

“I AM MISUNDERSTOOD” YOUNG WOMEN IN THE YOUTH JUSTICE SYSTEM

Judge Frances Eivers*

This article addresses the challenges faced by young women (kōtiro) in New Zealand’s justice system, which have been typified by inequity and simplistic assumptions about how kōtiro “should” behave. The author notes that almost all interventions in the youth justice system have been designed for tama, and don’t respond to the needs of kōtiro. Further, the life experience of many kōtiro make mixed group courses difficult and even retraumatising. Judge Eivers argues that to effect change in this context, the focus of all professionals involved must be on what we do for this young person to support change and create a better future for them – despite the system.

I became Children’s Commissioner at a challenging time for mokopuna and their whānau, with inequity being a huge issue and the ongoing impact of COVID-19 on health, education and social development exacerbating already existing challenges.¹ For a long time now, the challenges faced by kōtiro (girls and young women) in New Zealand’s justice system have been typified by inequity and simplistic assumptions about how kōtiro “should” behave. Of note is that a disproportionate number of the kōtiro in the youth justice system are kōtiro Māori.

* On 1 November 2021, Judge Frances Eivers (Ngāti Maniapoto) became the eighth Children’s Commissioner since the role was established in 1989. Judge Eivers grew up in the Eastern Bay of Plenty settlement of Te Teko and is the oldest of six children. She has extensive experience in Family, Youth, Rangatahi and Pasifika Courts and most recently sat as a District Court Judge in Manukau, South Auckland.

1 I am using mokopuna, kōtiro and tama to refer to all children and young people, all young girls and young men, under the age of 18 years, but still stress that a disproportionate number of the kōtiro in the youth justice system are kōtiro Māori. In particular, I use the word mokopuna which is a word drawn from indigenous mātauranga Māori (knowledge). Mokopuna is generally known as the word for grandchild. It has meaning from two words, moko and puna. Moko is tattoo, a trademark on the face or body, of the child’s tūpuna, a sacred vessel containing the wisdom of their tūpuna. Connecting moko to puna, meaning spring or pool, links the idea of intergenerational connectivity across whakapapa.

I SELLING KŌTIRO SHORT

The number of kōtiro who face charges in the Youth Court is relatively small. Of young people aged 10–17 years in the Court in 2021, just 210 were female (17 per cent), and that number has been decreasing since 2012 when 510 kōtiro came before the Court.²

That should be a good news story, a matter for celebration. But there's a snag: the sheer lack of kōtiro appearing, spread across the 57 Youth Courts nationwide, means that the targeted services needed to address their offending are scarce. What's more, the difference between the way young women and young men present to the Court leave kōtiro struggling to be treated with understanding, selling kōtiro short.

In both the Youth Court and the District Court, the kōtiro who appeared before me displayed distinct features. I want to share what I see as the common threads throughout the issues faced by these kōtiro and the inequities which lead them not only to the courtroom door, but which continue to travel with them through the criminal justice process.

A review of relevant international literature by Charlotte Best, Julia Ioane and Dr Ian Lambie shows that young female offenders experience consistently higher rates of child and adolescent maltreatment, sexual abuse, emotional abuse and neglect than males.³ In New South Wales, young women who are offending are 10 times more likely to report three or more types of abuse and for that abuse to be in the severe to extreme range.⁴

It's not rocket science to see what results. Mood and behaviour disorders, conduct disorder, anger and frustration, a lack of trust, PTSD and impaired impulse control are not uncommon in kōtiro before the courts. While we also regularly see trauma amongst tama, it is my belief that kōtiro who offend carry their trauma differently, and that addressing that trauma therefore requires

2 Te Tāhū o te Ture – Ministry of Justice "Data tables – Children and young people with charges finalised in the Youth Court" (2022) <www.justice.govt.nz>. The steady decrease in the number of kōtiro who face charges in the Youth Court is consistent with the overall decrease in young people appearing in the Court. From 2012 to 2021 the total number of young people appearing in the Court decreased from 2,763 to 1,263.

3 Charlotte Best, Julia Ioane and Ian Lambie "Young female offenders and the New Zealand Youth Justice System: the need for a gender-specific response" (2021) 28 *Psychiatry, Psychology and Law* 867 at 870.

