision to request a forensic psychological report and subsequently in weighing the value of reports in legal decision-making. As noted in the review of the literature, there is not enough knowledge about the rapport between legal decision-makers and forensic psychologists in legal systems where forensic mental health assessments are referred to a main state institution to serve here as baseline for discussion. However, the results of this present study can be compared to other countries of civil-law tradition, namely The Netherlands, where judges play an "active role" in appointing and interrogating experts (Krauss, Cassar, & Strother, 2009). This one-expert

system has been subject to criticism, namely because the validity of the opinions transmitted by the expert appointed by the court is not questioned by other experts, leaving the court more exposed to the influence of possible unscrupulous data (see Krauss et al., 2009; Malsch & Freckelton, 2005). This same issue regarding the lack of scrutiny of the assessment quality can be raised in the Portuguese criminal justice system. Despite of the fact that defendants in Portugal are allowed to hire their experts to question the validity of reports written under the state forensic institution, this is rare practice as it was also noted by Krauss and colleagues (2009) in the Dutch justice system, leaving to legal decision-makers of both countries the role of exerting a quality control over the expertise and deciding upon the weight to give to this evidence⁶. One finding of this study that illustrates how participants weigh the value of psychologists' expert opinion in their decisions concerns legal decision-makers' intuitions about the underlying issues that characterize assessees. Indeed, the reactions evoked by reports that did not validate legal decision-makers' intuitions can be compared with Pais' (2004) analyses of judicial sentences that pointed out for the possible presence of a confirmatory bias, which refers to a tendency to look for evidence that supports one's hypothesis (what one is expecting or hoping to find) and to ignore, or fail to seek, information that is not consistent with that hypothesis (Borum, Otto, & Golding, 1993). Future research could further explore this observation on a bigger sample of judges and prosecutors. This subsequent research could draw on the findings of the legal decision-making literature that point out to the challenges faced by judges and prosecutors in weighing and integrating evidence for and against before a judgment is delivered (see Dhami, 2006; Dhami & Ayton, 2001).

⁶ In the Portuguese case, this quality control task is statutorily attributed to NILMFS (article 3, Decree-Law166/2012, July 31.), yet, contrary to other forensic specialties managed by the NILMFS, reports written by forensic psychologists are not subject to regular quality control audits (personal communication, T. Magalhães January 31, 2012).

Another set of results that stood out in the content analysis of the interview material regards the differences and the similarities observed in the use that judges on the one hand and state prosecutors on the other seem to make of forensic psychological reports. Once the assessment report is validated as evidence, judges and prosecutors use this evidence as a “work-tool” according to their respective mandates. In the case of state prosecutors, this might consist of using the results to create a narrative of the events, a description of the accused in the indictment, his level of culpability and intentionality and in the case of judges, this “work-tool” appears particularly relevant in setting a personalized sentence. The different use judges and state prosecutors seem to make of forensic psychological assessments was observed in previous studies. Redding and colleagues (2001), for instance, report differences between judges and prosecutors as far as their expectations about the amount and type of information conveyed by the expert. While judges wanted more information “even somewhat speculative testimony such as theorizing about the causes of a defendant's behaviour. Prosecutors, on the other hand, were the least interested in theoretical and speculative information, probably because it usually tends to have mitigating effects” (p. 592). This was interpreted by the same authors as reflecting differences in the needs of the legal actors as a function of their role in the criminal justice system – an interpretative hypothesis that can be extended to the results of this present study.

Despite the differences observed between judges and state prosecutors in the use made of forensic psychological reports, one similarity was noted across the participants of this study, namely the importance that both judges and state prosecutors attribute to information in the reports that is specific to the assessee. This need of specific information was noted, on the one hand, in the interest legal decision-makers manifested for individual motivation for

offending behaviour and the expectation of a dangerousness assessment based on the assessee's personality on the other —as previewed by article 160 of the PCPC. If forensic psychological reports fail to give assessee-specific information, the assessment becomes useless because it would fall short of providing legal decision-makers with information to personalize sentences or to create a narrative for the events leading to offending behaviour. These findings are consistent with previous surveys of judges and attorneys conducted by LaFortune and Nicholson (1995) and Redding and colleagues (2001). According to this latter study, for instance, legal decision-makers attribute more importance to clinically relevant data than to actuarial or statistical-based data.

The limited number of participants interviewed raises the question of the generalizability of the data collected in this study to other legal decision-makers in Portugal. Indeed, it was pointed out by some interviewees the considerable differences in the administration of criminal justice in major cities and small urban centres. State prosecutors in particular argued that in the latter case there is a closer contact to individuals, investigative police and experts, when available, during the inquiry and fact-finding stages. Therefore, despite the experienced insights into the workings of the criminal justice system provided by the participants of this study, the information presented here should be considered as a first step into the study of legal decision-makers' use of forensic psychological reports in the Portuguese criminal justice system.

Concluding Remarks

This study explored legal decision-makers' views about the use made of forensic psychological reports in Portuguese criminal law. The results contribute to a better understanding of the use that reports have in the legal decision-making process. This consists in providing judges and prosecutors with objective responses regarding legal issues that legal decision-makers are trying to resolve such as dangerousness. Forensic reports appear also crucial in providing legal decision-makers with highly specific information about the accused and his milieu. The data analysis also showed that Portuguese legal decision-makers weigh the value of forensic reports differently, depending on whether the reports are authored by NILMFS' psychologists or by "private" experts appointed, for instance, by defence attorneys. Reports authored by "state" experts are expected to be of higher quality and neutral regardless of the observed lack of scrutiny exerted upon such reports. Forensic reports written by "state" experts have an assumed added value from the viewpoint of procedural efficiency as the credibility enjoyed by "state" experts typically does not lead to procedural objections on the basis of their possible partisanship.

Acknowledgement

We wish to express our thanks to Dr. Marion Vacheret, for her comments to the first draft of the manuscript.

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Third Chapter

Reporting Forensic Psychological Assessments Results: the Role of Implicit Theories

by

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December 2013

⁷ Acknowledge of receipt in Appendix I.

Abstract

An exploratory study was conducted in order to better understand research results that showed that forensic psychological reports produced under article 160 of the Portuguese Criminal Procedural Code (PCPC) tended to present much variability as to their content (Guerreiro, Casoni & Santos, in press). A series of interviews with key actors chosen amongst 29 forensic psychologists working for the Portuguese state forensic institution was thus conducted in view of understanding how they defined the main concepts comprised in “personality assessments” as they have been established by the PCPC. Results show that participants held different definitions of the three main concepts involved in these assessments as well as of their judicial mandate. A theoretical framework provided by an implicit theories model was used to help make sense of these results (Canestri, 2006; Dreher, 2000). This allowed for the exploration of the conceptual bases on which psychologists construct their reports – a hypothesis that has not been sufficiently explored in the literature so far. The present research results sought thus to fill the need identified in the literature for more knowledge about the expert’s decision-making process and its impact on the variability in the content of forensic psychological reports.

Keywords: Dangerousness; degree of socialization; forensic psychological reports; implicit theories; qualitative study; personality assessments; Portuguese forensic psychology.

Introduction

The issue of variability in forensic psychological reports has been noted ever since the first practice surveys were held in North America (Roesch & Golding, 1980). These findings still hold true according to more recent studies conducted both in North America and in Europe (Borum & Grisso, 1996; Grisso, 2010; Ogloff & Douglas, 2003; Nicholson & Norwood, 2000; Ryba et al., 2003; Wettstein, 2005). The content of forensic psychological reports indeed appear to vary considerably according to observations made by a number of recent empirical studies (Nicholson & Norwood, 2000; Grisso, 2010; Wettstein, 2005). Furthermore, Ogloff & Douglas (2003) have found that variability in psychological reports poses problems because it introduces a certain level of uncertainty as to the robustness of the psychologists' conclusions which, in turn, might undermine the fairness of judicial processes. Many reasons have been invoked to explain the variability found in forensic psychological reports. For instance, the decision to include, or not, certain types of observations, sources of data and testimonies all play a role in the nature of the reports produced, hence in their inherent variability (Borum & Grisso, 1996; Grisso, 2010; Nicholson & Norwood, 2000; Ryba et al., 2003; Wettstein, 2005).

A recent study conducted in Portugal on some 100 forensic psychological reports has observed similar variability amongst the reports analysed (Guerreiro, Casoni, & Santos, in press). What specifies this study from most others is the fact that it was conducted in a country under a civil law tradition, and in a social setting in which forensic psychological services are delivered under the auspices of a state institution, as will be further described. Since, the

reasons that account for variability in common law countries might not be the same as those that might hold true for civil law ones such as Portugal, the need to explore this question further will be explored in the present study.

Many sources of variability in forensic psychological reports produced in a civil law setting have been identified through a recent qualitative analysis (Guerreiro, Casoni & Santos, in press). Those results point to the idea that differences in the way forensic psychologists have of interpreting their legal mandate may account for some variability. The present study seeks to explore this very question through a series of interviews with key actors, psychologists, working within the Portuguese State Forensic Institution, with a view of better understanding how these forensic psychologists define and interpret the concepts comprised in the article of law that establishes the parameters of their forensic assessment reports (article 160 of the Portuguese Criminal Procedural Code). The results will be further discussed within the theoretical framework provided by an implicit theories model with a view of better understanding the meaning the participants have given to the concepts comprised in their legal mandate (Canestri, 2006; Dreher, 2000; Leuzinger-Bohleber & Fischmann, 2006).

