

“Court in the Act”

**The Youth Court; The Children, Young Persons, and their Families Act 1989;
And topical issues arising for NZ Youth Justice practitioners**

A newsletter co-ordinated by the Principal Youth Court Judge for the Youth Justice community
Contributions, feedback and letters to the Editor are not only acceptable, but encouraged

Youth Court Website: <http://www.courts.govt.nz/youth/>

No 13, December 2004

CHRISTMAS ISSUE

WITH THE APPROACH OF THE CHRISTMAS HOLIDAY SEASON, THIS ISSUE
CONTAINS

MAINLY GOOD AND ENCOURAGING NEWS ABOUT YOUTH JUSTICE AND YOUTH
OFFENDING TRENDS, TOGETHER WITH SOME MORE REFLECTIVE ARTICLES TO
READ ON THE BEACH, THE BOAT, OR AT THE BATCH

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Youth Offending Generally Stable: Recent Statistics

THE Principal Youth Court Judge’s third annual report “**Youth Offending: Putting the Headlines in Context**”, which covers 2003, has recently been released. A full copy of the report can be obtained from Jayne Collins at this office on (04) 914 3446 or email Jayne.Collins@courts.govt.nz. In summary, the position regarding youth offending is as follows:

Offending attributed to under 17 year olds has stabilised

Although there was a significant increase in youth offending statistics in the first half of the 1990s, most categories have been relatively stable since about 1997. There has been an increase this year in police apprehensions of 14-16 year olds.



Offending by under 17 year olds has not increased at any greater rate than adult offending

Offending by under 17 year olds has remained at about 22% of the total number of apprehended offenders for the last ten years.

The majority of youth crimes are not serious in nature.

In a 2000/2001 study, Police described almost half of youth offences as “of minimum seriousness”. The majority of offences are petty dishonesty or property offences. The average seriousness of proved cases involving young offenders has fluctuated over the last decade with no clear pattern.

Suffice to say, the average seriousness of offending for the last three years (2001-2003) has remained lower than figures, for instance, in 1995.

Violence features in about 10% of offences involving young people

The rates of violent offending attributed to 14–16 year olds significantly increased between 1991 and 1995, but much less so since. Violent offending attributed to 10-13 year olds peaked in 1997, and has dropped in each of the last 3 years.

The percentage of under 17 year olds involved in violent offending has remained relatively stable over the last 10 years.

Only the most serious youth offenders come before the Youth Court.

Police deal with 76% of offenders through diversion, written warnings or a range of creative, community-based

approaches. New Zealand’s “diversion” rate leads the world.

8% of youth offenders are dealt with by intention to charge Family Group Conferences, and a small number of these end up being charged in the Youth Court.

Only 16% of young offenders are directly charged in the Youth Court. Despite an increase in the population, the number of cases finalised in the Youth Court has declined over recent years. Well over half of those appearing in the Youth Court either receive an absolute discharge after the completion of a Family Group Conference Plan, or the case against them is not proved.

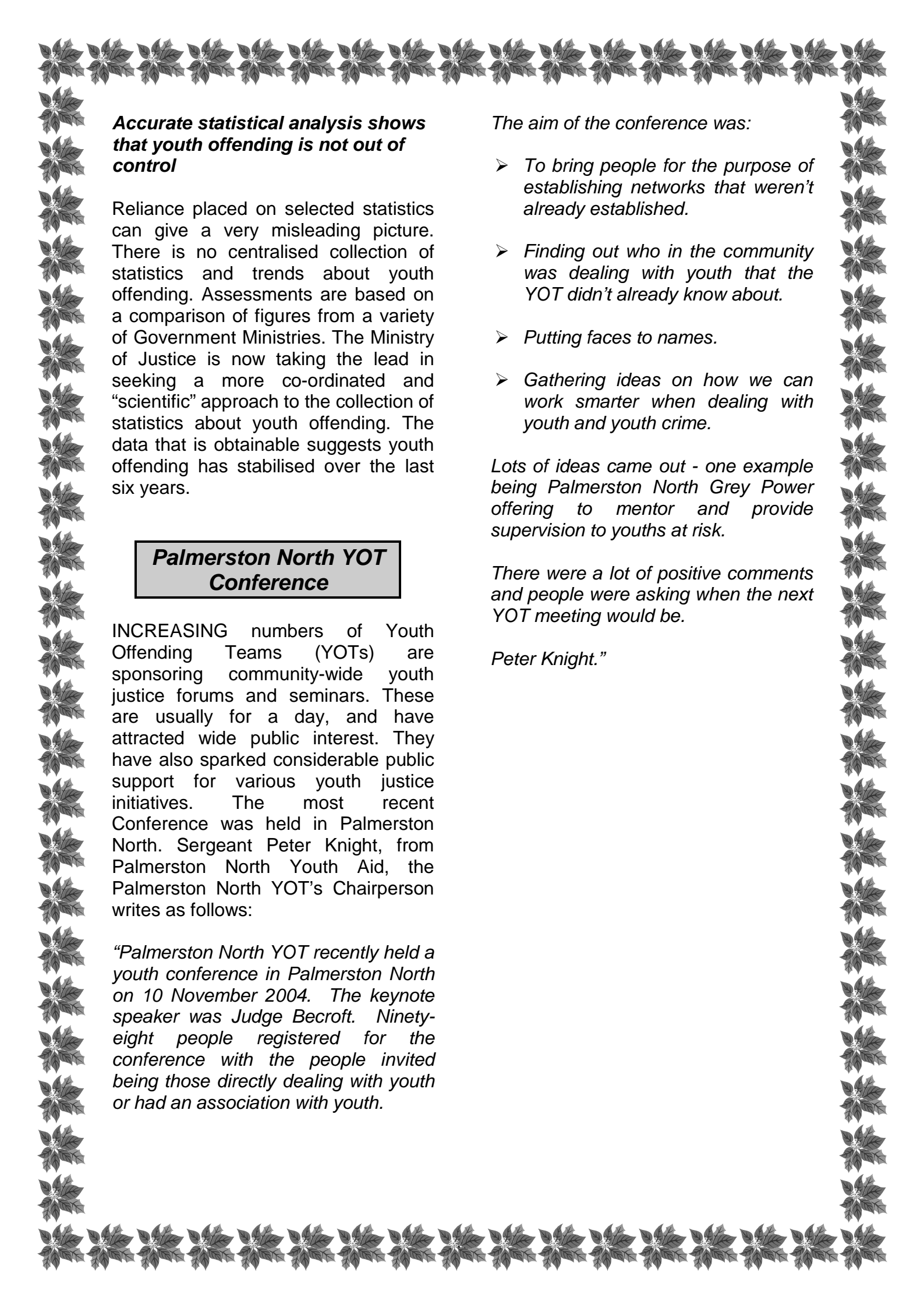
An important feature of the Youth Court process is the Family Group Conference (FGC).

