Expert Report of Emeritus Professor Andrew Coyle PhD

***British Columbia Civil Liberties Association and the John Howard Society of Canada v. Attorney General of Canada,* SCBC Vancouver Registry No. S-150415**

I have been asked to provide an expert report in relation to the above action. I certify that I am aware of my duty under Rule 11-2 of the British Columbia Supreme Court Civil Rules to assist the Court and not to be an advocate for any party. I have given this report in conformity with that duty. If I am called on to give further testimony it will also be in conformity with that duty.

Qualifications

1. My *curriculum vitae* ("CV") is attached as **Appendix 1**. I have a PhD degree from the Faculty of Law in the University of Edinburgh awarded in 1986 for a thesis on the organizational development of the Scottish Prison Service with particular reference to the role and influence of the prison officer. This thesis charted the development of the Scottish Prison Service from its earliest days and identified the key role which has been played by prison personnel in the humane management of prisoners. I am a Fellow of King's College in the University of London. This Fellowship was awarded in recognition of "exceptional achievement and academic service."

2. Prior to becoming a full-time academic, I spent 24 years as a governor (warden or superintendent) in the prison services of the United Kingdom. Between 1973 and 1991, I was a governor in the Scottish Prison Service, during which time I commanded three major prisons, including Peterhead Prison, which held the most dangerous and difficult prisoners in the system and also Shotts Prison, the main prison for convicted prisoners serving long sentences. I also spent five years in the national prison headquarters where I was responsible for the development of security policies at a national level. Between 1991 and 1997, I was governor of Brixton Prison in London which held up to 1,000 prisoners including some 300 who were being held for psychiatric observation and some 60 prisoners who were in the highest security category, including a number facing charges for terrorist crimes.

3. Between 1997 and 2005, I was founding Director of the International Centre for Prison Studies ("ICPS") within the School of Law in King's College of the University of London. From 2003 until my retirement in 2010, I was Professor of Prison Studies in the same School of Law, after which I was then given the honorary title of Emeritus Professor.

4. ICPS was founded in 1997 for the purposes of conducting research on prisons and imprisonment, developing and disseminating knowledge about how imprisonment should be used, and contributing to improved policy and practice in prisons across the world. Since then, it has contributed to prison reform and advised on good prison management in countries in all regions of the world. As Director of ICPS and Professor of Prison Studies, I was closely involved in advising on prison management and the reform of prison systems in all regions of the world. I have served as a consultant on prison matters to numerous governments including Brazil, Chile, Colombia, Russia, China, Cambodia, Poland, Sweden, Spain, South Africa, Uganda, Mozambique, Australia and New Zealand. I am currently assisting the independent Inspector Prisons in Ireland in carrying out a review of culture in the Irish Prison Service.

5. Between 1997 and 2000, I was an adviser on prison issues to the UK Secretary of State for Home Affairs. At various points during that time I was also special adviser to the UK Parliament's Select Committee on Northern Ireland for its inquiry into prisons in Northern Ireland and also to the Select Committee on Education and Skills for its inquiry into education in prisons in England and Wales. Since 2002, I have been a member of the UK Secretary of State for Foreign Affairs' Advisory Group on Torture Prevention. This group of experts meets on a regular basis to assist the Secretary of State to develop strategies for encouraging countries around the world to reduce the use of and ultimately to eliminate the use of torture within their jurisdictions. Between 2005 and 2010, I was one of the three panel members of the Public Inquiry into the murder of Billy Wright inside Maze Prison in Northern Ireland. This inquiry was set up under the terms of the Northern Ireland Peace Agreement to inquire into any possible collusion by state authorities in the murder of a loyalist prisoner by republican prisoners.

6. I have provided expert opinions and reports in numerous cases in the United Kingdom relating to prisoners and prison issues. In 2002, I provided an expert report for the Inter-American Court of Human Rights in the case of *Hilaire, Constantine and Benjamin et al. v. The Republic of Trinidad and Tobago* and, in 2004, I provided a report for the same court in the case of *Winston Caesar v. The Republic of Trinidad and Tobago*. In 2007, I gave expert evidence before the Inter-American Court of Human Rights in Costa Rica in the case of *Boyce et al v. Barbados*. In 2013, I gave expert evidence in Toronto in the coronial inquiry into the death of prisoner Ashley Smith while in federal prison custody. My evidence

focussed on the use of extended solitary confinement by the Correctional Service of Canada and described international good prison management practices in the treatment of prisoners who required special treatment. I refer to the Ashley Smith case in greater detail in paragraphs 46 to 48 below. A complete list of the cases in which I have contributed testimony is included in my attached CV.

7. I have published numerous scholarly articles and book chapters on topics related to the use of imprisonment and prison management. These include *Governing, leadership and change* (2007), *Change management in prisons* (2007) and *The Prison: Its contribution to punishment, rehabilitation and public safety* (2013). Among the books I have published are *The Prisons We Deserve* (Harper Collins, 1994), *Managing Prisons in a Time of Change* (International Centre for Prison Studies, 2002) and *Understanding Prisons: Key Issues in Policy and Practice* (Open University Press, 2005). My text book *A Human Rights Approach to Prison Management: Handbook for prison staff* (International Centre for Prison Studies, 2002 and 2009) has been translated into 16 languages and is an acknowledged international reference book on its subject. A list of the articles and books I have authored or edited is included in my attached CV.

8. In the course of my academic work I have lectured and given addresses in many countries and in a wide range of academic settings on criminal justice matters and on prison management. Most recently I have been invited to lecture on the new challenges in the management of extremist and terrorist prisoners and on the use of maximum security in prisons.