A brief review of the empirical literature will first be presented, followed by an outline of the theoretical framework constituted by the implicit theories model. A methodology section will follow, which will contain the specificities of the Portuguese context. Then, the presentation and discussion of the results will be followed by concluding remarks.

Review of the Literature

Variability in Forensic Reports

Content variability in forensic psychological reports has been documented in North America ever since the first practice surveys were held (Borum & Grisso, 1996; Roesch & Golding, 1980), these results remain unchanged to this day both in North America and in Europe (Guerreiro et al., in press; Ryba et al., 2003). One way of studying content variability in psychological forensic assessment reports has been to question forensic mental health experts about their perception of the importance of reporting different types of content in their reports. For instance, Ryba and colleagues (2003) surveyed psychologists regarding competency to stand trial mandates concerning teenagers. They questioned participants (n= 82) notably about the importance of reporting on issues other than the referral question and found differences in opinion. Whereas 10 % of the sample considered this to be essential, another 33% viewed referring to their mandate as contraindicated. Thus participants had a very different understanding of their mandates as forensic experts.

Other studies have examined the question through a quantitative perspective, noting the presence or the absence of specific content, like the results of psychological testing, or the voicing of opinions concerning criminal responsibility, or competency to stand trial issues (Heilbrun & Collins, 1995; Robbins, Waters & Herbert, 1997; Skeem, Golding & Cohn, 1998). In one such study conducted in the United States by Robbins et al. (1997), a total of 66 competency to stand trial reports written for two different states were examined. Authors found important differences related to the presence of opinions concerning criminal

responsibility. Although most reports contained relevant information regarding the referral question, some reports presented explanations concerning this question, such as the effects of a particular diagnosis on the question of competency to stand trial. Others, by contrast, did not attempt to establish any relationships between assessee's symptoms, diagnosis and the issue at hand.

Heilbrun and Collins (1995) analysed forensic reports pertaining to competency to stand trial and criminal responsibility assessments (n=277) conducted in both hospital and community settings. Differences between reports were noted regarding the type of documents consulted, the nature of the information used and the type of third party contacted for additional information. Whereas, hospital-based reports mostly reviewed existing mental health assessments (81%), such a practice occurred in less than a third of community-based forensic assessment reports (30%). Jail personnel were interviewed in 1% of hospital forensic assessment reports, however this was noted in 17% of community based forensic reports. In their meta-analysis, Nicholson and Norwood (2000) observed that variability in the use of third-party records appears to be related to three factors. First, information that is more readily available for some reason, be it agency regulation or statutory directive is more likely to be incorporated in forensic reports. Secondly, the importance to certain third-party reports varies as a function of the legal issue under assessment (e.g. competency to stand trial; criminal responsibility). Third, the specifics of the assessee also appears to be determinant in the sources and types of information used by the expert. For instance, an individual suspected of malingering would require some caution, on the part of the expert, regarding the sources of information cited in the report (Nicholson & Norwood, 2000).

In their overview of this empirical literature, Wettstein (2005), as well as Nicholson and Norwood (2000), are of the opinion that the most important sources of variability in forensic report content appear to be associated to: a) varying levels of access to information about assessees, b) differences in legal rules or statues governing expert witnesses c) differences in training levels, personal preferences and habits. In a recent study of over 100 forensic psychological reports conducted in Portugal, differences were found in the relative weigh attributed to test material as compared to interview and documentary data (Guerreiro et al., in press).

Implicit Theories Model

The theoretical framework chosen to discuss the results of the present study belongs to conceptual research and is designated as the implicit theories model. First coined in psychoanalysis by Joseph Sandler in 1983, the main goal of this body of research is to examine the meaning of concepts as they refer to the particular setting in which they are used (Canestri, 2006; Canestri, Bohleber, Denis, & Fonagy, 2006; Leuzinger-Bohleber & Fischmann, 2006). Such a perspective seeks to clarify ambiguity between concepts and to better understand different aspects of meaning associated to the same concept (Dreher, 2000; Sandler, 1983). This framework is useful to examine, for instance, the way psychologists, in a given setting, might use concepts and theories to give meaning to the material that emerges in their encounters with patients, or with assessees. Implicit theories, contrary to explicit ones, constitute personal versions, or mixes of explicit concepts and theories. They correspond to an individual's own way of giving meaning to concepts and theories that have been more or less explicitly integrated (Canestri, 2006; Dreher, 2000). Furthermore, implicit theories are often

socially shared among professionals of a same milieu, assuming the form of an “institutional lore,” or of what the meaning of explicit concepts and theories should or should not be (Casoni, 1996; Dreher, 2000).

How do forensic psychologists define the main concepts comprised in “personality assessments,” as they have been established by the PCPC? The present paper seeks to understand the conceptual bases on which psychologists construct their reports.

Method

Participants

Only six psychologists that practice “personality assessments” according to the criteria defined by PCPC were selected amongst the group of 29 forensic psychologists that compose the staff of the Portuguese National Institute of Legal Medicine and Forensic Sciences (NILMFS) to act as key actors in this study. These six participants were also chosen because of their experience as forensic experts. They are respected professionals in their field, being called on to give conferences in graduate programmes in forensic psychology, and to supervise interns in forensic psychology at the NILMFS. Their average age is 43 years old and they have 12 years of professional experience on average. The remaining staff mainly conduct assessments for civil-law Courts. NILMFS’ Board granted authorization to contact the six psychologists that participated in the research further to the approval of the research protocol by the Research Ethics Review Board of the Université de Montréal (cf. Appendix A). A

consent form was presented to each participant, was then further discussed with each one and signed when consent was reached (cf. Appendix F). A brief description of the context in which forensic psychologists work within the Portuguese criminal justice system will be provided next in order to set the background for interpreting the results of this exploratory study.

Portuguese Context

Forensic psychological assessments in Portugal are usually performed under the auspices of the NILMFS, which is the state institution responsible for forensic mental health assessments conducted in Portugal. The NILMFS has 27 Medical Legal Offices all over the country that are organized around three main branches located in Lisbon, Oporto and Coimbra (Vieira, 2012). The object of both forensic psychological and psychiatric assessments is defined by the PCPC (Carmo, 2005). Although psychologists may participate in the determination of criminal responsibility as co-authors of forensic psychiatric assessments according to article 159 of the PCPC, their main role consist of acting as independent experts in what article 160 of the PCPC designates as “personality assessments.” The aim of assessments performed under article 160 is to evaluate an individual’s “non-pathological psychological features [and] degree of socialization in view of describing issues of personality and dangerousness” (Antunes, 2011, p. 80).

The opinions presented in these forensic psychological reports are useful to guide the court as to the adjudication of responsibility and the severity of sentences (Carmo, 2005) as well as regards preventive detention (Antunes, 2011). Requests for forensic psychological assessments come mainly from state prosecutors at a pre-trial stage, they can also be mandated by judges upon the request of defence lawyers. Judges and state prosecutors may also add

questions to the main request for assessment; these may be formulated in general terms such as “please assess the cognitive faculties of Mr. X.” Additional questions may also consist of specific issues, for example: “Is there a risk that this individual might repeat the behaviour described in the judicial file?”

Interviews

A semi-structured interview protocol was chosen for it is well suited for the aims of this research, it being a recommended method for collecting rich and complex information about everyday experiences (Brinkmann & Kvale, 2008; Patton, 2002). The interview protocol aimed at eliciting information from the participants as to their own definitions of the main concepts involved in article 160 of the PCPC, said to be a *personality assessment* (Appendix D). This type of forensic report evaluates aspects of an individual that rest on three concepts, which are designated in article 160 as: *personality*, *degree of socialization* and *dangerousness*. Besides these three concepts, article 160 also mentions “non-pathological psychological features,” which is intended to distinguish “personality assessments” (article 160) from forensic assessments conducted under article 159 in which a psychiatrist, sometimes aided by a psychologist, address the question of criminal responsibility by evaluating issues of *pathological psychological features*, i.e. the diagnosis of mental illness according to a psychiatric framework (Carmo, 2005). In this sense, reference to “non-pathological psychological features” was not deemed useful to include in the interview protocol, which is limited to asking participants to define in their own words each of the three concepts associated to *personality assessments*: *personality*, *degree of socialization* and *dangerousness*.

The interviews were semi-structured and proceeded through open questions, the first one

being: “Can you speak about the concept of personality you use (in the context of article 160)?” This type of interview was chosen because it was expected that the key actors would experience no difficulty in elaborating on the themes proposed since these were important concepts used in their everyday work. Encouragement to continue, expressions of interest and follow up questions were used to help participants elaborate on the research themes (cf. interview protocol in Appendix D). Each participant was interviewed in a private room at his or her place of work. This was convenient for the participants and allowed all the interviews to be done in a relatively short time frame. Interviews lasted between 45 and 60 minutes, were audio taped and later transcribed verbatim. Interview material was stored securely and all nominal information was excluded from the interview transcripts. Any material that might allow the identification of interviewees or of people they referred to was excluded to ensure anonymity.