4 Elizabeth Moore, Claire Gaskin and Devon Indig "Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders" (2013) 37 (10) *Child Abuse & Neglect* 861 at 864, as cited in Best, Ioane and Lambie, above n 3, at 870-871.

a gender-specific approach. Still, we retain a youth justice system that is designed to treat kōtiro exactly the same as tama.

But it doesn't treat them the same, does it? Again, as Best, Ioane and Lambie went on to note, young females are less likely to be consulted on who ought to come to a Family Group Conference (FGC). In addition, only 52 per cent of kōtiro reported that they were able to say what they wanted at their FGC compared to 73 per cent of tama. The final nail in the coffin — half the number of kōtiro to young men felt their FGC helped them to stop or reduce their offending.⁵

The impact of this cannot be understated. The power of the FGC is that the young person is accountable not only to a judge, but to their family and community. It also provides the opportunity to meet their victims face to face, and so it is a cornerstone of the restorative justice system. When an FGC is at its best, the mokopuna has a say in the FGC plan, they are contributing in a way that expects them to keep to their word.

There are times where a single system cannot work for everyone within its reach, and this is one of them. There seems little in place to meet the needs of the small number of kōtiro coming in front of the Youth Court, even as the figures above suggest the degree of their vulnerability.

What I have seen as a judge is that while almost all young people who appeared before me were frightened and even overwhelmed by what they had got themselves into, kōtiro generally appeared with a heightened sense of anxiety. Fear was written all over their faces and their protective mechanism was either to ignore what was happening around them or show a strong persona of bravado, usually coupled with rudeness. What was also apparent was fierce intelligence and their inherent desire to survive.

The tama? Generally, they just gave their best impression of being told off by their aunty: polite in their dealings with the judge and the court officers, staring at their feet and mumbling the odd “sorry”. If I worked to make them feel comfortable, they would open up to me. Young women on the other hand were often sullen and difficult to engage with, and despite many efforts they never really opened up.

It would have been easy to take offence at their behaviour. But where time was taken to treat them with respect and hear their story, even a little bit of it,

⁵ Best, Ioane and Lambie, above n 3, at 877.

it was surprising how much I could learn about the kōtiro before me, and how much those young women wanted and needed to be heard.

Apart from a few who appeared before the Court because of mental health issues which their families struggled to cope with, most kōtiro appearing came from a care and protection background. Issues of physical, sexual and psychological abuse, family violence, separation from family or parents, one parent or both having been incarcerated, family facing alcohol and drug issues, transience, and leaving or being excluded from education are rife. Many of these young women — like the young men — come from a background where some or indeed all of these issues are in the mix. All kōtiro deserve our respect and to be valued; these kōtiro also generate in me a feeling of awe that they have even managed to survive.

II SEEING HOW PATHS CAN BE CHANGED

Before we give up on our mokopuna, we need to understand how their paths may be altered with attention, care, and professionalism — sometimes from the most unexpected of quarters. Until someone in the lives of these three kōtiro, described below, took that extra step, the future was bleak. My hope is that you too could be that person.

*A Maya*⁶

When Maya first came before me in the Court, she was so tiny she could hardly see above the dock. She was young — only 14 — and quite small for her age. She hardly spoke. Maya appeared in the Court again and again. She always seemed so sad, with a faraway look in her eyes. Although mechanisms were in place so that she could return home to be with her mother and her mother loved her very much, Maya's mother struggled with alcoholism and could not care for her. Maya's father had died several years beforehand. She had been very close to him and she simply could not cope. It seemed like Maya was on a path to destruction. Unsurprisingly, several years later she appeared in the Court again, having reoffended in quite a significant way. She was sentenced to serve time in a youth justice residence.

In the residence she connected with two women who were working there. They were young, bright and caring people who took Maya under their wing and helped and guided her. They believed in her. She responded by serving her

⁶ Names have been changed.

sentence without issue and emerged at the end as a young woman who was now standing tall and claiming her space in the world. At Court, she was still shy and reticent, but she presented a poem — which she gave me permission to share — to represent her new beginning:

I am Matariki

I am the breath of life

I am new beginnings

I am misunderstood

I am HOPE, that I will succeed and make it out of the

System

I am LOVE

I am the strength of all women, who have worked

alongside me

I am a daughter, I am a sister & I am an Auntie that will

Be the change for my whānau

I am Wahine Toa, and my mistakes will not define me.