9. I have also advised and been an expert on prison issues for several intergovernmental organisations including the United Nations Office on Drugs and Crime, the United Nations Latin American Institute, the Organization of American States, the Council of Europe and the International Committee of the Red Cross. I was one of the main drafters of what became the European Prison Rules 2006 and was an expert adviser to the United Nations on the review of the United Nations Standard Minimum Rules for the Treatment of Prisoners. These are standards agreed at regional and international levels respectively for the management of prisoners. I was the main drafter of what is now the European Code of Ethics for Prison Staff (2012). This Code sets out a recommended standard of professional behaviour for prison staff. I have been an expert of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") in its prison inspection missions to

several member states including Russia, Turkey and Armenia. The CPT has the right to inspect with complete independence all places of detention in the 47 member states of the Council of Europe. I was an expert member of the CPT's first two missions to Russia and had unhindered inspection access to numerous prisons and penitentiaries in large cities and in remote Siberia. My inspections with the CPT in Turkish prisons focussed on the management of terrorist and other maximum security prisoners. Details of all of this work are included in my attached CV.

10. During my time as a prison governor I served on a wide variety of commissions and groups developing operational standards for the management of high security prisoners. Most recently I have worked with the United Nations Interregional Crime and Justice Research Institute and the International Centre for Counter-Terrorism in developing strategies for the management of terrorist and violent extremist prisoners.

Nature and Basis of Expert Opinion

11. I have been retained by counsel for the Plaintiffs in this action to provide expert opinions on international and regional standards relating to the use of solitary confinement in prison and correctional settings and best practice in the operational application of these standards. I am providing testimony in this case on a *pro bono* basis. I will be compensated by the Plaintiffs for actual expenses incurred. A copy of my retainer letter is attached as **Appendix 2** to this report.

12. My opinions on these topics are based on a number of sources. In addition to my professional experience of managing prisoners who require the highest level of supervision, I have drawn on my international work with intergovernmental bodies including the United Nations, the Council of Europe, the International Committee of the Red Cross and the World Health Organization. I have also made use of my experience in advising prison services in many countries, often in maximum security settings. I have extensive academic knowledge of issues to do with solitary confinement and the management of extremist and violent prisoners. All of these sources are listed in my attached CV.

International and Regional Standards Relating to the Use of Solitary Confinement

13. The use and nature of imprisonment in all jurisdictions are governed primarily by the relevant domestic legislation. In addition there are a range of standards which have been

agreed upon either at an international level by bodies such as the United Nations or at regional levels by bodies such as the Inter-American Commission on Human Rights and the Council of Europe. Some of these standards have treaty status and are accordingly binding on those states which have ratified them. Others are in the form of recommendations agreed by representatives of constituent member states.

14. The key standard in terms of general treatment of prisoners is *Article 10 of the International Covenant on Civil and Political Rights*:[1]

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

15. This standard is reaffirmed in *Principle I of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*:[2]

> All persons subject to the jurisdiction of any Member State of the Organization of American States shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees, and strictly in accordance with international human rights instruments.

16. The following standards have more direct relevance to the use of solitary confinement:

> *United Nations Basic Principles for the Treatment of Prisoners, Principle 7*[3]
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> > Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
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> *United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 27*[4]
>
> > Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

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[1] International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

[2] Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the Inter-American Commission on Human Rights during its 131st regular period of sessions, held from March 3-14, 2008

[3] Basic Principles for the Treatment of Prisoners, adopted and proclaimed by United Nations General Assembly resolution 45/111 of 14 December 1990

[4] Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the United Nations Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 57

> Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Principle XXII of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

> The law shall prohibit solitary confinement in punishment cells.
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> …
>
> Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel.
>
> In all cases, the disposition of solitary confinement shall be authorized by the competent authority and shall be subject to judicial control, since its prolonged, inappropriate or unnecessary use would amount to acts of torture, or cruel, inhuman, or degrading treatment or punishment.
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> In cases of involuntary seclusion of persons with mental disabilities it shall be ensured that the measure is authorized by a competent physician; carried out in accordance with officially approved procedures; recorded in the patient's individual medical record; and immediately notified to their family or legal representatives. Persons with mental disabilities who are secluded shall be under the care and supervision of qualified medical personnel.

17. The *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* ("CPT") has the right to visit all places of detention in 47 member states of the Council of Europe spread geographically from Portugal to Russia and Norway to Turkey in order to assess how persons deprived of their liberty are treated. CPT delegations have unlimited access to all places of detention and the right to move inside such places without any restriction. After each country visit, the CPT sends a detailed report to the State concerned with findings, recommendations, comments and requests for information. Reports are confidential in the first instance but with the approval of the State concerned they are subsequently published along with the State's response. The CPT has commented critically

on arrangements in respect of the use of solitary confinement in a number of country reports; for example, on the Netherlands[5] and on the United Kingdom.[6]

18. In its second General Report on its activities[7] the CPT stated, "Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible."

19. The CPT has published a composite set of standards based on the findings of its State visits.[8] In respect of solitary confinement it has this to say:

> 53. Solitary confinement of prisoners is found, in some shape or form, in every prison system. The CPT has always paid particular attention to prisoners undergoing solitary confinement, because it can have an extremely damaging effect on the mental, somatic and social health of those concerned.
>
> This damaging effect can be immediate and increases the longer the measure lasts and the more indeterminate it is....
>
> 54. The CPT understands the term "solitary confinement" as meaning whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned. A prisoner subject to such a measure will usually be held on his/her own; however, in some States he/she may be accommodated together with one or two other prisoners, and this section applies equally to such situations.

20. *The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* submitted an interim report on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of the United Nations in 2008.[9] In the exercise of his mandate, particularly in the course of visits to places of detention as well as by responding to allegations brought to his attention, the Special Rapporteur has expressed concern at the use of solitary confinement (that is physical isolation in a cell for 22 to 24 hours per day, and in some jurisdictions being allowed outside for up to one hour). In the opinion of the Special Rapporteur, the prolonged isolation of detainees may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances,

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[5] CPT/Inf (2002) 30 Report to the Authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe and to the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in February 2002, Strasbourg (15 November 2002); CPT Response of the Authorities of the Kingdom of the Netherlands (CPT/Inf (2003) 39)
[6] CPT Reports to the Government of the United Kingdom CPT/Inf (2002) 6 and CPT/Inf (2003) 18
[7] CPT/Inf (92) 3 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, Strasbourg
[8] CPT/Inf/E (2002) 1 - Rev. 2015, Strasbourg
[9] General Assembly 28 July 2008 Sixty third session, Item 67, A/63/175

may amount to torture. In the opinion of the Special Rapporteur, the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort.