Data Analysis

The content analysis of the interview transcripts proceeded in four stages. First, transcribed interviews were read through a few times to gain a general picture of the interview material. Secondly, a coding scheme was developed which focused on the research themes; thirdly, a first transcript was coded and discussed between authors. This led to a revision of the coding scheme and the elaboration of definitions for each theme. Discrepancies in the coding were discussed until a consensus was achieved. At the fourth stage of the data analysis, the subsequent coding scheme was used to code the remaining interview transcripts. Following Stake’s (1995) recommendations, analytic memos were written along this preparatory stage and were later used to refine analytic categories, but also to document insights about particular

interviews and dataset as a whole. Findings relative to each interview were entered into a cross-case data matrix (Miles & Huberman, 1994), which provided an overview and enabled the identification of differences and similarities between interviewees' material. This also helped to determine relationships between different excerpts and identify overlap between codes and categories. The content analysis also allowed for the construction of categories that were generated using a constant comparative method that consists in trying out tentative categories until the interview material of each interviewee fits smoothly into one category (Strauss & Corbin, 1990). In order to better depict the nuances identified in the interview material, some categories were refined.

To keep track of all emerging codes, excerpts, thoughts and ideas during the content analysis, the software Atlas.ti was used (Muhr, 2004). The advantages of its use have been reviewed in various studies (Lewins & Silver, 2007; Mühlmeier-Mentzel, 2011; Muhr, 2000; Zhang & Wildemuth, 2009). Of particular relevance for this study is its capacity to establish semantic relationships between codes in a workflow fashion by simultaneously keeping track of the original transcript. In order to preserve anonymity in a social setting where all participants know each other, the number of participants to share a given concept definition will be rendered qualitatively.

Results

The analysis of the interview material allowed for the emergence of two types of observations. The first concern the participants' views of their judicial mandate, these views will be presented first. Then, the definitions the participants gave of the three main concepts comprised in *personality assessments* according to article 160 of the PCPC, will be presented and illustrated.

Judicial Mandate

The analysis of the participants' interview material allowed for the identification of two general, albeit opposite, ways of defining their judicial mandate. In the first of these, they tended to define their role as being limited to what is strictly comprised within the boundaries of article 160 as a *personality assessment* and, the case being, to any additional question accompanying the assessment request. For these participants, the correct way of understanding their judicial mandate consisted of excluding from their reports any information that had not been specifically been requested by a legal decision-maker in the context of *personality assessments*. When invited to elaborate further on what type of information might be deemed irrelevant to their use, participant D answered:

We are sometimes aware of some disorders that the examinees manifest, but because we are working here with a determined purpose, that is, what the court instructs us to do. If we were to go beyond that, we would run the risk of altering the case [and its outcome].

Whereas this participant expresses concern about a potential misguided use of the information contained in forensic psychological reports, others are of the opinion that legal decision-makers need more information than what is strictly comprised within the boundaries of article 160 of the PCPC. This second group of participants see their judicial mandate as being such that it allows for descriptions, outside the guidelines set by the PCPC, of the individual's motivations, the dynamics of his personality and other such aspects that go beyond the questions comprised in article 160, as well as beyond those usually asked by legal decision-makers. Participant F describes this view in the following manner:

(...) let's talk about the case, what we understand, what the individual is trying to convey, what we understand of this case that is beyond the magistrate's request. This is what really makes the report richer and answers what they [legal decision-makers] really want. I tell them what I understand of the case and let them decide.

This second group of participants seem to see their mandate as enlightening the court rather than as complying with the procedural code that defines their judicial mandate (article 160, PCPC). What appears important to these participants is to determine what is, and what is not relevant, amongst the available data. Furthermore, it appears as if participants who adhere to this view are of the opinion that it is their responsibility to analyse the data to the extent that their knowledge allows them to: "I tell them what I understand of the case and let them decide;" seeing that the decision to be made is out of their hands.

Defining Personality Assessment

The three concepts defining “personality assessments” in the PCPC are: *personality*, *dangerousness* and *degree of socialization*. Two different definitions of *personality* emerged in the analysis of the participants’ discourse; that is as 1) a “psychiatric concept” and 2) as a “non-pathological concept.” Three definitions have been given by the interviewees to the notion of *dangerousness*: dangerousness as 1) a “legal concept.” 2) as a “risk factors for violence” and as 3) an “equivalent to psychopathy.” As for the concept of *degree of socialization*, it was defined in two ways: 1) as “a legal concept” and 2) as “an approximation.” Each of these definitions will be presented and illustrated in the following sections.

Personality defined as:

1- a psychiatric concept. This first definition refers to the observation that participants view the concept of personality, as it is stated in article 160 of the PCPC, as if it was subsumed under the psychiatric concept of personality disorder. For them, the psychiatric concepts of psychological illness or of psychiatric disorder appear to be the closest notions to the concept of *personality* as it is used in article 160. Participant E illustrates such a definition of *personality* as follows: “*personality* for me is a group of traits that follows the individual across life.”

2- a non-pathological concept. In this other definition of *personality*, participants put emphasis on aspects that encompass individual differences and characteristics that refer to a non-pathological broad notion of personality. The idea that one’s personality makes an

individual unique is also a feature of this definition. Participant C summed this definition of the concept as follows:

Personality is a group of individual characteristics; here we're talking about a mix of various facets such as the interaction between cognitive, emotional and behavioural dimensions. It's a very broad notion that defines each one of us.

This participant defines personality not only vis-à-vis individual characteristics, but also in terms of internal processes.

Dangerousness defined as:

1- a legal concept. The analysis of the data concerning the participants' definitions of the concept of *dangerousness* shows that for some of them, *dangerousness* is fundamentally seen as a legal concept not directly applicable to psychology. It follows that, for these participants, psychologists should refrain from giving opinions about dangerousness. The following excerpt illustrates how participant A views the notion:

It is a legal concept, purely legal and that [to give an opinion about dangerousness] is something that I, in my reports, never do. There is a set of legal concepts, purely legal that, in my view, psychology, as an applied science to the justice system, has mistakenly incorporated.

This excerpt shows how, for some forensic experts, judicial concepts constitute the furthest extent to which psychology may be applied. The issue of boundaries between disciplines was taken up by many participants who express concern about the apparent ease with which

concepts pertaining to the legal field are transferred without modification to the psychological field.

2- risk factors for violence. For some participants, the concept of *dangerousness* is best defined as risk factors for violent behaviour. More precisely, risk factors for violence are seen as manifestation of *dangerousness*. Participant F explains this definition thus: “regarding dangerousness, we highlight these risk factors for violence, these protection factors. These high risk factors [for violence] can be more or less dynamic.” For these participants, risk factors for violent behaviour can be inferred from interview data and from results drawn from psychological instruments. Many aspects of an individual’s life may also be interpreted in terms of heightening the risks for violent behaviour, for instance the fact of lacking family support or of not holding a steady job.

A very clear divergence exists between these two definitions of the concept of *dangerousness*; for the first group of participants, the concept is not reducible to a psychological meaning, whereas for the other, it is the equivalent of a statistical notion used in psychology. A third definition of dangerousness also emerged from the analysis of the participants’ discourse, in which dangerousness is seen as:

3- an equivalent to psychopathy. For these participants, *dangerousness* is best defined with the notion of psychopathy as described by Hare’s theory and checklist (Hare, 1991). In a variant of this definition, a few equate *dangerousness* with anti-social personality disorder, a notion quite close conceptually to psychopathy (Granger & Chevrel, 1999). For these participants, *dangerousness*, either equated to psychopathy or to anti-social personality

disorder, is defined by the presence of an ensemble of stable traits that characterize the individual throughout life. Participant E explains this way of defining *dangerousness*:

The person becomes dangerous because he is incapable of managing all that emotion. (...) The measurement of psychopathy here through the PCL-R is fundamental because usually, in these cases, dangerousness is associated to a personality disorder. We are talking here about psychopathy.

In this excerpt, participant E refers to the use of a tool, the PCL-R, which is a checklist designed to identify psychopathy (Hare, 1991). In this definition, psychopathy is quite clearly equated with antisocial personality disorder. In this sense, a certain conceptual muddling appears in which the frontiers of each concept are attenuated to accommodate another similar, yet different conceptual notion. According to such a definition, *dangerousness* is equated to psychopathy, which is equated to antisocial personality disorder.

Although each of these three notions has been developed within different conceptual frameworks and cannot be amalgamated without losing their specificity, some areas of overlap do exist. Discussing the concept of *dangerousness*, Casoni (2013) and Gravier (2008, 2009) note that the concept originates from the need to identify imminent violent breakdowns in psychiatric clinical practice. The tendency to amalgamate concepts introduces a tendency towards circularity in the thinking process. This poses problems when too few elements are allocated too much weight in the overall assessment of an individual.

Degree of socialization defined as:

1-a legal concept. Two definitions have emerged from the analysis of the interview material as pertains to the notion of the *degree of socialization*. In the first one, participants

tended to define *degree of socialization* as a predominantly legal concept that is quite foreign to psychology. Participant A expresses this in the following way:

I have no idea what that [degree of socialization] is. These are legal concepts, sometimes formulated in a doctrine-like manner, they are very difficult to operationalise from a scientific point of view. I may contribute with my report to clarify concepts like socialization, but if I'm asked to do a study on someone's *degree of socialization*, I couldn't because I cannot operationalise that concept.

The distance this participant sees between legal and psychological concepts is communicated quite clearly in this excerpt. A certain disdain might even be perceptible in the comment concerning the idea that the concept of *degree of socialization* might be “formulated in a doctrine-like manner,” which further distances the notion from the scientific point of view forensic psychologists usually share. It is interesting to note that one of the main difficulties this group of participants does indeed share when dealing with this notion is their difficulty in translating it in a psychological perspective. Might this view express a need for psychological tools and measures that would better espouse the contours of the legal terminology?

