
BOOK REVIEWS

The Life of a Distaff Legal Pioneer



SHEILA: A BIOGRAPHY OF SHEILA MARY McCLEMANS

By Lloyd Davies
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THE soldier-lawyer is not an unknown figure in the history of the legal profession in Western Australia. However, women lawyers who were also active in the defence forces are an almost unknown species, and early Western Australian lawyer Sheila McClemans is one of a very few Australian examples.¹ She is described by Moira Rayner in her foreword to Lloyd Davies' new biography *Sheila* as 'a brilliant naval officer and lawyer', and depicted on the cover of the biography in the uniform of First Officer of the Women's Royal Australian Naval Service, in a portrait painted by official war artist Nora Heysen in 1943.

Rayner goes on to argue that McClemans' achievements 'were limited by the ignorance and mediocrity of the sexist and parochial society she graced' and Davies' sympathetic biography illustrates this theme.

In developing this argument, however, Davies' biography illustrates the very *unexceptional* experience of McClemans as an early woman lawyer in Western Australia. Her 'soldiering' was rare – but the obstacles she encountered as an early

1. Enid Russell, the first woman in Western Australia to practise as a lawyer, served in the South African Women's Army Service during World War II: see S McClemans 'A Brief Biography of Enid Marjorie Russell' in E Russell *A History of the Law in Western Australia and Its Development from 1829 to 1979* (Perth: UWA Press, 1980) 361-364. Molly Kingston also enlisted, taking a commission in the Women's Australian Auxiliary Airforce in 1943: see Davies, 88.

woman lawyer were not. It is perhaps instructive, therefore, to examine the events of her life as documented in Davies' biography, and to contrast them with the more exceptional circumstances of her better known female contemporary, South Australian Dame Roma Mitchell, to understand the ways in which McClemans' experience embodies the continuing obstacles which may still face women in the Western Australian legal profession.

FAMILY AND EARLY LIFE

Sheila McClemans was born on 3 May 1909 at the rectory next door to Christ Church, Claremont, where her father was rector.² Her mother, Ada, was a qualified nursing sister who, after her marriage, was actively involved in the local Women's Service Guild. Between 1905 and 1914 she gave birth to five daughters, of whom Sheila was the third. Canon McClemans was a classical scholar with a Master of Arts degree from Trinity College, Dublin. His interest in education led to his involvement in the founding of two leading Anglican boys' schools: Guildford Grammar (1909) and Christ Church Grammar (1910). He also had a hand in encouraging the establishment of the forerunner of St Hilda's school for girls. Theirs was a household which imbued respect for learning and a strong sense of duty and service. It also gave an entrée to the world of Perth's society, which in the early 20th century was mostly landed gentry for whom the Anglican church was the establishment church and its clergy part of the colonial aristocracy.

Despite the Canon's incipient drinking problem and the financial strains of 'keeping up with the Forrests and Drake-Brockmans',³ Sheila's memories of her early childhood were happy. The outbreak of World War I shattered that idyllic world. Canon McClemans joined up and was posted overseas, serving in France and Belgium and becoming Chaplain General to the Australian Imperial Forces. His duties required that he give comfort and counsel to the Australian forces while burying two hundred men a day for weeks on end. It was a gruelling experience that took its toll. When he returned home from the War, he began drinking heavily and was precipitated into alcoholism. Eventually he lost his job, his marriage and his family. The Canon was taken to the country by kind friends and thereafter lived in poverty. Sheila's mother survived by starting a boarding house in Havelock Street, West Perth, and it is there that Sheila and her four sisters grew up. Sheila refused to have anything to do with her father for the rest of his life.

When she was born, women in Western Australia (as in New South Wales and South Australia) were barred from practising law. Any doubts about the matter had

2. The facts of Sheila McClemans' life as referred to in this review are, unless otherwise footnoted, taken from Davies' biography.