United Nations Commission on Crime Prevention and Criminal Justice 2015: The Mandela Rules

21. The United Nations Commission on Crime Prevention and Criminal Justice held its 24th Session in Vienna in May 2015. At its conclusion, the Commission recommended to the United Nations Economic and Social Council that it should approve a draft resolution containing a review of the United Nations Standard Minimum Rules for the Treatment of Prisoners, the said review to be known as the Mandela Rules, for adoption by the General Assembly of the United Nations.[10] At the time of writing this report, the draft resolution has yet to be presented to the United Nations General Assembly. However, it is worth drawing attention to the draft Rules which deal with the use of solitary confinement.

> *Rule 43*
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> 1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
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> (a) Indefinite solitary confinement;
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> (b) Prolonged solitary confinement;
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> (c) Placement of a prisoner in a dark or constantly lit cell;
>
> (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
>
> (e) Collective punishment.
>
> 2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
>
> 3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.
>
> *Rule 44*
>
> For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

[10] Commission on Crime Prevention and Criminal Justice, 24th Session, Vienna (18-22 May 2015), Agenda item 6. E/CN.15/2015/L.6/Rev.1

Rule 45

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice continues to apply.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

2. Health-care personnel shall report to the director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.

3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

22. The recommendation from the United Nations Commission on Crime Prevention and Criminal Justice concerning these new draft Rules on the use of solitary confinement is testament to concern about the increasing tendency in a number of member states to expand significantly the use of solitary confinement and also to intensify the nature of the restrictions which are imposed. Rule 44 is of particular relevance in two respects. Firstly, it defines solitary confinement as "the confinement of prisoners for 22 hours or more a day without meaningful human contact." The draft Rule does not define "meaningful human contact." In the case of Ashley Smith described below, her human contact was limited largely to exchanges with staff conducted through the hatch in her closed cell door other than on the occasions in which staff in riot clothing entered her cell. My understanding is that this is also the case with other prisoners who are currently held in Correctional Service Canada ("CSC") administrative segregation. This does not fall within the term "meaningful human contact" as

understood in everyday parlance. Secondly, the new draft Rule defines prolonged solitary confinement as "solitary confinement for a time period in excess of 15 consecutive days."

Case Law Concerning Solitary Confinement

European Court of Human Rights

23. The European Court of Human Rights in a number of judgments has found violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") in respect of the use of solitary confinement in several member states. The following are some of the more recent judgments of the Court. Full reports of each case are available online at http://hudoc.echr.coe.int.

> *Khider v. France*, No. 39364/05 - Judgment 9 July 2009
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> The Court held that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention. The applicant's conditions of detention, his classification as a high-security prisoner, his repeated transfer from prison to prison, his lengthy solitary confinement and the frequent full body searches he was subjected to all added up to inhuman and degrading treatment within the meaning of Article 3.
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> *Ilaşcu and others v. Moldova and Russia*, No. 48787/99 - Judgment 8 July 2004 (Grand Chamber)
>
> Mr. Ilascu had no contact with other prisoners, was not permitted to send or receive mail and had no right to contact his lawyer or to receive regular visits from his family. His cell was unheated, he was deprived of food as a punishment and he was able to take showers only very rarely. The Court held that as a whole these conditions amounted to torture, in violation of Article 3 of the Convention by Russia (the Court found that the Transdniestrian region of Moldova had been under the effective authority or at least under the decisive influence of the Russian Government at the time).
>
> *Ramirez Sanchez v. France*, No. 59450/00 - Judgment 4 July 2006 (Grand Chamber)
>
> The applicant, an international terrorist known as "Carlos the Jackal," was detained in solitary confinement in France for eight years following his conviction for terrorist-related offences. He was segregated from other prisoners but had access to television and newspapers and was allowed to receive visits from family and lawyers. The Court held that there had been no violation of Article 3 of the Convention. It found that, having regard in particular to the applicant's character and the danger he posed, the conditions in which he had been held had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment. The Court took note of the fact that, several months before its judgment, France had ended the solitary confinement. At the same time, the Court shared concerns by the CPT about the possible long-term effects of the applicant's isolation and underlined

that solitary confinement, even in cases entailing only relative isolation, could not be imposed on a prisoner indefinitely. A State had to periodically review a prisoner's solitary confinement, give reasons for any decision to continue segregation and monitor the prisoner's physical and mental condition.

Piechowicz v. Poland, No. 20071/07 – Judgment 17 April 2012 and *Horych v. Poland*, No. 13621/08 - Judgment 17 April 2012

Both cases concerned a regime in Polish prisons for detainees who are classified as dangerous. The Court found a violation of Article 3 and Article 8 (right to respect for private and family life) of the Convention in both cases. It held in particular that keeping detainees under that regime for several years, in isolation, without sufficient mental and physical stimulation and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison.

X v. Turkey, No. 24626/09 - Judgment 9 October 2012

This case concerned a homosexual prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement for over eight months in total. The Court took the view that these detention conditions had caused him mental and physical suffering, together with a feeling that he had been stripped of his dignity, thus constituting a breach of Article 3 of the Convention. It further found that the main reason for the applicant's solitary confinement had not been his protection but rather his sexual orientation. It concluded that there had been discriminatory treatment in breach of Article 14 (prohibition of discrimination) of the Convention.

Öcalan v. Turkey (No. 2), Nos. 24069/03, 197/04, 6201/06 and 10464/07 - Judgment 18 March 2014

The applicant complained about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers) in the prison on the island of İmrali, where he was held in solitary confinement until 17 November 2009, at which point five other prisoners were transferred there. The Court held that there had been a violation of Article 3 of the Convention as to the conditions of the applicant's detention up to 17 November 2009 and that there had been no violation of Article 3 as regards the conditions of his detention during the period subsequent to that date.