The FGC emphasises accountability and family involvement in the resolution of a young person’s offending. The number of Family Group Conferences held has remained stable over most of the last decade but rose by more than a thousand to 7,552 between 2002/2003 and 2003/2004.

There are huge regional variations in youth offending throughout New Zealand

Offence rates are not always an accurate indicator of crime trends

Factors such as Police resourcing, changes to Police strategies and charging practices, and society’s decreased tolerance of violence can impact upon the numbers of offences reported. A better indicator is the number and nature of cases proven in the Youth Court.



Accurate statistical analysis shows that youth offending is not out of control

Reliance placed on selected statistics can give a very misleading picture. There is no centralised collection of statistics and trends about youth offending. Assessments are based on a comparison of figures from a variety of Government Ministries. The Ministry of Justice is now taking the lead in seeking a more co-ordinated and “scientific” approach to the collection of statistics about youth offending. The data that is obtainable suggests youth offending has stabilised over the last six years.

Palmerston North YOT Conference

INCREASING numbers of Youth Offending Teams (YOTs) are sponsoring community-wide youth justice forums and seminars. These are usually for a day, and have attracted wide public interest. They have also sparked considerable public support for various youth justice initiatives. The most recent Conference was held in Palmerston North. Sergeant Peter Knight, from Palmerston North Youth Aid, the Palmerston North YOT’s Chairperson writes as follows:

“Palmerston North YOT recently held a youth conference in Palmerston North on 10 November 2004. The keynote speaker was Judge Becroft. Ninety-eight people registered for the conference with the people invited being those directly dealing with youth or had an association with youth.

The aim of the conference was:

- *To bring people for the purpose of establishing networks that weren’t already established.*
- *Finding out who in the community was dealing with youth that the YOT didn’t already know about.*
- *Putting faces to names.*
- *Gathering ideas on how we can work smarter when dealing with youth and youth crime.*

Lots of ideas came out - one example being Palmerston North Grey Power offering to mentor and provide supervision to youths at risk.

There were a lot of positive comments and people were asking when the next YOT meeting would be.

Peter Knight.”



SPECIAL FEATURE

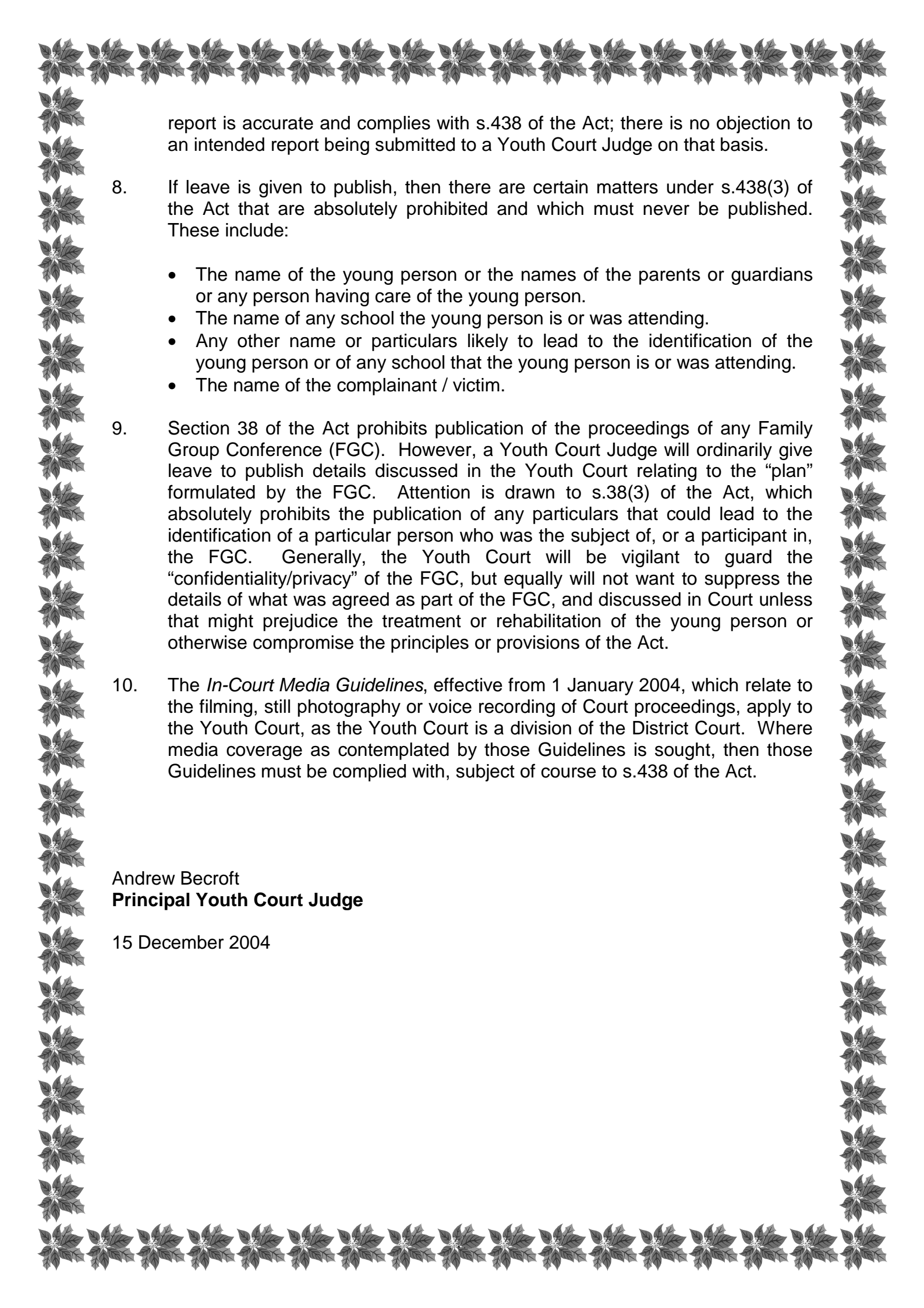
Media Guidelines Reporting Youth Court Cases