2- as an approximation. In this second definition, participants had a tendency of viewing the notion of *degree of socialization* as an approximation for psychological terminology. Some of the participants were of the opinion that the best way to address this notion was by using different psychological tools and concepts that allowed them to approximate the legal notion designated in article 160 of the PCPC. The following excerpt from participant B illustrates this second definition:

There is a set of characteristics within psychological functioning that can help us understand the socialization of a given individual (...) some characteristics like gregariousness, or I can look at other psychological concepts like external locus of control, or attachment patterns.

Although the notion of *degree of socialization* is not per se a psychological term of reference, as is evidenced in the previous excerpt, for some of the participants interviewed, it appears sufficiently close to various psychological notions to warrant the use of such approximations to evaluate individuals accordingly. *Degree of socialization* is much easier to translate in psychological terms than is the notion of *dangerousness*; the fact that it is not as directly connected to criminal behaviour is assuredly amongst the most salient reasons that account for this distinction. Furthermore, psychologists are not implicitly asked for a prediction of future behaviour in their evaluation of the *degree of socialization*, whereas the evaluation of *dangerousness* comprises such a predictive aspect that many psychologists know can only be made, with some confidence, in the short term (Casoni, 2013).

Discussion

The analysis of the interview material shows that the participants hold two divergent views of their judicial mandate. Also, many differences appear in the participants' definitions of the three concepts comprised in *personality assessments*, namely *personality*, *dangerousness* and *degree of socialization*. These observations were expected since a previous study showed content variability in an important Portuguese sample of some 100 forensic

psychological reports (Guerreiro et al., in press). In order to better understand how Portuguese forensic psychologists understand the concepts that define their judicial mandate, the definitional elements identified in the present study will first be discussed according to current knowledge and, second, will be explored from the perspective of implicit theories. Directions for future research and concluding remarks will follow.

Present Studies

Content variability in forensic reports has been documented in several empirical studies showing, for instance, that experts have varying opinions about the value of reporting or not reporting certain elements (Borum & Grisso, 1996; Ryba et al., 2003). A finding that was also observed in the present study showing that participants held different definitions of their judicial mandate as well as of the definitions of the concepts implied therein. Other studies have found that forensic psychologists have different views about what sources of information should be taken into consideration; whether psychological instruments should be used or not; and what should be included or avoided in their reports (Borum & Grisso, 1996; Ryba et al., 2003).

Content variability in forensic reports has been hypothetically attributed to differences in training, experience and habits, as well as to local procedures and access to data (Nicholson & Norwood, 2000; Wettstein, 2005). The same hypotheses might probably also apply to the present results and further research is needed to help determine this. The implicit theories framework offers yet a new hypothesis to be explored. In the next section, this model will be used in order to help explain the present results.

Implicit Theories Model

The judicial mandate. The literature on implicit theories has documented how clinicians trained in the same institution or in a particular geographical area have a tendency to share opinions about which best practices should, or should not, be adopted in their daily clinical work (Dreher, 2000). For example, Hamilton (1996) asked a sample of 65 clinicians from Los Angeles, New York, San Francisco and London to describe their use of different technical concepts drawn from twenty-seven dimensions defining their mandate as clinicians. By means of cluster analysis, she found that individuals working within a same group appeared to hold shared descriptions. In a similar fashion, it was possible to observe in the present study that participants from a same branch of the larger institution shared a common view of their judicial mandate. Implicitly, they have developed a shared meaning as to what they considered to be the best practice when it came to the information that should be included, or not, in their forensic reports. The fact of defining their judicial mandate differently, depending on the branch they belonged to, may hence be seen as an effect of their shared implicit, albeit opposite, theories about what should be contained in a *personality assessment* according to article 160 of the PCPC.

Definitional variability. The use of implicit theories, as a model, seems relevant to better understand the variability noted in the participants' definitions of the three concepts explored in this study. As such, the material that emerged from the content analysis might be better described as their re-elaboration of the concepts comprised in the PCPC's notion of personality assessment. According to Dreher (2000), individuals have a tendency of making

their own personal theoretical constructs out of the explicit theories and conceptualizations that they have learned through official and personal training.

Proponents of an implicit theories perspective (Dreher, 2000; Sandler, 1983) suggest that clinicians might have a tendency to resort to their implicit theories in cases where they are confronted with tensions, inconsistencies or indistinctiveness between concepts. Such implicit theories are resorted to in an effort to attribute meaning and “resolve” such tensions through their own implicit conceptualizations despite the fact that these might: “deviate to some extent from their currently acknowledged use” (Dreher, 2000, p. 131). This observation drawn from the previous research on implicit theories may be applied to the way in which the boundaries of the concept of *dangerousness* became muddled with those of psychopathy and of antisocial personality disorder. This attenuation of the boundaries of each of these concepts might help resolve the tension, the inconsistency or the indistinctiveness between them; so doing, it seems to have led to the development of an implicit theory of *dangerousness* in some participants. The fact that this observation was more evident for the concept of *dangerousness* might be related to the history of the concept as well as to deficiencies in its definition, both in civil as well as criminal law and in psychology and psychiatry (Granger & Chevrel, 1999; Gravier, 2008; Melton et al., 2007).

Limitations

An important limitation to the generalizability of the results is found both in the number of participants and in the method used. Indeed, the major limitation of the present research is the limited number of participants, which did not allow for “saturation” to be reached (Bowen, 2008). In future research, the methodology employed in this study could be used to explore

how psychologists working at the 27 Medical Legal Offices affiliated with the NILMFS define their judicial mandate and the concept, for instance, of *parental capacity* in child custody cases (article 1906, Portuguese Civil Law, Rocha 2013). The advantages of extending this future research to a the higher number of experts will allow for the recruitment of new participants continually into the study until evidence of saturation, or when the inclusion of new participants does not amount to modification or refinement of previously established categories (Bowen, 2008). Finally, this future research can also contribute to a broader portrait of how psychologists form their expert opinion.

A further limitation worth acknowledging is the qualitative nature of this study, although rich in meaning, is rather poor when it comes to generalization. In this sense, it is not possible to extrapolate the results of this study to the body of psychologists serving as forensic experts in Portugal. The present study generates mostly hypotheses for further research.

In order to gain a deeper understanding of the usefulness of the implicit theories framework, some methodological limitations should also be addressed, notably the fact that the interviewing process did not follow an in-depth methodology (Giorgi, 2009; Seidman, 1998). Such an interview process has already been successfully applied to professionals from socially complex settings and would consist in engaging participants in an in-depth exploration of the meaning of their experiences (Goldman & Swayze, 2012; Groenewald, 2004). The use of an in-depth interviewing protocol might be the best suited methodology to access implicit theories as they are construed by the participants.

Concluding Remarks

This study explored how a group of forensic psychologists understood and defined the concepts comprised in what is designated as *personality assessments* under the Portuguese criminal justice system. Results show that the participants interpreted their judicial mandate differently and varying definitions of the three main concepts used in these assessments were identified. An implicit theories framework was used to explain how such variability can develop.

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General Discussion

This dissertation examined different facets involved in the formation of psychologists' expert opinion in the Portuguese criminal justice system, as this opinion is reflected in assessment reports. The three studies presented in the previous chapters addressed this general goal from different angles: the first sought to describe a dataset of 106 forensic psychological reports written under the Portuguese criminal justice system in terms of their relevance and coherence. The second study explored the use of forensic psychological reports from the viewpoint of judges and prosecutors, and the third examined psychologists' own definitions of the concepts described in the PCPC's *personality assessments*.

The three angles from which forensic report writing was examined in this dissertation raise a set of overarching issues about how forensic psychologists form and report on their expert opinions in the Portuguese criminal justice system. This will be discussed in this last chapter, which is organized in four parts. In the first part, the main results of the three studies will be discussed according to current knowledge. In the second part, conceptual research about implicit theories will be described in regards to its potential relevance to better understand the way psychologists form and report their expert opinions. The third part will address the limitations of the results reported in this dissertation and advance suggestions for future research. A general conclusion will follow.

Main Research Findings

First study. The first study sought to provide a general portrait of forensic psychological reports under the Portuguese criminal justice system in terms of their relevance and coherence. A certain number of observations that were made in our research found correspondence with published results. For instance, Lander and Heilbrun (2009) as well as Skeem et al. (1998) noted a tendency not to provide the reasoning that would explain the link between the data reported on and the forensic issues involved, which, according to them, has a negative effect on the overall relevance of reports. Grisso (2010) also noted, as we did, a tendency to rely on one main source of information to support the expert's opinion, which, he finds, weakens a report's relevance. He also found a tendency not to discuss incongruent results or data, as was observed in our results. Grisso (2010) suggest that this has a negative impact on the coherence of reports, adding that when different interpretative hypotheses exist for a given assessment finding, these should be addressed.