Halil Adem Hasan v. Bulgaria, No. 4374/05 - Judgment 10 March 2015

As a life sentenced prisoner, Mr. Hasan was under a heightened security regime and kept in a permanently locked cell. The Court held that there had been a violation of Article 3 of the Convention on account of the regime and conditions of the applicant's detention and of Article 13 of the Convention in relation to the lack of an effective domestic remedy in respect of the regime and conditions of the applicant's detention.

24. These judgments demonstrate that the European Court of Human Rights has taken a consistent view the Convention can be violated in a number of respects by the imposition of solitary confinement, on the basis of the length of its imposition, the restrictive conditions

which it involves, the absence of mental and physical stimulation or the restriction on family contact. It has also held that the State has an obligation to review the need for continued segregation and to give reasons for any decision to continue segregation.

Inter-American Court of Human Rights

25. The Inter-American Court of Human Rights has given judgment in a number of cases in respect of the use of solitary confinement. These are available online at: http://www.corteidh.or.cr. In the case of *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela* (Judgment of July 5, 2006), the judgment including the following statement at paragraph 94:

> The Court deems that solitary confinement cells must be used as disciplinary measures or for the protection of persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accommodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that that the prisoner is fit to sustain it….

26. In the case of the *Miguel Castro-Castro Prison v. Peru* (Judgment of November 25, 2006), the Court ruled at paragraph 323:

> In what refers to the solitary confinement, the Court has already referred, in other cases, to the effects it causes on the inmates, and it has indicated, *inter alia*, that "prolonged isolation and coercive solitary confinement are, in themselves, cruel and inhuman treatments, damaging to the person's psychic and moral integrity and the right to respect of the dignity inherent to the human person." Likewise, it has established that solitary confinement may only be used in an exceptional manner, taking into account the gross effects it generates, since "isolation from the outside world produces in any person moral suffering and psychic perturbations, places them in a situation of particular vulnerability and increases the risk of aggression and arbitrariness in prisons."…

Ireland

27. There are two recent judgments from the High Court in Ireland which deal with the use of solitary confinement. Both judgments can be accessed at: http://www.bailii.org. The case of *Connolly v. Governor of Wheatfield Prison*, [2013] IEHC 334, concerned a prisoner who had asked to be separated from other prisoners because of his personal concerns for his own safety. The Court was asked to rule as to whether the detention of the applicant for three months under conditions of what amounted to solitary confinement for all but one hour in the course of a day amounted to a contravention of the State's duty to protect the person under

Article 40.3.2 of the Irish Constitution. The Court noted that the conditions of the prisoner's detention were as follows:

> 10. In the course of the restricted regime, the applicant remains in a 23 hour lock-up. His cell contains a bed, a counter, a place for storing clothes, a television, a toilet and a sink. He receives all his meals in a cell and he is brought outside the cell for one hour during the day. He has ready access to reading material and, indeed, he spends most of his day reading. During the hour when he is not on lock up he cleans out his cell and has access to the yard with other prisoners from his landing with whom he has a good relationship. He is not, however, able to participate in any training or recreational activities.

28. At paragraph 26, the Court concluded that the circumstances of the prisoner's detention did not "violate the substance of the guarantees of Article 40.3.2 to protect the person." However, it went on to note:

> 27. Yet if Mr. Connolly's detention under these conditions were to continue indefinitely for an extended period of months with no sign of variation, the point might very well come in which the substance of these constitutional guarantees would quickly be compromised and violated. It would, however, be premature just yet to anticipate what might yet materialise at some future time or in some future case.

29. The second case is that of *McDonnell v. Governor of Wheatfield Prison*, [2015] IEHC 112. The Court described the issue in paragraph 1 on which it had to decide as "whether a Governor of a prison can keep a prisoner in solitary confinement for almost a year for his own safety or whether such a restriction is disproportionate, unlawful and a violation of the prisoner's constitutional rights." The prisoner had been placed in solitary confinement because the prison governor deemed that there was a credible threat to his safety. The prisoner did not accept that there was such a threat to his person, nor that he should be kept in conditions of solitary confinement. The Court found at paragraph 114 that keeping the prisoner in solitary confinement for 11 months was "a clear and sustained violation of his constitutional right to bodily and psychological integrity" and was "wholly disproportionate to the risk to the applicant." Importantly, the Court found that "[t]here are many other steps which could be taken to protect the applicant from harm whilst at the same time not keeping him in solitary confinement." The Court went on to state:

> Under the Prison Rules no prisoner can be punished with solitary confinement for more than three days by the governor. In this case the prisoner has been kept in solitary confinement for a period of over eleven months against his will – not as a punishment – but ostensibly for his own protection. In my view such treatment of the prisoner whilst not intended to be a punishment quite

> clearly has an effect similar to a punishment. It is a *de facto* punishment if not a *de jure* one.
>
> …
>
> It is clear from the international perspective, the European perspective and the Irish constitutional perspective, that solitary confinement can cause significant mental and psychological harm to prisoners. It is only to be used in exceptional circumstances and then – most critically – for a limited period of time. Indeed the UN study describes solitary confinement in excess of fifteen days as "prolonged solitary confinement". Whilst one could take issue with a period of fifteen days and whilst it is impossible at this point to lay down precise periods, I would have thought that any period of solitary confinement longer than three or four weeks is certainly "prolonged solitary confinement". After this period of time there should be an intensive review of such cases and more intensive management of such prisoners to ensure that such conditions can come to an end at the earliest possible time.

30. Finally, the Court concluded:

> (1) That the applicant has a constitutional right to bodily and psychological integrity.
>
> (2) That there has been a breach of these constitutional rights.
>
> (3) That such a breach is unlawful and neither necessary nor proportionate to the perceived threat to his person.

Management of Prisoners Who Require the Highest Level of Supervision

31. There are two general models for the management of prisoners who require the highest level of supervision. The first involves placing them in isolated conditions, either on their own or with one or two other prisoners. Under this arrangement, prisoners spend all day and night in their living accommodation. In the most extreme of these conditions, prisoners have no access to any activity or external stimulation and have nothing at all to do. They may be allowed an hour of solitary recreation in an empty outdoor exercise cage. They are strip-searched and shackled every time they leave their cell. In some jurisdictions prisoners can spend years in this kind of regime. This method of dealing with prisoners often arises from an absence of proper management techniques and will undermine any attempts at the reform or rehabilitation of individuals. This model, often referred to as administrative segregation, is frequently used in prisons and penitentiaries in the United States.