Introduction

The reporting of Youth Court proceedings is subject to a statutory prohibition against publication, except with the leave of the Judge that heard the proceedings. The Youth Court wishes to adopt an open approach to publication, and generally to take the least restrictive approach necessary in all the circumstances of a case consistent with the principles of the Children Young Persons and Their Families Act 1989 (the Act).

The following notes will act as a guide, subject to the discretion of a Youth Court Judge to apply s.438 as he or she thinks fit in individual cases. Of course, these notes have no legislative force and do not create rights additional to those in the Act.

1. “Accredited” news media reporters are entitled **as of right** to be present at any hearing of proceedings in a Youth Court: see s.329(1)(l) of the Act. Reporters are welcome to attend, but may be asked to demonstrate accreditation.
2. Leave of the Court is required before any person publishes any report of proceedings in the Youth Court (s.438(1) of the Act).
3. Such a request, wherever possible, should be made in writing, in advance, to the Court Registrar. If necessary it can be made orally by the news media representative in Court when the case is first called. Alternatively leave may be sought orally or in writing at the completion of the case.
4. A Youth Court Judge may seek the views of the youth advocate, the Police, and other relevant parties regarding the request to publish.
5. If leave to publish is granted, the permission will usually be unconditional. On some occasions the leave to publish may be subject to specified conditions.
6. It is only in rare cases that leave to publish will be refused, such as in order to protect witnesses who may be later giving evidence in trials in the District/High Court or to ensure that a fair trial is not prejudiced.
7. It is recognised that it would be inappropriate and contrary to the New Zealand Bill of Rights Act for the Youth Court to adopt a practice of requiring to see and approve an intended report prior to publication. Such a power will only be exercised in special cases, such as suggested in point 6 above. However, a Youth Court Judge maybe willing to assist in ensuring that a



report is accurate and complies with s.438 of the Act; there is no objection to an intended report being submitted to a Youth Court Judge on that basis.

8. If leave is given to publish, then there are certain matters under s.438(3) of the Act that are absolutely prohibited and which must never be published. These include:
 - The name of the young person or the names of the parents or guardians or any person having care of the young person.
 - The name of any school the young person is or was attending.
 - Any other name or particulars likely to lead to the identification of the young person or of any school that the young person is or was attending.
 - The name of the complainant / victim.
9. Section 38 of the Act prohibits publication of the proceedings of any Family Group Conference (FGC). However, a Youth Court Judge will ordinarily give leave to publish details discussed in the Youth Court relating to the “plan” formulated by the FGC. Attention is drawn to s.38(3) of the Act, which absolutely prohibits the publication of any particulars that could lead to the identification of a particular person who was the subject of, or a participant in, the FGC. Generally, the Youth Court will be vigilant to guard the “confidentiality/privacy” of the FGC, but equally will not want to suppress the details of what was agreed as part of the FGC, and discussed in Court unless that might prejudice the treatment or rehabilitation of the young person or otherwise compromise the principles or provisions of the Act.
10. The *In-Court Media Guidelines*, effective from 1 January 2004, which relate to the filming, still photography or voice recording of Court proceedings, apply to the Youth Court, as the Youth Court is a division of the District Court. Where media coverage as contemplated by those Guidelines is sought, then those Guidelines must be complied with, subject of course to s.438 of the Act.

Andrew Becroft
Principal Youth Court Judge

15 December 2004

SPECIAL FEATURE

Adolescents Are Not “Junior Adults” An American Perspective

In an interesting U.S. article, Steinberg and Scott argue that, as under 17-year olds are developmentally immature and not simply “junior adults”, they should be less culpable for their crimes and should not face the death penalty. Below is a summary of the article, prepared by the new Principal Youth Court Judge’s Research Counsel, Rhonda Thompson, who we welcome to chambers here in Wellington.

Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility and the Juvenile Death Penalty

Summary

In the face of a US Supreme Court decision refusing to categorically prohibit the death penalty for 16 and 17 year olds, Steinberg and Scott (University of Virginia Law School) argue that adolescents are less culpable for criminal acts as their decision-making capacities are immature. They question research which found that adolescents were able to reason at an adult level saying that in real-life situations adolescents’ greater likelihood of risk taking, susceptibility to peer pressure and limited concept of the future could lead them to make poor choices, despite their developed reasoning ability. Research shows that at least some of the differences between adolescents’ and adults’ decision-making abilities have neuropsychological and neurobiological underpinnings i.e. are organic.