It is interesting to note that most formal characteristics of forensic psychological reports that are equated with quality were met in our sample of some 100 reports. Nonetheless, relevance and coherence criteria used to evaluate quality in our first study were not as well addressed. This finding replicates those by current research that had called into question emphasis given in earlier studies to formal characteristics of reports as robust indicators of quality (Lander & Heilbrun, 2009; Fuger, Acklin, Nguyen, Ignacio, & Gowensmith 2013; Nguyen, Acklin, Fuger, Gowensmith, & Ignacio, 2011). According to Griffith et al. (2010), formal characteristics ensure a certain level of quality that might underestimate the requirements of forensic reports which, when compared to clinical

reports, need to address very specific issues. To that effect, Griffith and Baranoski (2007), Griffith et al. (2010) argue that formal characteristics provide a structure, which is very important, but which is “insufficient for delineating what is necessary to create a persuasive and relevant product” (Griffith et al., 2010; 33). Griffith and Baranoski (2007) contend that there is an entrenched belief amongst forensic experts that construes forensic reports as objective and impersonal documents. These authors, by contrast, conceptualize forensic report writing as a form of narrative writing they claimed to be a “performance” wherein the author has a story to tell, that of the person at the heart of the forensic issue, the psychologist acting as the narrator of this “story.” Accordingly, the expert’s main task is to convey not only the different “voices” that are seeking to be heard by the legal decision-makers, but also to communicate these voices in a relevant and coherent fashion that accounts also for the narrator’s, that is the expert’s, own voice (Griffith & Baranoski, 2007). In criminal cases, “voices of the victim, defendant and narrator are fighting for position in forensic reports,” argue Griffith and Baranoski (2007, p. 28).

Forensic reports conceptualized in this fashion require, on the part of psychologists, the capacity of wording their findings into a relevant and coherent narrative along the lines of the criteria used in the first study (Griffith et al., 2010). This includes, for instance, being able to sort out the information that allows the expert to understand the uniqueness of a given assessee from all the data collected during the assessment; that is to be able to discern, from different “voices,” be they police records, court’s referral, or test data, what is true and unique about the individual assessed (Wettstein, 2010). The use of the coding grid developed for the analysis of relevance and coherence as criteria allowing the study of quality of our sample of forensic psychological reports sought to overcome the limitations

described by a number of authors (Griffith & Baranoski, 2007; Griffith et al., 2010; Wettstein, 2005, 2010). Indeed, although the importance of formal characteristics cannot be discounted, the use of stricter criteria to evaluate quality through the concepts of coherence and relevance should be considered for further research since it has not only appeared useful in the study of our sample of forensic reports, but also susceptible of generating results that can be discussed with the current literature.

Second study. The exploration of Portuguese judges' and state prosecutors' views about the use made of forensic psychological reports in their work resulted in a better definition, on the one hand, of the characteristics that forensic psychological reports should aspire to from the viewpoint of legal decision-makers, and how reports seem to be used and valued by them in the Portuguese criminal justice system. Research conducted on frontline legal professionals about forensic psychological reports is scarce (Wettstein, 2005), more so in countries of civil legal tradition and where forensic assessments are conducted at a state forensic institution. The second study tackled the need for more research data in this jurisdiction and allowed for the identification of how forensic reports appear to be differently used by judges and prosecutors according to their respective roles, and on what type of information do their interest for expert opinion converge. Our interviewees' interest for specific information about assesseees and their degree of dangerousness replicate the observations of Redding and colleagues (2001) who found that judges and prosecutors were interested in clinically relevant data, of which issues of dangerousness can be counted.

Previous studies have emphasized the importance of the rapport between expert and legal

decision-maker in the study of forensic psychological reports. For instance, this has been noted in a study by Robbins, Waters and Herbert (1997) on competency to stand trial assessments conducted in the context of an adversarial justice system where the parties present their own experts to the trier of fact (Malsch & Freckelton, 2005). Robbins and colleagues (1997) observed that forensic experts and the judiciary often have “professional contacts for many years and know what each other expects or means without asking or reporting on it” (p. 478). Consequently, what might be construed by an unaware outside researcher as a report of poor quality according to professional standards of practice (APA, 2013): “might however be the report that the judge is exactly waiting for” (Robbins, et al, 1997, p. 478). This observation of a tacit understanding between legal decision-makers and experts might nuance the results reported in the first study showing that reports fall short of the quality criteria defined therein. The portrait provided in the first study might indeed come as a surprise for judges and prosecutors who see in those reports a valuable aid in their daily legal decision-making. This appears to shed light on the fact that the reports produced at the state forensic institution were perceived to be of higher quality and to be more impartial than those written by experts exercising outside that institution. This would concord with previous observations (Griffith et al., 2010) according to which, the “voice of a legitimized institution” might be heard within the expert’s “voice” as it is conveyed in the assessment report; this might be what the legal decision-makers are sensible to in the use they make of forensic psychological reports written under the auspices of the Portuguese National Institute of Legal Medicine and Forensic Sciences (NILMFS).

Third Study. Previous research on forensic report writing have highlighted that most efforts have been put on the content of forensic reports, leaving unexplored aspects of the expert's decision-making process that might play a role in the content of forensic assessment reports (Wettstein, 2005, 2010). The third exploratory study addressed this need by asking experts to define the main concepts used in *personality assessments*. Variability in the way participants define their judicial mandate as forensic psychologists on the one hand, and definitional variability regarding the concepts comprised in *personality assessments* on the other were the main findings of this study. Previous research conducted in North-America have documented variability in report content in regards to psychologists' different opinions about the importance of reporting on issues other than the referral question (Ryba et al., 2003), or variability in the sources of data used in the assessment such as test material or the type of third parties contacted by the expert (Borum & Grisso, 1996; Heilbrun & Collins, 1995). Variability in the content of forensic reports has lead several authors to express concerns over the potential of introducing an element of uncertainty and of undermining the fairness of the judicial process by presenting an assessee in a manner which is not reflective of him (Ogloff & Douglas, 2003).

The sources of variability in report content have been associated in the literature to experts' varying level of access to information about assessees, differences in jurisdictional dispositions governing expert testimony in different geographical areas or experts' differences in training levels, preferences or habits (Nicholson & Norwood, 2000; Wettstein, 2005). The third study explained the variability in the participants' definition of the judicial mandate and of the concepts comprised in *personality assessment* as an effect

of implicit theories.

This new hypothesis for the variability in the content of forensic psychological reports will be further elaborated on in the next section. Conceptual research about implicit theories will be discussed regarding its potential relevance in better understanding how forensic psychologists form and report their expert opinions, first, from an individual point of view and secondly, from an interpersonal one.

Formation of Psychologists' Expert Opinion: The Relevance of Conceptual Research about Implicit Theories

Individual dimension. Previous studies on forensic psychological report writing have mainly aimed at the content of forensic reports (Lander, 2006), which have led some authors to call for more research on experts' idiosyncrasies in regards to expert opinion formation (Griffith et al., 2010). Little is known about how forensic psychologists use their analytical thinking, apply theoretical frameworks or resort to heuristics in the preparation of forensic reports (Wettstein, 2005, 2010). Heilbrun and Brooks (2010) have recently noted that the promotion of research that might lead to more data about experts' decision-making should be a priority in forensic psychology "in order to consolidate gains, expand and energize the field" (p. 235). The exploration of these timely research issues in forensic psychology, particularly the need for more data on this individual dimension regarding the way in which forensic psychologists form their expert opinion could be addressed via the development of conceptual research about forensic psychological assessments. In this context, conceptual research could be defined as the systematic investigation of the meanings and uses of psychological concepts in relation to forensic psychological

assessment (Dreher, 2003). The findings of the third exploratory study, particularly, the identification of two opposite ways of defining the judicial mandate and the variability observed in the definition of the concepts of personality, dangerousness and degree of socialization, in such a small yet most specialized number of participants suggests that an individual dimension appears to be paramount on how psychologists form their expert opinion which could be further understood with the aid of conceptual research.

The three aims that orient conceptual research in psychoanalysis may be applicable to conceptual research in forensic psychological assessment: to *clarify* ambiguity between concepts or different meaning aspects of a same concept; to *preserve* those aspects of a concept that have been proven to be of use for the clinical-forensic setting, and finally to *examine* concepts as to their adequacy and meaningfulness (Dreher, 2000).

Conceptual research in psychoanalysis does not have a normative stance, which means that it does not determine which concept definitions are the more “accurate” (Leuzinger-Bohleber & Fischman, 2006). In the case of conceptual research applied to forensic psychological assessment, this means that its aim is not to ascertain, for instance, if dangerousness as high risk factor for violence is a definition that is more appropriate than construing dangerousness as a personality trait; or that a psychiatric paradigm for conceptualizing assessee’s personality is better suited for the practice of forensic psychological assessment than a psychoanalytic-inspired model. This is the reason why, instead of trying to subsume from these three exploratory studies a set of recommendations on how *should* forensic psychologists in Portugal conduct their assessments, or ultimately, form their expert opinion, more emphasis was put in this dissertation in regards to the need of expanding the still limited knowledge on how psychologists form their expert opinion

following the conceptual research “motto,” namely, clarify, preserve and examine.

Interpersonal dimension. Previous studies on forensic psychological report writing highlighted that one of the distinctive features of forensic mental health assessments is the socially intricate context in which these assessments are produced (Melton et al., 2007; Ogloff & Douglas, 2003). Only a few studies have addressed the impact that these complex interpersonal contexts might have on the way psychologists form and report their expert opinions (Griffith & Baranosky, 2007; Griffith et al., 2010). In the Portuguese context, the relationships forensic psychologists maintain, on the one hand, with fellow psychologists within the NILMFS, and on the other, with authorities within the institution, or still with judges and prosecutors are some examples of this interpersonal dimension. Conceptual research about implicit theories might contribute to a better understanding of how the various relationships forensic psychologists maintain with their fellow experts and different legal actors may impact the way in which they form and report on their expert opinions. This framework has previously described that implicit theories are often shared among professionals of the milieu assuming the form of an “institutional lore,” or of what the meaning of explicit concepts and theories should or should not be (Casoni, 1996; Dreher, 2000; Hamilton, 1996).