32. On March 23, 2015, US Supreme Court Justice Anthony Kennedy testified before a US House of Representatives Appropriations Subcommittee. In the course of his testimony

Justice Kennedy had this to say about the use of this form of administrative segregation in the United States:

> And this idea of total incarceration just isn't working. And it's not humane. The federal government built – what do they call them – supermax prisons with isolation cells. Prisoners, we had a case come before our court a few weeks ago. The prisoner had been in an isolation cell, according to the attorney - I haven't checked it out - for 25 years. Solitary confinement literally drives men mad...
>
> We simply have to look at the system we have. The Europeans have systems for difficult recalcitrant prisoners in which they have them in a group of three or four. And they can stay together for three and four. And they have human contact. And it seems to work. It seems to work much better.[11]

This was a very powerful criticism from one of the nine most senior judges in the United States of what is commonly described in his country as administrative segregation, more commonly known as solitary confinement.

33. A much more positive model for managing prisoners who require the highest level of supervision is that of housing them in small units of anything up to ten prisoners. This model is based on the premise that it is possible to provide a positive regime for prisoners who have to be held in the highest conditions of supervision by confining them in small groups away from the general prison population rather than in individual segregation. The principle on which these units operate is that it should be possible for professionally trained staff to develop a positive and active regime for even the most dangerous prisoners. The intention is that, within a secure perimeter, small numbers of prisoners should be able to move relatively freely within the units and to have a normal prison routine. In such an environment, prisoners will only be placed in isolation when all else fails and then only for the shortest necessary time. One variation of this second model is to be found in the Close Supervision Centres which operate in the Prison Service of England and Wales. This model is described in detail below.

34. Based on my experience of giving evidence to the Ashley Smith Coronial Inquiry as described below and my knowledge of other reports, for example, from the Office of the Correctional Investigator, it appears to me that the form of the highest level of supervision practised in CSC is more akin to the first model described above than to the second one.

[11] http://www.c-span.org/video/?324970-1/supreme-court-budget-fiscal-year-2016&live

Expert Evidence to the Ashley Smith Coronial Inquiry

35. I provided expert oral evidence in October 2013 at the coronial inquest into the death of Ashley Smith while in federal custody on October 19, 2007. In the course of my evidence-in-chief and subsequent cross-examination, I gave testimony, among other matters, on current international standards and norms in the area of administrative segregation, largely as detailed in the previous paragraphs. I made reference to the guidelines on the use of such segregation in the case of vulnerable prisoners and those at risk of harming themselves. These are described in the earlier part of this report. I also described the strict limits which guidelines place on resort to segregation and the reasons for these restrictions.

36. I referred to the fact that "segregation" is a generic term which can be interpreted in a wide variety of ways. In its widest sense, it implies that some form of restriction is placed on the degree of association which a prisoner may have with other prisoners. There can be varying degrees of segregation. For example, a prisoner may be kept in a normal cell, but be limited as to which other prisoners she or he can mix with or the activities in which she or he can participate. The most restrictive form of segregation amounts in effect to isolation, in which case a prisoner will be held in a special cell, very often within a "segregation unit," and will not be allowed to associate with <u>any</u> other prisoners. A distinction is made between prisoners who are placed in this form of segregation as punishment for a breach of discipline and those who are there because there is evidence to show that they may be a risk to other prisoners or that others may wish to harm them. In North America, these different grounds for segregation are often described as '"disciplinary segregation" and '"administrative segregation" respectively.

37. I expressed the opinion that this form of isolated segregation should be used only within narrow parameters. There should be clear protocols as to the type of behaviour or threat which might lead to the imposition of segregation, about the level or grade of staff who are entitled to impose segregation and the procedures for doing so, about the length of time for which segregation may be imposed. I referred to the opinion of the United Nations Special Rapporteur on Torture that solitary confinement should not be used for more than 15 days consecutively. This opinion has now been confirmed by Rule 44 of the draft Mandela Rules as approved by the 24th Session of the United Nations Commission on Crime Prevention and Criminal Justice. There should be a formal procedure for regularly reviewing

segregation in each individual case and its use should be subject to independent review, as has now been recommended by Rule 45 of the draft Mandela Rules.

38. Prisoners who are in administrative segregation should have access to normal facilities and activities as far as is possible. These will include access to visits, use of the telephone, canteen (commissary), exercise and showers, radio and other electronic items and educational items. In my oral testimony, I expressed the opinion that the use of isolated segregation within CSC did not meet these standards. My testimony referred in the first instance to the specific case of Ashley Smith, but I indicated my understanding, based on reports for example from the Correctional Investigator, that this applied more generally in the use of isolated segregation within CSC.

39. I drew particular attention to the role of medical and other health professionals in monitoring the use of administrative segregation in individual cases and their particular obligation to make decisions and to give advice in terms of their clinical responsibilities to prisoners as patients. In my oral testimony, I referred to Principle 1 of the United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

> Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

I also referred to Article 5 of The Oath of Athens agreed by the International Council of Prison Medical Services in 1979:

> That our medical judgments be based on the needs of our patients and take priority over any non-medical matters.

40. I was questioned at length about the benefits of external oversight and review of segregation placements and explained the various forms which exist in different jurisdictions, including judicial oversight, independent monitoring and expert committees. I referred to the fact that international standards are clear in requiring that all prisons and places of detention should be subject to a system of inspection which is independent of the authority responsible for administering those prisons. The standards also give prisoners the right of full and confidential access to inspectors subject to legitimate security considerations (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,

Principle 29). I explained that even in the best managed prisons questions will be asked from time to time about what is going on and complaints will be made. For these reasons it is important to have a system of inspection which checks that everything is as it should be. Independent inspection procedures protect the rights of prisoners and their families and they can also be a safeguard to staff in demonstrating that they are doing their difficult work in a proper manner. I distinguished between periodic inspections carried out, for example, by the Correctional Investigator in Canada, and the continuous monitoring which is carried out by such bodies as the Independent Monitoring Boards attached to every prison in England and Wales. I stressed the need for these two to complement each other.