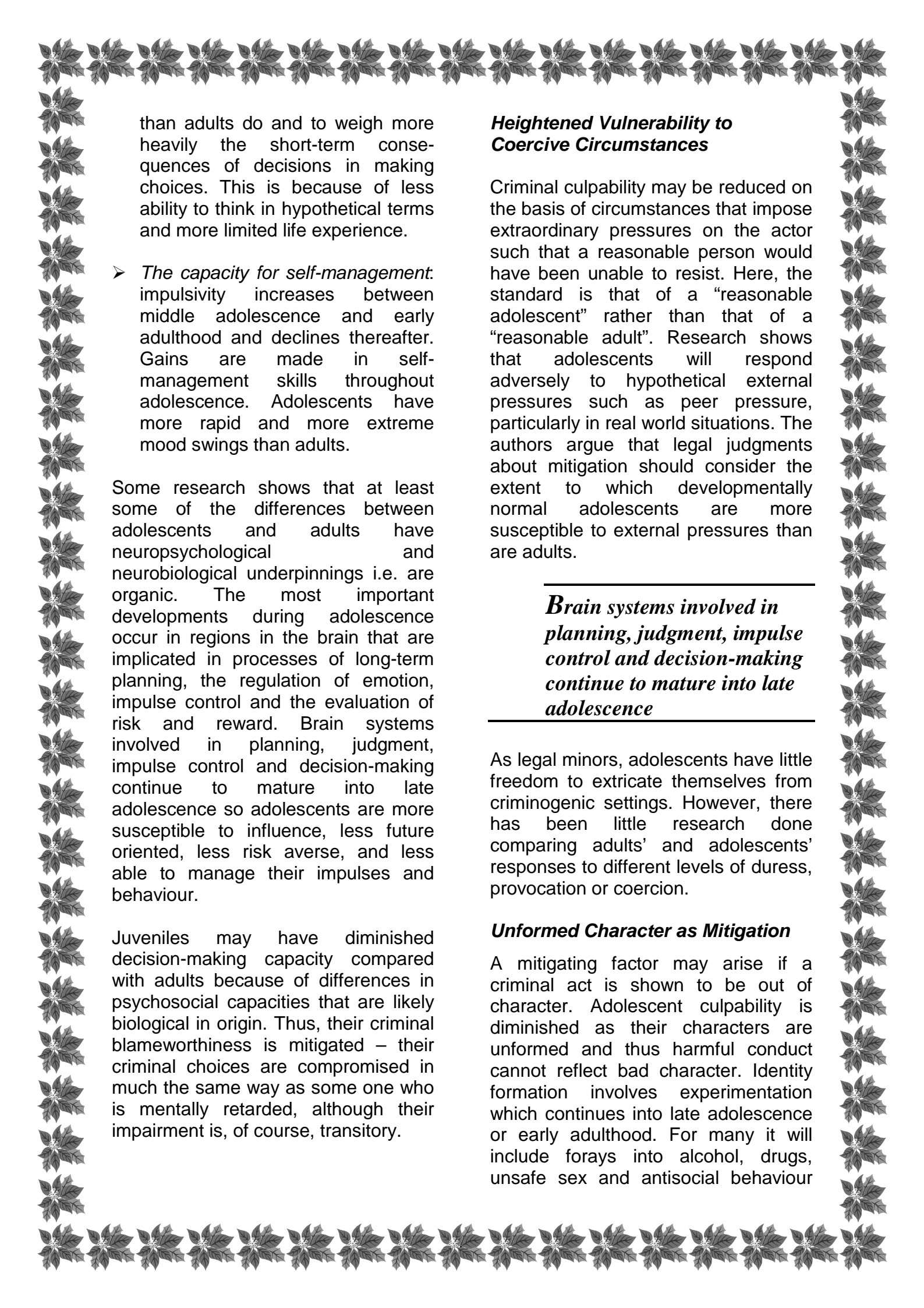
Adolescence as a Mitigating Factor

Steinberg and Scott argue that adolescence should not provide an excuse to a crime but rather that it should be a mitigating factor. Three key factors that reduce criminal culpability and that are relevant to adolescents are:

Deficiencies in Decision-Making Capacity

By mid-adolescence understanding and reasoning abilities may be roughly equal to those of an adult. However, due to psychosocial immaturity the adolescent’s decision-making capacity could be compromised because of:

- ***Susceptibility to peer influence:*** peaks age 14 and declines slowly during high school years.
- ***Attitudes toward and perception of risk:*** an adolescent’s risk-reward calculus places less weight on risk in relation to reward than adults because of limited time perspective and different values and goals than adults.
- ***Future orientation:*** adolescents tend to discount the future more



than adults do and to weigh more heavily the short-term consequences of decisions in making choices. This is because of less ability to think in hypothetical terms and more limited life experience.

- *The capacity for self-management:* impulsivity increases between middle adolescence and early adulthood and declines thereafter. Gains are made in self-management skills throughout adolescence. Adolescents have more rapid and more extreme mood swings than adults.

Some research shows that at least some of the differences between adolescents and adults have neuropsychological and neurobiological underpinnings i.e. are organic. The most important developments during adolescence occur in regions in the brain that are implicated in processes of long-term planning, the regulation of emotion, impulse control and the evaluation of risk and reward. Brain systems involved in planning, judgment, impulse control and decision-making continue to mature into late adolescence so adolescents are more susceptible to influence, less future oriented, less risk averse, and less able to manage their impulses and behaviour.

Juveniles may have diminished decision-making capacity compared with adults because of differences in psychosocial capacities that are likely biological in origin. Thus, their criminal blameworthiness is mitigated – their criminal choices are compromised in much the same way as some one who is mentally retarded, although their impairment is, of course, transitory.