B Celeste

Celeste was from a well-known gang family who were dysfunctional and struggled with violence and addiction. Her Nana was the rock of the family but was stretched thin trying to cope with the issues facing the whānau. Celeste's behaviour had spiralled to the point where she was charged with aggravated robbery. But a change was taking hold, and with the support of her social worker Celeste found the courage to share with the Court her ambition to become a nurse. This was a big ask as at this point Celeste was functionally illiterate. To her shock, the Police prosecutor told her that if she passed her bridging courses to catch up on her education, he would buy her a laptop to

support her studies. She passed with all A's. Celeste was shown a vision of the future that she could embrace and was helped to build the confidence needed to believe that she deserved that hopeful future by the collaborative efforts of the professionals involved.

C Phaedra

I met Phaedra as a 17-year-old. She had been on remand in a youth justice residence for three months on a charge of minor assault without any prior offending history. She had acted out in the residence and been placed in secure residency three times. These breaches then became a part of the allegations brought before me. But something wasn't right, leading me to ask more and more pointed questions. Phaedra lost her temper, not at me and my questions, but at the fact that no one had tried to understand what had happened with her before. We talked. I learnt that she was in a residence because her mum was an addict who the state said could not care for Phaedra while she was on bail. No other whānau had been approached, neither had her iwi. Her infant son had also been placed with whānau due to Phaedra being in a residence. She was angry, frustrated, felt her treatment was disproportionate, and was aching for her son. I strongly believe that a single wrong turn had put Phaedra in a place where her outcomes steadily became worse because of the way the system had treated her. I bailed her to her mother's house under a number of controls that were eased over time as she proved herself. Phaedra is now on the journey to being reunited with her son full time. She is an intelligent amazing young woman who potentially has a bright future.

III CONCLUSION

Not only I, but also (recently retired) Principal Youth Court Judge John Walker and Dr Hinemoa Elder have been vocal about the critical need to better support kōtiro.⁷ Almost all interventions in the youth justice system have been designed for young men, and don't respond to the needs of young women. Further, the life experience of many kōtiro make mixed-group courses difficult and even retraumatising.

To effect change throughout this process, the focus of all professionals involved — lawyers, judges, social workers and others — must be on the next

7 Katie Doyle "Judge calls for targeted support for young female offenders" (19 February 2022) Radio New Zealand <www.rnz.co.nz>.

steps: what can we do for this young person to support change and create a better future for them?

Luckily, there are answers. For myself, I would like to see more community-based services led by iwi, hapū, or local organisations. But to you, as fellow legal professionals, I would ask this:

- (a) Break through the façade of bravado with both patience and perseverance. If you don't, no one else will. Do not assume that the defiant or silent kōtiro in front of you is all there is to see.
- (b) Advocate, advocate, advocate. Do not accept that everything that could be done for a kōtiro has been done. No specific service for the young woman you are involved with? What else might be accessed? Perhaps a confidence-building course or support to re-engage with education is available. Ask and expect people to think laterally and be creative.
- (c) Find your team. Expect the other professionals you work with to collaborate to find workable solutions for the young women you are supporting. It is in everybody's interest to help kōtiro to find a new path.
- (d) If we do this, and are successful, it is possible to give young women in this situation hope and to show them that they are as a valuable person as any other.

There are fallacies about all young people who offend, but some of the most pervasive about kōtiro arise from responses and misinformed concerns that they have subverted expectations that women are nurturing, feminine and maternal. A violent young woman or an angry young woman is somehow “wrong” or “born bad”. They are often treated more harshly as a result of this stereotyping, without recognition that the vast majority of these kōtiro were victims themselves long before they began offending. Their trauma forms their responses to the world around them, a world that has never shown itself to be on their side.

I for one will continue to take whatever steps I can to demonstrate to them that the system can change, that we are on their side, and we do have their backs.

Aroha mai, aroha atu