41. I described the strategies which are available to prison management in order to substantially reduce if not eliminate the use of administrative segregation as a means of managing prisoners who require high security supervision. These will include the proper assessment of each prisoner on admission, followed by appropriate allocation to units which are of a size which can be properly supervised by staff to ensure safety and good order. They will also include early intervention by specialists who can use strategies which will minimise the likelihood of disorder and maximise the likelihood of good order in the prison setting. I also testified as to my operational experience in managing violent, high security prisoners in Peterhead Prison in Scotland and in managing vulnerable prisoners who might be tempted to harm themselves or attempt to commit suicide.

42. In the course of my evidence, I laid stress on the need for an ethical framework to underpin all activities of prison and correctional management and personnel. As an example I referred to the European Code of Ethics for Prison Staff which was approved by the Committee of Ministers of the Council of Europe in April 2012 and recommended for adoption in all 47 member states.[12] This Code states that:

> *II. Objectives of prison staff*
>
> The main objectives of prison staff in a democratic society governed by the rule of law shall be to:
>
> - carry out all their duties in accordance with national law and international standards;
> - protect and respect the fundamental rights and freedoms of individuals as enshrined, in particular, in the European Convention on Human Rights;

[12] Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff. (Adopted by the Committee of Ministers on 12 April 2012 at the 1140th meeting of the Ministers' Deputies)

- ensure that all prisoners are safe and held in conditions that comply with relevant international standards, and in particular the European Prison Rules;
- respect and protect the right of the public to be safeguarded from criminal activity;
- work towards the social reintegration of prisoners on release, by providing them with the opportunity to use their time in prison positively.

The Code goes on to lay down a set of guidelines for the conduct of prison and correctional staff under the headings of Accountability, Integrity, Respect for and Protection Of Human Dignity, Care and Assistance, Fairness, Impartiality and Non-discrimination, Co-operation and Confidentiality and Data Protection.

43. I continue to hold the opinions that I expressed in oral testimony to the Ashley Smith Inquiry.

Response of Correctional Service Canada to the Coroner's Inquest Touching the Death of Ashley Smith

44. I have read the Response of CSC to the Coroner's Inquest Touching the Death of Ashley Smith[13] and make the following observations using the same headings as are in the Response.

3.2 Effective Management: Background

45. The Government "accepts that long periods in administrative segregation is generally not conducive to healthy living or meeting the goals of the correctional planning process." It goes on to state, "[t]o be clear, the term solitary confinement is not accurate or applicable within the Canadian federal correctional system." This assertion appears to fly in the face of the findings of the Coroner's Jury which recommended (27) that "indefinite solitary confinement should be abolished." The Jury recommended this within the context of the treatment of Ashley Smith; the implication being that they had concluded that her treatment did indeed constitute solitary confinement as defined by the United Nations Special Rapporteur on Torture and other authorities. In the course of giving my evidence to the jury, I was questioned at length about the definition of solitary confinement by several of the Counsel involved and by the Jury. It was my opinion that the conditions of confinement for Ashley Smith constituted solitary confinement and I do not recollect anyone disputing that

[13] http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml

fact. My understanding from reading the reports of the Correctional Investigator and others is that a number of prisoners in CSC custody are currently held in conditions of extended administrative segregation similar to those in which Ashley Smith was held. I do not accept the Government's assertion that solitary confinement does not exist within the Canadian correctional system.

46. CSC goes on to make several assertions about the nature of administrative segregation including the following:

a. "Administrative segregation... is an interim population management measure resulting from a carefully considered decision made by the Institutional Head..."

b. "Segregated inmates are entitled to all the rights and privileges of other inmates within the physical limitations of the segregation unit.... Inmates are routinely provided with their personal effects, which can include books, television, hobby materials and other personal items."

c. "Every inmate's confinement in administrative segregation is guided by regularly schedules reviews that must conform to strict time frames..."

d. "Decision-makers are held to the highest standards of accountability."

After listening to evidence for twelve long months, the Coroner's Jury found that these provisions did not apply in the treatment of Ashley Smith. My understanding, as indicated above, is that other prisoners in CSC custody are currently held in segregation in circumstances that do not meet these provisions.

47. The CSC Response goes on to state that there are various aspects of the Jury's recommendation in respect of this section that "the Government is unable to fully support without causing undue risk to the safe management of the federal correctional system." It is not clear from my reading of the Response which "aspects" are being referred to; nor is there a full explanation as to why the Government cannot support them. Further, it is not clear what CSC means by the term "undue risk." In my professional opinion, none of the Jury's recommendations give rise to undue risk to the safe management of a prison.

3.3 Actions: Segregation Law and Policy

48. The Response refers to the need to "balance the risk connected to the inmate's release from segregation with the need to reintegrate the individual back into the institutional population." This appears to imply that the only two options available are location in segregation or in general population. I do not agree with this position. Effective prison management indicates that there it is often a need for an interim measure which avoids the extreme of administrative segregation while recognizing that location in general population is inappropriate. I touch on this matter below using England and Wales as an example.

49. The Response refers to "offenders with mental health disorders who have been designated as acute or high need intermediate care cases." Good operational practice indicates that such prisoners should not be held in administrative segregation.

England and Wales: An Alternative To Solitary Confinement

50. In England and Wales all prisons are administered by the National Offender Management Service ("NOMS") within the United Kingdom Ministry of Justice. There are 118 prisons overall with a total of just over 84,000 prisoners, including pre-trial and convicted. Following individual assessment, all convicted prisoners are assigned to a security category which determines the degree of supervision to which they will be subjected. The security categories are A to D, with A being the highest. All prisoners in security category A are held in high security prisons. The vast majority of these prisoners are in the general population. They are allowed to move within their living units and will be engaged during the day in organized work, education and cultural activities, always under direct staff supervision.