Heightened Vulnerability to Coercive Circumstances

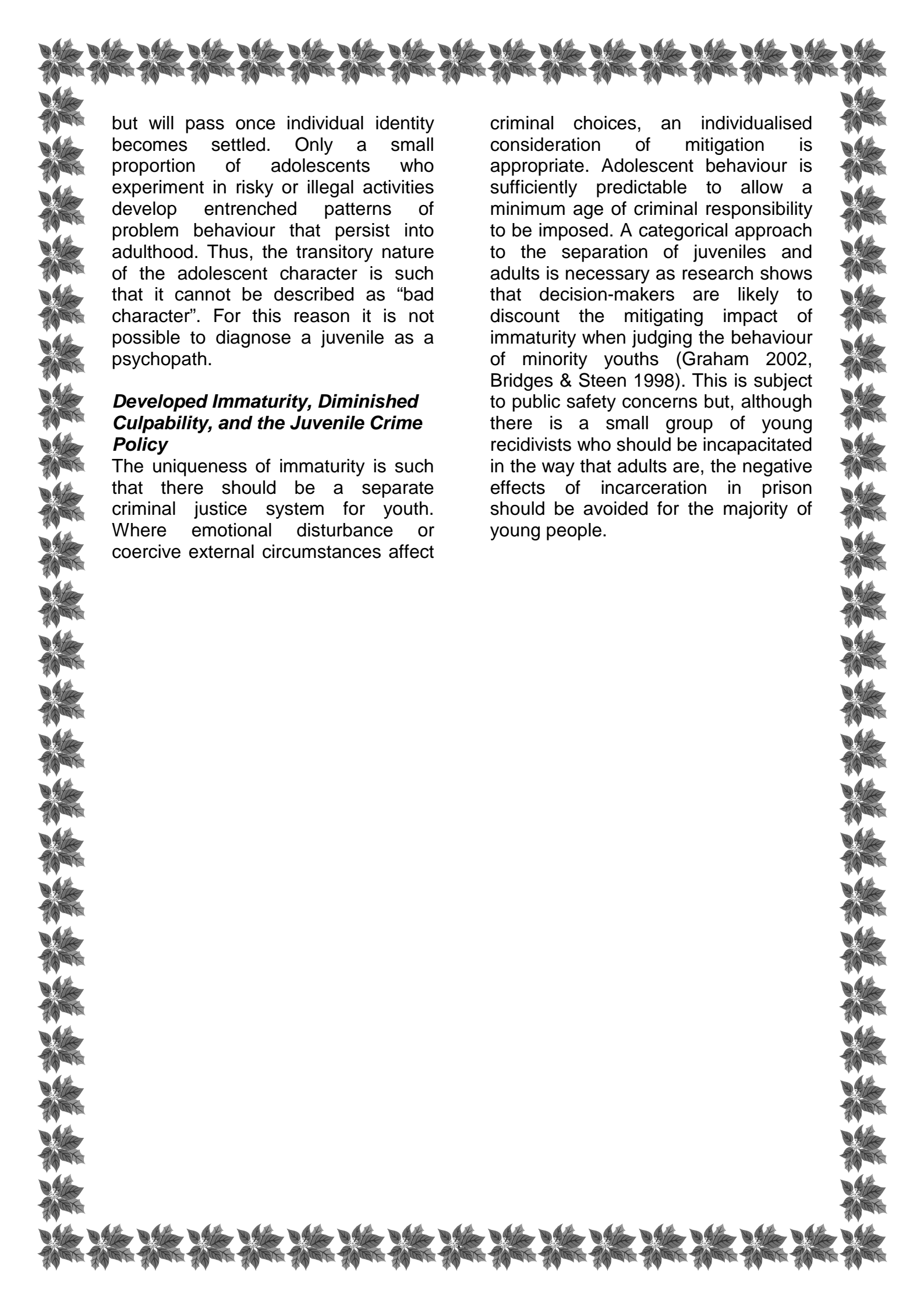
Criminal culpability may be reduced on the basis of circumstances that impose extraordinary pressures on the actor such that a reasonable person would have been unable to resist. Here, the standard is that of a “reasonable adolescent” rather than that of a “reasonable adult”. Research shows that adolescents will respond adversely to hypothetical external pressures such as peer pressure, particularly in real world situations. The authors argue that legal judgments about mitigation should consider the extent to which developmentally normal adolescents are more susceptible to external pressures than are adults.

Brain systems involved in planning, judgment, impulse control and decision-making continue to mature into late adolescence

As legal minors, adolescents have little freedom to extricate themselves from criminogenic settings. However, there has been little research done comparing adults’ and adolescents’ responses to different levels of duress, provocation or coercion.

Unformed Character as Mitigation

A mitigating factor may arise if a criminal act is shown to be out of character. Adolescent culpability is diminished as their characters are unformed and thus harmful conduct cannot reflect bad character. Identity formation involves experimentation which continues into late adolescence or early adulthood. For many it will include forays into alcohol, drugs, unsafe sex and antisocial behaviour



but will pass once individual identity becomes settled. Only a small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behaviour that persist into adulthood. Thus, the transitory nature of the adolescent character is such that it cannot be described as “bad character”. For this reason it is not possible to diagnose a juvenile as a psychopath.

Developed Immaturity, Diminished Culpability, and the Juvenile Crime Policy

The uniqueness of immaturity is such that there should be a separate criminal justice system for youth. Where emotional disturbance or coercive external circumstances affect

criminal choices, an individualised consideration of mitigation is appropriate. Adolescent behaviour is sufficiently predictable to allow a minimum age of criminal responsibility to be imposed. A categorical approach to the separation of juveniles and adults is necessary as research shows that decision-makers are likely to discount the mitigating impact of immaturity when judging the behaviour of minority youths (Graham 2002, Bridges & Steen 1998). This is subject to public safety concerns but, although there is a small group of young recidivists who should be incapacitated in the way that adults are, the negative effects of incarceration in prison should be avoided for the majority of young people.