The existence of a state forensic institution brings forensic psychologists into contact with fellow psychologists and experts from other disciplines, most often psychiatrists, and also with authorities within the institution. At a more immediate level, this refers to a clinical director, typically an MD, who among other tasks distributes the cases to experts and who, in his or her turn, receives instructions regarding institute policies from one of

the three branch directors (article 14 of Decree-Law 166/2012, July 31. 2012). Some of the material that resonate with the definition of socially shared implicit theories was presented in the third study, namely when it was argued that the fact that the participants defined their judicial mandate differently, depending on the branch they belonged to, may be seen as an effect of their shared implicit, albeit opposite, theories about what should be contained in a *personality assessment*, according to article 160 of the PCPC.

The presence of other possible shared implicit theories related to the exchanges that occur between experts and legal decision-makers was suggested in the course of the content analysis of the interview material. Some participants were of the opinion that judges and prosecutors are goal-oriented and thus tend to consider forensic reports from this vantage point. Participants who expressed this view argued that because legal decision-makers are usually goal centred, they would be less keen on the inherent complexity of psychological concepts such as personality. Is this shared opinion amongst some of the forensic psychologists interviewed, an allusion to a “socially shared” implicit theory? To what extent does this shared implicit theory take part in the formation of expert opinion, and factor in the content of forensic reports? It would be interesting to address this issue, for instance, by studying whether experts who hold that decision-makers are goal-oriented are likely to meet this goal-oriented expectation by being more straightforward in providing expert opinions in reports about very complex legal issues such as dangerousness.

The observations subsumed here under the heading of “interpersonal dimension” warrant further research for they may shed light on how forensic psychologists manage their role in the Portuguese criminal justice system, i.e., the role they are assigned to as staff members

of the state forensic institution, and how they individually construe this role. In the next section, other research avenues will be presented in response to some of the limitations of this dissertation.

Limitations and Future Research Directions

The first and the third studies share a limitation in that only data from experts working in the three main branches of the NILMFS is concerned. Reports authored by experts working in the medical legal offices in Portugal were not considered in the first study, nor were these experts interviewed in the third study. Future research should consider the participation of these experts in order to allow for a clearer portrait of forensic psychological report writing in Portugal, and to better understand how forensic psychologists define their judicial mandate and the concepts they are called to address in forensic psychological assessments. Their participation in future studies could offer an opportunity to collect more data to further develop the coding grid used in the first study, particularly the criteria used in the coherence dimension, which will require further elaboration.

The participation of forensic psychologists working in the medical legal offices could also contribute to refine some of the categories created in the content analysis of key-actors' interview material, pertaining to the definitions of the judicial mandate and of the concepts of personality, dangerousness and degree of socialization. For instance, a questionnaire built on the definitions identified in the third study could be used on forensic psychologists that were not selected for the third study in the view of discerning the prevalence of concept definitions on a wider group of practitioners.

A further limitation of the studies reported in this dissertation is related to the limited generalizability of the results, in particular to other jurisdictions. This is due to the specificity of the Portuguese legal standards regarding the participation of psychologists in criminal law, as well as the specificities related to the existence of a state forensic institution under which most of forensic psychological assessments are conducted. Despite these issues of generalizability, it would be challenging to design a study using a sample of experts working in a common-law jurisdiction in an effort to replicate the results obtained in the first study and to pursue the research efforts undertaken in the third one.

Within the Portuguese jurisdiction itself, it is also possible to replicate the study reported in chapter three to other contexts where psychologists are called to give an expert opinion, that is in civil-law cases, in child custody cases and in parental capacity cases (article 1906 Portuguese Civil Law, Rocha, 2013), or, within criminal law, to the assessment of the competence to testify (article 131 of PCPC).

Other research avenues are worth considering in regards to the study of content variability in forensic psychological report writing. If the variability in defining the expert mandate, or the variability in defining the concepts described in forensic psychological assessments may be seen an effect of implicit theories, as discussed in the third study, the question of what this might entail is most relevant. For instance, a study using content analysis might allow to understand if the use of implicit theories can be identified in forensic reports, either concerning the judicial mandate which might be reported on in a specific pattern; similarly, concepts such as dangerousness could be identified and potentially associated to a specific reporting pattern. Should such research data confirm a link between the presence of implicit theories and specific types of reporting patterns in the

assessment reports, this would make for a stronger case for considering the relevance of conceptual research in forensic psychological assessment.

The little amount of time devoted to each interview in the third study limits the results, not allowing for a finer portrait of how these forensic psychologists in Portugal define the three concepts described in *personality assessments*. However, expanding on the present findings, it would be challenging in future research to continue the exploration of definitions for the concepts involved in other forensic psychological assessments, and to pursue the two other aims of conceptual research described by Dreher (2000). Specifically, to “*examine*” concepts as to their meaningfulness, and *preserve* those aspects of a concept that have been proven of use for a clinical-forensic setting. In the Portuguese context, the general goals defined by Dreher (2000) could be achieved by promoting seminars where relevant concepts pertaining to forensic psychological assessment are discussed as part of continuing professional training of forensic psychologists. Previous research has documented that efforts to standardize the practice of forensic psychological assessment may reduce the variability in the content of forensic psychological reports, but this does not necessarily amount to a better quality in the reports produced (Grisso, Coccozza, Steadman, Fisher, & Greer, 1994; Poythress, Otto, & Heilbrun, 1991). Considering these research findings, these seminars would be less concerned in providing top-down recommendations than it would be to promote discussions in a collegiate environment in the view of contributing to coherence according to the paradigm chosen by each clinician.

Continuing professional training of forensic psychologists in Portugal could also address the shortcomings identified in forensic report writing presented in the first chapter. A training programme designed, for instance, in the form of a workshop could contribute to enhance the relevance and coherence of forensic report writing, as these two dimensions were operationalised in the present research project. More specifically, this workshop could address, as far as relevance, possible ways of improving the reporting of data from psychological assessments that relate to the psycho-legal issues at hand. Different strategies could also be discussed in a collegiate environment to improve the reporting of information that describes assessees in an individual and specific manner. As far as coherence, continuing professional training could help psychologists, who serve as forensic experts in Portugal, to better integrate in the report information stemming from the different sources used during the forensic psychological assessment.

Finally, following up on the exploratory study about the use of forensic psychological reports from judges and prosecutors viewpoints, it would be interesting to deepen the aim of the interviews. More precisely, it would be worth collecting, firstly, more data about the information that legal decision-makers believe they need to form their judgments. For instance, some might probably express – as some of our interviewees did – that obtaining information in the report about risk for violence is crucial for their decision-making process. Secondly, judges' and prosecutors' beliefs about what they find more useful in forensic psychological reports could be systematically compared to the literature in forensic psychology, more specifically, in view of defining if what information judges and prosecutors believe they need to form their judgments is attainable from the state-of-

the-art knowledge in forensic psychology. Thirdly, judges' and prosecutors' beliefs about key information for legal decision-making could be compared with the way in which a sample of professional forensic psychologists would manage it from a clinical and/or technical points of view.

A systematic comparison between these three sources of information, i.e., legal decision-makers' beliefs about key information; literature in forensic psychology and the protocol followed by experts in forensic psychology could result in the identification of possible gaps. For instance, between what legal decision-makers believe they need and a) the current knowledge in forensic psychology or b) the technical possibilities and limitations of forensic psychologists. Finally, this future research may also identify possible gaps between the clinical and/or technical way in which forensic psychologists address the need that judges and prosecutors have for a specific type of information and where the literature in forensic psychology stands in that regard.

Most importantly, the collection of data from these three sources, and their systematic comparison could be used as the starting point of a series of organized discussions between legal decision-makers on the one hand, and forensic psychologists on the other.

Conclusion

This dissertation examined different facets involved in the formation of psychologists' expert opinion in the Portuguese criminal justice system, as this opinion is reflected in assessment reports. Three qualitative studies were designed to approach this research goal. The first study analysed a dataset of 106 forensic psychological reports written under the Portuguese criminal justice system, which provided a general portrait of forensic psychological reports in Portugal. An analysis of their quality was undertaken, which was operationalised in terms of relevance and coherence. Results show that, although the reports studied comply with formal characteristics such as adequate organization or clarity of the language employed, they fell short of meeting all the criteria defining relevance and coherence. This data was analysed with the aid of a coding grid devised for studying forensic psychological reports from the viewpoint of their relevance and coherence, this grid (see Appendix B) can be used for further research that attempts to study the quality criteria of forensic reports. Furthermore, if subsequent studies confirm that the concepts of relevance and coherence are useful dimensions for the study of quality in forensic reports, the results of this initial study might have been of importance in setting preliminary levels.