51. There are five Close Supervision Centres with a total of 54 places for prisoners who have been identified as being too dangerous or disruptive to be in general population. This constitutes approximately 0.05% of the overall number of prisoners. NOMS describes the Close Supervision Centres as follows:

> The overall aim of the [Close Supervision Centre] system is to remove the most significantly disruptive, challenging, and dangerous prisoners from ordinary location, and manage them within small and highly supervised units; to enable an assessment of individual risks to be carried out, followed by

> individual and/or group work to try to reduce the risk of harm to others, thus enabling a return to normal or a more appropriate location as risk reduces.[14]

52. Following a referral by a prison governor, the decision to admit any prisoner to a Close Supervision Centre is taken by the Close Supervision Centre Management Committee based in the national headquarters. When a referral is made the prisoner is advised of the fact and the reasons for it are set out in a letter which is given to him. The letter will provide brief reasons such as "presenting a significant risk of harm to others," or "to enable work to be undertaken to address your personality disorder to enable you to be referred to a treatment programme." The prisoner or his legal adviser has 14 days within which to submit representations about his case. If the decision is confirmed by the Close Supervision Centre Management Committee and approved by a senior Director, the prisoner is again advised in writing and the transfer takes place.

53. On first admission to a Close Supervision Centre, the prisoner is individually assessed by a range of specialists, usually over a four month period. Those involved will include mental health specialists, clinical and forensic psychologists, security personnel, other staff and the Centre manager. Input may also be provided by others involved in care and management such as faith chaplains. Thereafter, a structured care and management plan is drawn up by the specialist team. Its implementation is reviewed every three months by the Close Supervision Centre multi-disciplinary team. The prisoner is encouraged to attend these meetings and after receives a written summary of what has been discussed and has the opportunity to make representations. Copies are sent to his legal representative if required. The national Close Supervision Centre Management Committee reviews each individual case monthly and also receives the three monthly reports. The monthly reports are disclosed to the prisoner who has the opportunity to make representations. When the Close Supervision Centre Management Committee decides to move a prisoner out of a Close Supervision Centre back to the general high security population, his progress will continue to be monitored by the Committee for a further six months. The work and decisions of the Close Supervision Centre Management Committee are overseen by a Close Supervision Centre Advisory Panel, chaired by an independent person and including a number of independent academics, psychiatrists, psychologists and others. This group meets three times a year and among other matters considers the monthly reviews of each prisoner's case. This Panel is purely advisory

[14] National Offender Management Service High Security Prisons Group (October 2013).

and does not have the power to overturn decisions of the Close Supervision Centre Management Committee.

54. The regime in a Close Supervision Centre is based on individual and group risk assessments, but generally includes daily access to showers, telephone, library, outside exercise, gym, education, visits and association with other prisoners in the Centre. Specialist forensic mental health services are commissioned for each unit providing consultant forensic psychiatry, forensic mental health nursing and clinical psychology. All prisoners are held in single cells.

55. Close Supervision Centres do not operate as solitary confinement units. Small groups of prisoners are able to move about within their living units, although their contact is closely and directly supervised. The highest risk offenders within the system, those who have been assessed as presenting an acute level of severe or fatal risk of harm to other prisoners, are not permitted to associate freely with others. They are permitted to access gymnasium and exercise yards adjacent to another prisoner thus enabling visual and verbal contact. The need for these restrictions on individual prisoners is subject to regular review. All prisoners have daily direct contact with prison and health staff and are entitled to visits including inter prison visits. Families are invited to attend care planning meetings, which are held every three months.

The Principles of Good Operational Management in Respect of Prisoners Who Require to be Held in Conditions of the Highest Security

56. Extrapolating from my extensive personal experience as a prison governor with responsibility for the care of prisoners who require to be held in conditions of the highest security and from visiting high security prisons in almost 60 countries as detailed in my CV, as well as from my knowledge of the relevant international and regional standards described above, I am able to list the principles of good operational management in respect of prisoners who require to be held in the conditions of the highest security.

Humane Treatment

57. In many prison systems there are likely to be a small number of prisoners who require to be held in conditions of the highest security. The management of these prisoners presents an important challenge to prison authorities, which have to achieve a balance between the threat that such prisoners would present to the public if they were to escape, the threat that

they may pose to good order inside prisons, the threat that they may pose to themselves and the obligation that the state has to treat all prisoners in a decent and humane manner. It is sometimes said that the manner in which a society treats its prisoners is a reflection of its deepest values. This principle applies particularly to the management of prisoners in the highest security category. The system of management of prisoners who require to be held in the conditions of highest security in England and Wales has a clear process for the review of category A prisoners and prisoners are able to seek an oral hearing to challenge decisions and put forward their case. Reports are completed collaboratively with the prisoner as far as is possible and disclosed accordingly. Where risk can be managed without the need for high security, prisoners will be moved to a lower category prison.

Minimum Number

58. The number of prisoners held under high security conditions should be kept to a minimum for several reasons. Prisoners should only be confined in high security conditions where their behaviour has demonstrated that they pose such a degree of threat to safety and security that they cannot be managed in any other way. High security prisoners require to be kept under close supervision at all times and their freedom of movement and contact with other people is likely to be kept under close surveillance. When implemented in a proper manner, high security supervision will be very resource intensive in financial, technical and staffing terms. In addition, staff are more likely to be able to provide the appropriate level of intense supervision if the label of high security prisoner is not applied indiscriminately. Prison systems which keep a smaller number of prisoners in high security conditions are likely to be safer for both prisoners and staff. Where the numbers are small, staff will be able to identify the prisoners who need to be kept in conditions of high security and to ensure they are properly supervised. If the number of prisoners in this group is too great, then it may be that staff will not be able to provide close enough supervision of those prisoners who are most likely to attempt to escape or to provoke disorder. The arrangements in England and Wales described above are an example of a system which attempts to keep the number of prisoners subject to the highest security to the essential minimum. In England and Wales, a decision to identify a prisoner as requiring category A security (the highest level) is based on an assessment of the risk to the public. Category A prisoners will be held in high security prisons and will be closely supervised within the general population. Allocation to a Close

Supervision Centre is based on assessment of custodial risk. The Close Supervision Centre population has remained at 0.04-0.05% of the overall prison population since 2008.