SPECIAL FEATURE

Youth Justice – The Real Picture

Recent inaccurate media reports on youth offending trends and youth justice developments are concerning. I wrote this article in response to one such media report. I hope you find it a useful balance to some of the recent inaccurate and misleading comments:

HEADLINES such as “*the youth justice system is failing*” or “*youth crime out of control*” are often a knee jerk reaction to a particularly appalling instance of youth offending which has rightly shocked the nation. Alternatively, they may be triggered by victim dissatisfaction where the system has miscarried – as occasionally it does.

But these headlines are factually incorrect. Recent statistics actually permit cautious optimism. Youth offending (14-16 year olds) and child offending (10-13 year olds), has stabilised in the last five to eight years. It has increased no more quickly than total offending and, for the last 14 years, has remained constantly at about 22% of overall offending.

Of total youth offending, only a small percentage constitutes serious offending. And, the great majority of youth crimes are carried out by a small group of “hard core” offenders, who number less than 15% of total youth offenders.

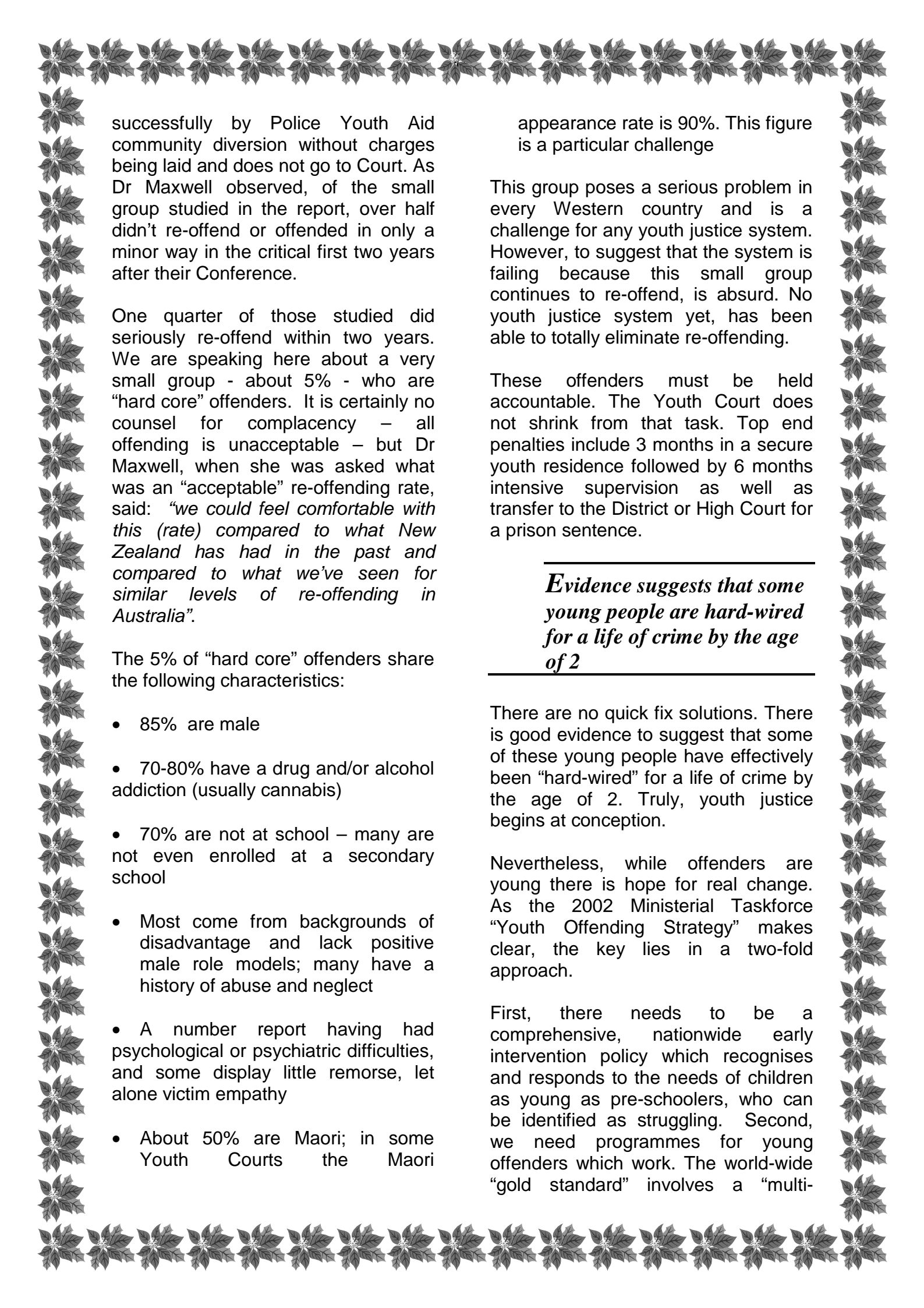
None of these encouraging statistics are the stuff of headlines. But they do refute the popular misconception that youth offending is out of control. It may surprise the public to learn that New Zealand is actually seen as an international leader in its response to youth crime.

An example of a distorted picture of youth offending is recent media comment on the Ministry of Social Development Report, “*Achieving Effective Outcomes in Youth Justice*”, which was released in February of this year. The headline “*Youth Justice System is Failing*” was remarkable given the generally favourable observations made about the system by the Report. Much was made by the media of the statistic that two-thirds of young criminals dealt with by Family Group Conferences (FGCs) re-offend. Yet here is what the Report writer, Dr Maxwell, said in a subsequent interview on National Radio:

“Two-thirds re-offending is a peculiar way of putting it. 33% did not re-offend at all; 22% only re-offended in a very minor way. So over half of them did not continue to get involved in serious crime and that’s a pretty good outcome for a relatively serious group of offenders.”