The second study presents the results of the analysis of interviews with 17 Portuguese judges and state prosecutors as to their opinions concerning the use they make, in their work, of forensic psychological assessment reports. Results suggest that legal decision-makers

expect reports to provide objective responses regarding legal issues, and dangerousness in particular. Highly specific information about the accused and his milieu appears also to be of importance on how forensic reports are used according to the specific needs of the judges and prosecutors interviewed. The setting where the assessments are produced, i.e., the state forensic institution, appears to be crucial on how results of forensic psychological reports are valued in the Portuguese criminal justice system. The findings reported in this exploratory study might serve as backdrop for future research on the use of psychologists' expert opinion in legal decision-making, specifically in countries where forensic psychological assessments are provided by similar state forensic institutions.

The third study sought to better understand research results described in the first study that showed that forensic psychological reports produced under article 160 of the Portuguese Criminal Procedural Code tended to present much variability as to their content. The results of a series of interviews with six key actors who act as forensic psychological experts in the Portuguese context suggest that participants held different definitions of their judicial mandate as well as of the three main concepts involved in these assessments. The fundamental differences in the very definitions of their forensic and professional mandates are further discussed within the framework of an implicit theories model with a view of better understanding the definitions the participants gave to the concepts involved in *personality assessments* (Canestri, 2006; Dreher, 2000). This exploratory study distinguishes itself from previous ones conducted about forensic psychological report writing because it explored the issue of variability in report content focusing on the authors of the assessment. Specifically, it tackled the need identified in the literature for more knowledge on the way in which forensic psychologists define their mandate as experts and apply theories and concepts in the

formation of forensic expert opinion (Wettstein, 2005).

The model of implicit theories used to explain the results described in the third study was elaborated on in the general discussion section in regards to its relevance for future studies on formation of expert opinion in Portugal. Conceptual research about implicit theories may be of relevance at an individual level, by allowing for a better understanding of how forensic psychologists individually define their mandate as forensic experts and define the concepts they are expected to address in forensic psychological assessments. The framework of implicit theories is also presented as a valid model for enhancing the current knowledge on how interpersonal relationships experts have with other fellow experts and the institution they work at may take part in the formation of forensic expert opinion.

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Appendix A

Ethics Certificate issued by the “Comité d’éthique de la recherche de la Faculté des arts et des Sciences”, Université de Montréal

Faculté des arts et des sciences
Vice-décanat à la recherche

**COMITÉ D'ÉTHIQUE DE LA RECHERCHE DE LA
FACULTÉ DES ARTS ET DES SCIENCES (CÉRFA S)**

CERTIFICAT D'ÉTHIQUE

Le Comité d'éthique de la recherche de la Faculté des arts et des sciences, selon les procédures en vigueur et en vertu des documents qui lui ont été fournis, a examiné le projet de recherche suivant et conclu qu'il respecte les règles d'éthique énoncées dans la *Politique sur la recherche avec des êtres humains* de l'Université de Montréal :

TITRE : LE JUGEMENT D'EXPERTS EN PSYCHOLOGIE LÉGALE : RÔLE DES THÉORIES IMPLICITES

REQUÉRANT : DA SILVA GUERREIRO, Joao Paulo (DASJ26018107), étudiant au Ph.D., École de criminologie
sous la direction de Dianne Casoni, professeur titulaire

MODALITÉS D'APPLICATION

Tout changement anticipé au protocole de recherche devra être communiqué au CÉRFA S qui en évaluera l'impact au chapitre de l'éthique.

Toute interruption prématurée du projet ou tout incident grave devra être immédiatement signalé au CÉRFA S.

Selon les exigences éthiques en vigueur, **un suivi annuel est minimalement exigé afin de maintenir la validité de ce certificat**, et ce, jusqu'à la fin du projet. Le questionnaire de suivi peut être consulté sur la page Web du CÉRFA S.

Martin Arguin, *président*
Comité d'évaluation accélérée

Date de délivrance : 2012/03/16
AAAA / MM / JJ

Date d'échéance* : 2017/04/01 *EF*
AAAA / MM / JJ

*correspond à la date prévue de fin du projet

Espace réservé en cas de prolongation

Appendix B

Coding grid used in the first study: relevance and coherence criteria as measures of quality

<p>R (Relevance)</p>	<p><i>R1. Clear methodology employed</i></p>	<p>R1.1. A clear methodology is employed in the assessment;</p> <p>R1.2. Presence of methodological consistency;</p> <p>R1.3. Test data is presented in reference to their normative meaning;</p> <p>R1.4. Test data is discussed in relation to the individual assessed.</p>
	<p><i>R2. Various sources of information used and their relative importance is taken into account</i></p>	<p>R2.1. Observations distinguished from interpretative hypotheses;</p> <p>R2.2. Qualitative material is integrated and discussed along with quantitative material.</p>
	<p><i>R3. Assessment goals are addressed</i></p>	<p>R3.1.a. Assessment goals associated to article 159 are met according to two criteria:</p> <ul style="list-style-type: none"> i) capacity to assess the situation that originated the judicial file and capacity to determine oneself accordingly; ii) capacity to appreciate the wrongfulness of the offense. <p>R3.1.b. Assessment goals associated to article 160 are met according to three criteria:</p> <ul style="list-style-type: none"> i) personality assessment; ii) dangerousness; iii) degree of socialization;

C (Coherence)	<i>C1. Presence of coherent information about the assessee across different sections of the report</i>	<p>C1.1. Information about the assessee is articulated in a logical way (i.e. not contradictory or incoherent).</p> <p>C1.2. Incongruent data is discussed;</p> <p>C1.3. All information presented in the report is taken into account when interpreting test results.</p>
	<i>C2. Explanations for behaviour follow from information previously reported</i>	<p>C2.1. Presence of hypotheses explaining behaviour;</p> <p>C2.2. Use of the results of the assessment material (interview material, psychological tests, etc.) to develop hypotheses about behaviour</p>

Appendix C

Interview Protocol: Judges and Prosecutors

Initial question

1. In your experience, how would you describe the use you make of forensic psychological reports in your work?

Examples of encouragement questions:

1. Can you tell me more about...
2. Do you have examples you can tell me about...

Examples of follow-up questions:

1. What do you think motivates requests for forensic psychological assessments?

(Can you tell me more about... ; do you have examples you can tell me about...)

2. Do you have expectations regarding the results of forensic psychological assessments?

(Can you tell me more about...; do you have examples you can tell me about...)

3. Are there any parts of the report that are more important than others to you?

(Can you tell me more about...; do you have examples you can tell me about...)

Appendix D

Interview Protocol: Psychologists

In your work as forensic psychologist, I understand that you must work with certain articles of the Portuguese Criminal Procedural Code (PCPC). I'm interested in particular in the work you do under article 160.

1. Can you speak about the concept of personality you use (in the context of article 160 of the PCPC)?
2. What about the concept of dangerousness? Can you speak about the concept of dangerousness you use (in the context of the same article)?
3. Finally, what about "degree of socialization"? Can you speak about the concept of degree of socialization you use (in the context of the same article)?

Appendix E

Consent form: Judges and Prosecutors

FORMULAIRE DE CONSENTEMENT

Titre de la recherche : Le jugement d'experts en psychologie légale : rôle des théories implicites.

Chercheur : Joao Da Silva Guerreiro, candidat au doctorat en criminologie, Faculté des arts et des sciences, Université de Montréal.

Directeur de recherche : Dianne Casoni, Ph.D., professeure titulaire, École de Criminologie, Faculté des arts et des sciences, Université de Montréal
Jorge Costa Santos, Ph.D., professeur titulaire, Faculté de Médecine, Université de Lisbonne.

A) RENSEIGNEMENTS AUX PARTICIPANTS

1. Objectifs de la recherche.

Cette recherche vise à mieux comprendre comment les psychologues forment leurs opinions au sein de l'expertise psycho-légale, plus spécifiquement dans les articles 159^e et 160^e du Code de procédure pénale portugais. Elle porte sur la façon dont les psychologues utilisent leurs théories et leurs techniques pour répondre aux questions posées par les juges et les magistrats du ministère public.

2. Participation à la recherche

Votre participation à cette recherche consiste à :

- Participer à un entretien semi-dirigé portant sur votre travail comme juge ou magistrat du ministère public.
- Dans l'entretien plusieurs des questions qui vous seront posées porteront sur la façon dont les experts en psychologie et psychiatrie participent à votre travail de magistrat. Plus spécifiquement, il vous sera demandé de décrire vos attentes à l'égard du travail de l'expert dans vos décisions et l'utilisation que vous faites des résultats d'expertise psychologique et psychiatrique, par exemple, des rapport d'expertise.
- L'entretien dure de 45 minutes à 1 heure et vous pouvez y mettre fin au moment qui vous convient.

L'entretien se tiendra dans un local de votre choix dans votre milieu de travail.

3. Confidentialité

Les renseignements que vous nous donnerez demeureront confidentiels. Chaque participant à la recherche se verra attribuer un numéro et seul le chercheur principal aura la liste des participants et des numéros qui leur auront été attribués. De plus, les renseignements seront conservés dans un classeur sous clé situé dans un bureau fermé. Les données permettant de vous identifier seront conservées pour une durée de 7 ans et elles seront détruites par la suite. Aucune information permettant de vous identifier ne sera publiée.

4. Avantages et inconvénients

En participant à cette recherche, vous pourrez contribuer à l'avancement des connaissances sur l'expertise en psychologie légale au sein du système judiciaire portugais. Le principal inconvénient consiste à consacrer une heure de votre temps à cette recherche.