Individual Assessment of Risk

59. There should be a clear, well-defined system for identifying which prisoners require to be held in high security conditions. The degree of risk which they pose should be assessed individually on a continuing and regular basis. Individual assessment of risk can help to identify those prisoners who present a serious threat to staff, to other prisoners and to the wider community. In the absence of proper individual assessment, general criteria may be applied. This often leads to inappropriate assessment of the level of risk posed by an individual. In England and Wales, the assessment of prisoners in security category A and those held in Close Supervision Centres is carried out on an individual basis using a standard set of assessments. Formal assessments are completed by forensic psychology and mental health staff who have received training and certification in the use of the assessment measures.

Criteria for Assessing the Security Risk Posed by an Individual

60. Sets of criteria for assessing the degree of risk posed by an individual prisoner have been developed in many countries. Issues to be taken into account will include:

a. the potential threat to the public if the prisoner were to escape;

b. any previous history of attempting to escape;

c. access to external assistance for escape;

d. in the case of pre-trial prisoners, any potential threat to witnesses;

e. the nature of the crime for which the prisoner was convicted;

f. length of sentence, which usually reflects the nature of the crime;

g. the potential for threat to other prisoners; and

h. the potential for threat to the good order of the institution.

The model used in England and Wales as described above makes use of all of these criteria.

Regular Review of Security Level

61. Security levels for individual prisoners should be reviewed at regular intervals throughout the sentence. Prisoners who are classified as being high security risks early in their sentences may become less so as a result of good management during the sentence. The prospect of progressing to a lower security category during the sentence can also act as an incentive for good behaviour. The English practice of reviewing prisoners held in a Close Supervision Centre on one monthly and three monthly cycles is an example of good practice.

Only Necessary Restrictions

62. It is the responsibility of a prison system to detain all prisoners in conditions which are decent and humane, regardless of the crimes of which they have been convicted or accused. This obligation also applies to the treatment of high security prisoners and the restrictions which are imposed on these prisoners should be no more than are necessary to ensure that they are detained securely and safely. In England and Wales, prisoners who require to be held in conditions of high security are allocated to high security prisons which all provide a range of activities including education, skills based learning, employment, association, resettlement and health care.

The Balance of Security

63. Security in a prison or correctional institution has three main elements:

a. *Physical security* includes the architecture of the prison buildings, the strength of the walls of those buildings, the bars on the windows, the doors of the accommodation units, the specifications of the perimeter wall and fences, watchtowers and so on. They also include the physical aids to security such as locks, cameras, alarm systems, radios and such like.

b. *Procedural security* refers to the variety of procedures which have to be in place to ensure that prisoners are supervised appropriately. They include regular searching, both of physical spaces and of individuals. There should be procedures for regularly searching all places where prisoners live, work or congregate. These should include searches of living accommodation, such as cells and dormitories, to make sure that security features, including doors and

locks, windows and grilles, have not been tampered with. Depending on the security category of the prisoner, his or her personal property should also be subject to search from time to time. There should also be procedures which govern the regularity of checking prisoner numbers and how these checks are carried out. The same applies to arrangements from movements of prisoners from one area of the prison to another.

c. *Dynamic security* is based on what it sometimes called direct supervision. It is provided by staff who are alert, who interact with prisoners, who have a direct awareness of what is going on in the prison and who are experienced in working with prisoners. This kind of security is much more qualitative than static security measures of physical and procedural security. Where there is regular contact between staff and prisoners, an alert guard will be responsive to situations which are different from the norm and which may present a threat to security or good order. The strength of dynamic security is that it is likely to be proactive in a way which recognizes a threat to security at a very early stage. It will operate best when staff are professional and well-trained.

64. In a well-managed prison, there will be a balance between physical, procedural and dynamic security and the three elements will complement each other. This needs to be borne in mind when making arrangements for the management of high security prisoners. A system which uses the dynamic security which comes from staff interactions and intelligence is likely to be more effective than one which relies exclusively on very restrictive hardware, technology, conditions and procedures. When staff work directly with prisoners in a positive manner, they are more likely to be alert to changes in atmosphere in a unit and to changes in the behaviour or attitude of individuals. This is less likely to be the case when staff come into direct contact with prisoners in a formal or perfunctory manner. The Prison Service of England and Wales has always relied on sound direct staff/prisoner relationships as the bedrock of its approach to managing and caring for prisoners. In general the balance is struck well.

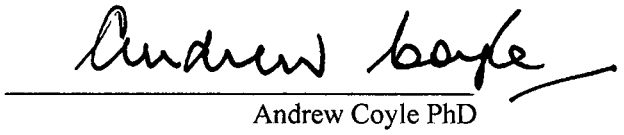
Specially Trained Staff

65. Working with high security prisoners requires a special degree of professionalism and staff who work in this environment need to be given special training and continuing support.

The prison administration in England and Wales has developed a High Security Staff Well Being Strategy.[15] This strategy is primarily for the benefit of staff who work in a variety of discrete units, such as Close Supervision Centres, Managing Challenging Behaviour Units, Category A Units, Segregation Units and Protected Witness Units. The strategy is based on the need to select, train and support staff to work in these high risk areas; to mentor them and to provide them with positive supervision; and to provide post-event recovery after incidents. All of this with the aim of making staff better equipped to do carry out their work.

Appropriate Level of Decision Making and Review

66. Detention in conditions of the highest security, including solitary confinement, is the most severe form of deprivation of liberty. A decision to hold a prisoner in such conditions for whatever reason should be made in the first place by the most senior person in the institution in which the prisoner is being held. At an early stage thereafter this decision should be confirmed at a higher level, usually in the regional or national structure. If the prisoner is to be held in such conditions for more than a short period, there should be a procedure for regular review, preferably involving independent persons. The decision making process described above for Close Supervision Centres in England and Wales is an example of how this principle can be applied in practice.



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June 19, 2015

[15] CSC Operating Manual