As Dr Maxwell also emphasised, only the most serious offenders (between 16 -24%) are dealt with by FGCs. Media analysis of the Report should have made it clear that the statistics quoted related only to that small percentage of offenders and not to youth offending as a whole.

In fact, three-quarters of youth offending is dealt with very



successfully by Police Youth Aid community diversion without charges being laid and does not go to Court. As Dr Maxwell observed, of the small group studied in the report, over half didn't re-offend or offended in only a minor way in the critical first two years after their Conference.

One quarter of those studied did seriously re-offend within two years. We are speaking here about a very small group - about 5% - who are "hard core" offenders. It is certainly no counsel for complacency – all offending is unacceptable – but Dr Maxwell, when she was asked what was an "acceptable" re-offending rate, said: *"we could feel comfortable with this (rate) compared to what New Zealand has had in the past and compared to what we've seen for similar levels of re-offending in Australia"*.

The 5% of "hard core" offenders share the following characteristics:

- 85% are male
- 70-80% have a drug and/or alcohol addiction (usually cannabis)
- 70% are not at school – many are not even enrolled at a secondary school
- Most come from backgrounds of disadvantage and lack positive male role models; many have a history of abuse and neglect
- A number report having had psychological or psychiatric difficulties, and some display little remorse, let alone victim empathy
- About 50% are Maori; in some Youth Courts the Maori

appearance rate is 90%. This figure is a particular challenge

This group poses a serious problem in every Western country and is a challenge for any youth justice system. However, to suggest that the system is failing because this small group continues to re-offend, is absurd. No youth justice system yet, has been able to totally eliminate re-offending.

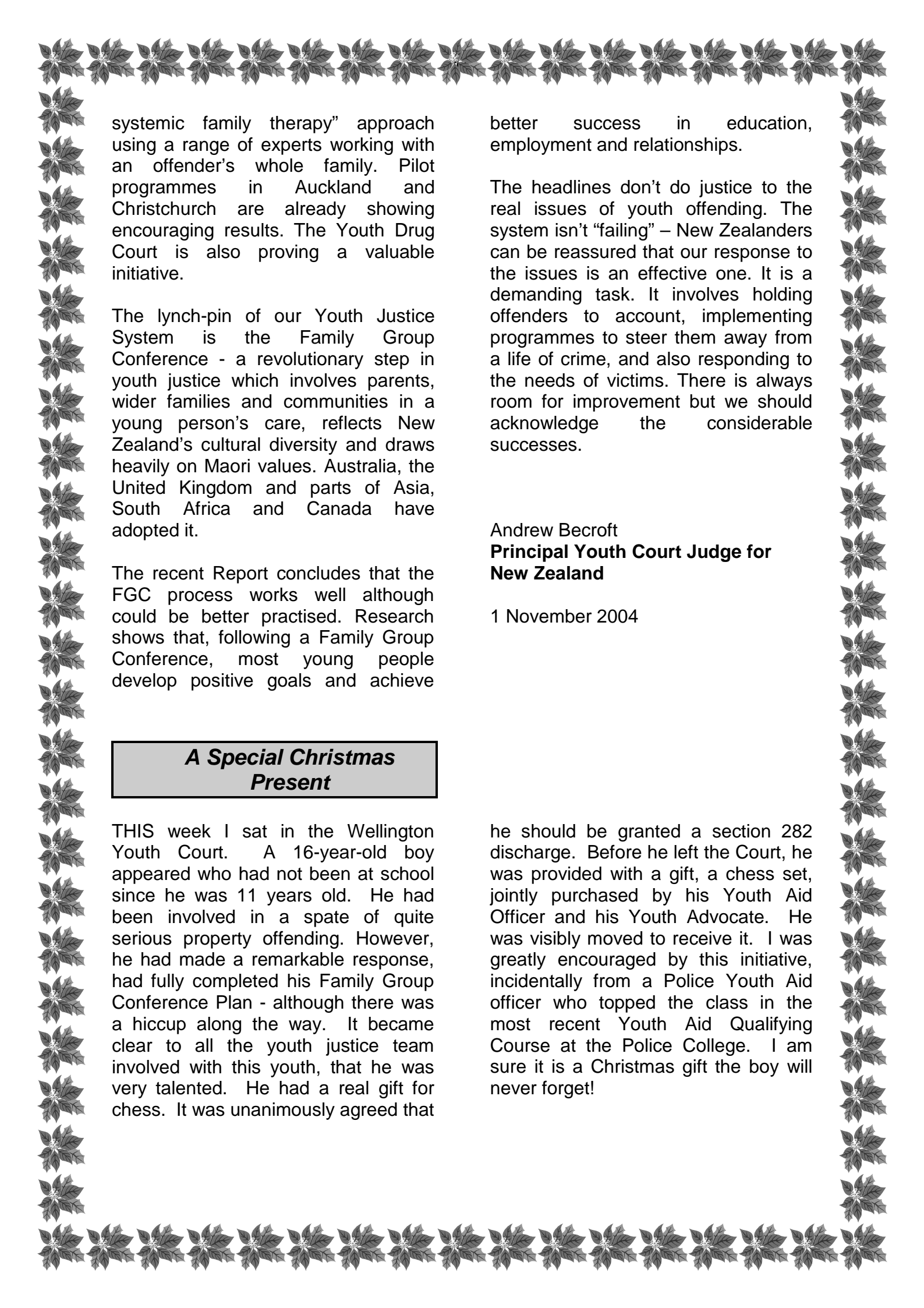
These offenders must be held accountable. The Youth Court does not shrink from that task. Top end penalties include 3 months in a secure youth residence followed by 6 months intensive supervision as well as transfer to the District or High Court for a prison sentence.