5. Droit de retrait

Votre participation est entièrement volontaire. Vous êtes libre de vous retirer en tout temps par avis verbal, sans préjudice et sans devoir justifier votre décision. Si vous décidez de vous retirer de la recherche, vous pouvez communiquer avec le chercheur, au numéro de téléphone indiqué à la dernière page de ce document. Si vous vous retirez de la recherche, les renseignements qui auront été recueillis au moment de votre retrait seront détruits.

B) CONSENTEMENT

Je déclare avoir pris connaissance des informations ci-dessus, avoir obtenu les réponses à mes questions sur ma participation à la recherche et comprendre le but, la nature, les avantages, les risques et les inconvénients de cette recherche.

Après réflexion, je consens librement à prendre part à cette recherche. Je sais que je peux me retirer en tout temps sans préjudice et sans devoir justifier ma décision.

Signature : _____ Date : _____

Nom : _____ Prénom : _____

Je déclare avoir expliqué le but, la nature, les avantages, les risques et les inconvénients de l'étude et avoir répondu au meilleur de ma connaissance aux questions posées.

Signature du chercheur _____ Date : _____
(ou de son représentant)

Nom : _____ Prénom : _____

De plus, j'accepte que l'entrevue soit enregistrée en support audio.

Signature : _____ Date : _____

Nom : _____ Prénom : _____

Pour toute question relative à la recherche, ou pour vous retirer de la recherche, vous pouvez communiquer avec João Da Silva Guerreiro (chercheur) à l'adresse courriel suivante :

Toute plainte relative à votre participation à cette recherche peut être adressée à l'ombudsman de l'Université de Montréal, au numéro de téléphone (514) 343-2100 ou à l'adresse courriel
(L'ombudsman accepte les appels à frais virés).

Un exemplaire du formulaire de consentement signé doit être remis au participant

Appendix F

Consent form: Psychologists

FORMULAIRE DE CONSENTEMENT

Titre de la recherche : Le jugement d'experts en psychologie légale : rôle des théories implicites.

Chercheur : Joao Da Silva Guerreiro, candidat au doctorat en criminologie, Faculté des arts et des sciences, Université de Montréal.

Directeur de recherche : Dianne Casoni, Ph.D., professeure titulaire, École de Criminologie, Faculté des arts et des sciences, Université de Montréal
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2. Participation à la recherche

Votre participation à cette recherche consiste à :

- Participer à un entretien semi-dirigé portant sur votre travail comme expert de l'Institut nationale de médecine légale.
- Dans l'entretien plusieurs des questions qui vous seront posées porteront sur la façon dont vous gérez les demandes d'évaluations psychologiques et psychiatriques faites à la délégation de l'institut national de médecine légale. Plus particulièrement, la façon dont vous utilisez vos savoirs pour sélectionner l'information et donner les résultats de vos évaluations aux tribunaux. De plus, il vous sera demandé de décrire les méthodologies de travail que vous adoptez pour répondre aux questions que vous sont posées par les tribunaux, entre autres celles qui porteront sur la dangerosité ou la responsabilité pénale.
- L'entretien dure de 45 minutes à 1 heure et vous pouvez y mettre fin au moment qui vous convient.

L'entretien se tiendra dans un local de votre choix à la délégation de l'Institut national de médecine légale.

3. Confidentialité

Les renseignements que vous nous donnerez demeureront confidentiels. Chaque participant à la recherche se verra attribuer un numéro et seul le chercheur principal aura la liste des participants et des numéros qui leur auront été attribués. De plus, les renseignements seront conservés dans un classeur sous clé situé dans un bureau fermé. Les données permettant de vous identifier seront conservées pour une durée de 7 ans et elles seront détruites par la suite. Aucune information permettant de vous identifier ne sera publiée.

4. Avantages et inconvénients

En participant à cette recherche, vous pourrez contribuer à l'avancement des connaissances sur l'expertise en psychologie légale au sein du système judiciaire portugais. Le principal inconvénient consiste à consacrer une heure de votre temps à cette recherche.

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Votre participation est entièrement volontaire. Vous êtes libre de vous retirer en tout temps par avis verbal, sans préjudice et sans devoir justifier votre décision. Si vous décidez de vous retirer de la recherche, vous pouvez communiquer avec le chercheur, au numéro de téléphone indiqué à la dernière page de ce document. Si vous vous retirez de la recherche, les renseignements qui auront été recueillis au moment de votre retrait seront détruits.

B) CONSENTEMENT

Je déclare avoir pris connaissance des informations ci-dessus, avoir obtenu les réponses à mes questions sur ma participation à la recherche et comprendre le but, la nature, les avantages, les risques et les inconvénients de cette recherche.

Après réflexion, je consens librement à prendre part à cette recherche. Je sais que je peux me retirer en tout temps sans préjudice et sans devoir justifier ma décision.

Signature : _____ Date : _____

Nom : _____ Prénom : _____

Je déclare avoir expliqué le but, la nature, les avantages, les risques et les inconvénients de l'étude et avoir répondu au meilleur de ma connaissance aux questions posées.

Signature du chercheur _____ Date : _____
(ou de son représentant)

Nom : _____ Prénom : _____

De plus, j'accepte que l'entrevue soit enregistrée en support audio.

Signature : _____ Date : _____

Nom : _____ Prénom : _____

Pour toute question relative à la recherche, ou pour vous retirer de la recherche, vous pouvez communiquer avec João Da Silva Guerreiro (chercheur) à l'adresse courriel suivante :

Toute plainte relative à votre participation à cette recherche peut être adressée à l'ombudsman de l'Université de Montréal, au numéro de téléphone (514) 343-2100 ou à l'adresse courriel
(L'ombudsman accepte les appels à frais virés).

Un exemplaire du formulaire de consentement signé doit être remis au participant

Appendix G

Manuscript Accepted for Publication at Psychiatry, Psychology and Law

From: Ian Freckelton
Date: Tue, Apr 22, 2014 at 11:46 PM
Subject: Re: Update on manuscript TPPL-2014-0007
To:

Dear Sir

We are experiencing some serious problems with the Scholar One system.

However, I am pleased to inform you that your manuscript has been reviewed and recommended for publication in PPL. It has been sent to Taylor and Francis who will soon contact you in relation to page proofs.

Ian
Professor Ian Freckelton QC
Barrister
617 Crockett Chambers
530 Lonsdale St
Melbourne, 3000, VIC, Australia

Postal address: Dr I Freckelton QC
Barrister
c/o Barristers' Clerk Howells
525 Lonsdale St
Melbourne, VIC, 3000, Australia

Ph: 61 (0)3 92257666
61 (0)3 92257074

Fax: 61 (0)3 99142790
61 (0)3 92258450

Email:

Web:

Editor, Journal of Law and Medicine
Editor-in-Chief, Psychiatry, Psychology and Law

Professorial Fellow in Law and Psychiatry, University of Melbourne
Adjunct Professor of Law, Monash University

Member:
Coronial Council of Victoria
Mental Health Review Board of Victoria
Psychosurgery Review Board of Victoria
Suitability Panel of Victoria

Appendix H

Acknowledge of Receipt: Applied Psychology in Criminal Justice

Enquiry

Applied Psychology in Criminal Justice
To: João Guerreiro

Thu, Feb 13, 2014 at 1:18 PM

The system should have sent a confirmatory email; however, we have recently learned that that may not always be happening. Sorry for the inconvenience. Your submission has been received.

RG

R Garner, PhD

Professor / Behavioral Sciences

Editor, *Applied Psychology in Criminal Justice*

College of Criminal Justice

Sam Houston State University

Huntsville, Texas 77340-2296

Appendix I

Acknowledge of Receipt: Penal Field

From: João Guerreiro
Subject: Fwd: Submission
Date: May 27, 2014 11:05:17 AM EDT

From: **Nicolas Carrier** <
Date: Mon, Feb 10, 2014 at 8:15 AM
Subject: RE: Submission
To: Joao Guerreiro

Dear Joao Da Silva Guerreiro,

Thank you for your submission to Champ pénal/Penal Field. We shall send out the paper for review shortly.

Regards,

Nicolas Carrier

Associate Professor of Criminology, Sociology and Law

Institute of Criminology & Criminal Justice

C567 Loeb Building

Carleton University

1125 Colonel By Drive

Ottawa, Ontario

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f. [+1.613.520.6654](tel:+16135206654)

Appendix J

Authorization to write dissertation in English

Le 16 avril 2009

Joao Da Silva Guerreiro

Votre code permanent: |

(permis de séjour)

Admission

Monsieur,

J'ai le plaisir de vous informer que vous êtes admis à:

3-065-1-0 Ph.D. (Criminologie)
(Niveau universitaire 3e cycle, 90 crédits requis pour le programme)

pour l'automne 2009 comme étudiant régulier à plein temps.

Je vous souhaite la bienvenue et du succès dans vos études.

. durée minimale de la scolarité (en trimestres équivalent plein temps): 6.0 trimestres.
nombre de crédits de cours complémentaires s'ajoutant au programme: 6.0 crédits.

. N.B. Cours complémentaires: CRI6006 ou CRI60007 ou CRI6008.

N.B. Vous êtes autorisé à soumettre une thèse rédigée en langue anglaise.

Responsable : Jocelyne Emond tél : 514 343-6426
pour Louise Béliveau, Doyenne
Études supérieures

José Bourguignon, Directrice