Evidence suggests that some young people are hard-wired for a life of crime by the age of 2

There are no quick fix solutions. There is good evidence to suggest that some of these young people have effectively been "hard-wired" for a life of crime by the age of 2. Truly, youth justice begins at conception.

Nevertheless, while offenders are young there is hope for real change. As the 2002 Ministerial Taskforce "Youth Offending Strategy" makes clear, the key lies in a two-fold approach.

First, there needs to be a comprehensive, nationwide early intervention policy which recognises and responds to the needs of children as young as pre-schoolers, who can be identified as struggling. Second, we need programmes for young offenders which work. The world-wide "gold standard" involves a "multi-



systemic family therapy” approach using a range of experts working with an offender’s whole family. Pilot programmes in Auckland and Christchurch are already showing encouraging results. The Youth Drug Court is also proving a valuable initiative.

The lynch-pin of our Youth Justice System is the Family Group Conference - a revolutionary step in youth justice which involves parents, wider families and communities in a young person’s care, reflects New Zealand’s cultural diversity and draws heavily on Maori values. Australia, the United Kingdom and parts of Asia, South Africa and Canada have adopted it.

The recent Report concludes that the FGC process works well although could be better practised. Research shows that, following a Family Group Conference, most young people develop positive goals and achieve

A Special Christmas Present

THIS week I sat in the Wellington Youth Court. A 16-year-old boy appeared who had not been at school since he was 11 years old. He had been involved in a spate of quite serious property offending. However, he had made a remarkable response, had fully completed his Family Group Conference Plan - although there was a hiccup along the way. It became clear to all the youth justice team involved with this youth, that he was very talented. He had a real gift for chess. It was unanimously agreed that

better success in education, employment and relationships.

The headlines don’t do justice to the real issues of youth offending. The system isn’t “failing” – New Zealanders can be reassured that our response to the issues is an effective one. It is a demanding task. It involves holding offenders to account, implementing programmes to steer them away from a life of crime, and also responding to the needs of victims. There is always room for improvement but we should acknowledge the considerable successes.

Andrew Becroft
Principal Youth Court Judge for New Zealand

1 November 2004

he should be granted a section 282 discharge. Before he left the Court, he was provided with a gift, a chess set, jointly purchased by his Youth Aid Officer and his Youth Advocate. He was visibly moved to receive it. I was greatly encouraged by this initiative, incidentally from a Police Youth Aid officer who topped the class in the most recent Youth Aid Qualifying Course at the Police College. I am sure it is a Christmas gift the boy will never forget!



SPECIAL FEATURE

STATISTICS PROFILE HARD CORE OFFENDERS

OVER 70% of serious young offenders sent for medical, psychological or psychiatric reports have issues with alcohol and cannabis.

That's the finding of a report prepared by the Capital and Coast District Health Board Youth Forensic Service which profiled 276 serious young offenders between 2000 and 2004. The offenders had appeared in the Youth Court with sufficient mental health problems for the Court to order a section 333 report into their medical, psychological or psychiatric condition.

The profile offers some useful insights into the 5 to 15% of persistent "early onset offenders" who are thought to commit 30 to 50% of youth offending. This small group challenges the youth justice system at every stage but little detailed study has been carried out on it.

The profile showed that 70.3% had issues with alcohol and 71.7% with cannabis. This was a far higher figure than for any other drug issue – the next most serious problem was solvent abuse, which 15.2% had problems with, and LSD, used by 14.9% of the group. "P" was only used by 1.8% of the offenders.

The profile highlights some worrying issues for CYFS and the education system. Sixty percent were in some form of CYFS care and only 12.7% were living with both parents. More than 25% of these were living with

their mother while a smaller percentage, 8.7%, were living with their father.

Only 18.5% were attending school, 28% were attending courses and just 3% were in some form of employment. Around 45% of the young offenders were unemployed and the same percentage had been expelled or excluded from school. Just 45.3% had attended only one school and 29% had attended two schools. This raises the question of how many excluded students are being actively re-enrolled in other schools.

As to mental disorder, the profile showed that psychiatric disorder was as low as 11.6%. Of concern, however, is the number of those presenting with conduct disorders - a known precursor to adult antisocial behaviour – which featured in over a quarter of cases.

More than 11% of the young offenders had considered harming themselves – attempted hanging being the most commonly used method amongst the male offenders (5.2%) and self inflicted cuts amongst the female offenders (23.9%).

The most commonly committed offences amongst the group were: offences involving physical violence to others (36.2%), robbery and burglary (33.3%) and motor vehicle related incidents (26.4%).

Police Cell Statistics

POLICE cell remands of young people awaiting determination of charges against them, are unacceptable. The extent to which we rely on Police cell remands is, as I have said previously, intolerable in a civilised community. As is well known, there was a failure by CYFS to provide a proper Residential Services Strategy in the late 90's, with adequate forecasts of demand, so that we have now inherited the present problem.

It is not a new problem. It is churlish simply to blame past failures. It must also be acknowledged that it was difficult for CYFS to obtain planning permission to build residences. What can now be said, is that there is apparently an adequate

Residential Services Strategy in place and it will be implemented as soon as possible. More residential beds will be available next year.

A new youth justice residence is planned for the Bay of Plenty/Hamilton region. Five supported Bail Pilot Programmes are soon to be launched. There is a drive for more residential services. In the medium to long term, use of Police cell remands should be much reduced. As it is, while the levels are unacceptable, there has been a clear reduction in the amount of Police cell remands in the last six months, as the 15 new beds in the new Youth Justice North Unit at Wiri have become available.

The figures already show a marked improvement:

Date	Remanded in Police cells	Total nights
August 2003	46	140
September 2003	39	107
October 2003	58	178
August 2004	38	86
September 2004	28	65
October 2004	33	76