3. Davies, 27.

been put to rest in the case of *In re Edith Haynes*,⁴ in which the Supreme Court of Western Australia – ignoring the provision in the Interpretation Act 1898 (WA) that the word ‘person’ should be read as including both men and women – held that in the Legal Practitioners Act 1893 (WA) the word ‘person’ referred only to men. Nevertheless, as a child Sheila McClemans formed the opinion that she wanted to be a lawyer when she grew up. She was impressed by lawyer John Campbell Forman, a regular visitor to the McClemans family home and ‘an interesting man with a profound sense of duty and service to others’ as well as ‘an endless supply of sweets and adventure stories for children’.⁵ He was, Sheila afterwards said, ‘the only adult who took me seriously’ and she wanted to be like him.⁶



An exceptional student, at the age of 12 she won a scholarship to Perth Modern School, where – perhaps ironically for a selective high school – school policy eschewed any prizes for academic achievements but rewarded accomplishments in sport. Sheila shone as a sportswoman, became a school prefect and attained her Leaving Certificate when she was still 16. Too young to enrol at the University of Western Australia, she returned to school with a view to repeating the final year and improving her grades, but before the end of the year her family’s financial straits forced her to take a position as a bank clerk. The following year, 1927, with financial assistance from a Hackett bursary, she temporarily entered the University of Western Australia as a Bachelor of Arts student, pending the arrival of Frank Beasley, the foundation professor and dean of Law, who began teaching in 1928. Among her law classmates were three other women: Margaret Battye, Mary Kathleen Hartrey and Molly Connor Kingston. These four women formed the whole of the 1930 graduating

4. (1904) 6 WAR 209.

5. Davies, 22.

6. *Ibid.*

class in law – it seems the men were all qualifying through the system of five-year articulated clerkships, attending lectures conducted by the Barristers' Board part-time. For women this latter route to admission was largely barred by the impossibility of persuading legal practitioners to take on a female law clerk, Enid Russell proving the sole exception.

A CAREER IN THE LAW

After graduation McClemans obtained articles with the firm of family friend John Campbell Forman, without pay in the first year and at the rate of 10 shillings per week in the second, which meant that she had to earn her living by coaching schoolchildren after hours. She and her fellow students were all admitted to practice in 1933 in the midst of the Depression. Only two women had been admitted in Western Australia before them: Alice Cummins (a South Australian who never practised in Western Australia) in 1930 and Enid Russell in 1931. The economic climate of the early 1930s compounded the discrimination against women in the legal profession and all the newly qualified women found it next to impossible to obtain positions as employee solicitors. McClemans and her friend Molly Kingston showed their mettle by starting their own modest all-women firm, the first in Western Australia. They practised together for six years in premises at 133 St George's Terrace until after the outbreak of the War, when the economy improved and McClemans' old firm of Hardwick & Slattery (by then Hardwick, Slattery & Gibson) offered her a position in their Fremantle office. She then retired from the partnership with Molly Kingston, who stayed on alone for a time but eventually went to work for Stone James & Co.

When World War II broke out there was no avenue for women to serve in the defence forces other than as nurses. It was not until 1941 that the Women's Royal Australian Naval Service (WRANS) began to accept women telegraphists and the Women's Australian Auxiliary Air Force and Australian Women's Army Service were constituted. But McClemans' sense of duty was such that she badly wanted to 'do her bit'. She took the first opportunity to join up, applying for the advertised position of First Officer of the newly-established WRANS in October 1942. When she was overlooked in the initial appointment, she simply swallowed her pride and joined a cohort of women accepted into the WRANS for officer-training, rising through the ranks to become First Officer and Commander-in-Chief, a position she held until the end of the War and in which she was exceptionally successful.

On her return to legal practice, however, nothing had changed – she went back to her old firm and resumed matrimonial work, in which she had established a reputation before the War. The partnership of Hardwick, Slattery & Gibson split in 1953 and McClemans was not offered a partnership in either of the two resulting firms. She then set up practice on her own and developed 'one of the biggest

divorce practices in Perth'.⁷ However, it seems that her health was a factor in her decision in 1960, at the age of 50, to sell her practice and take up the position of full-time secretary of the Law Society and Administrator of its Legal Aid Scheme. To those close to her she gave as her reason for leaving private practice the strain on her back, which she had injured during the War and which the constant standing in court made very painful. Publicly she said that her practice had grown too large and become unmanageable. Davies believes that the creation of the Legal Aid Scheme offered her 'an opportunity to employ her outstanding organising talents to serve both the legal profession and the underprivileged on a grand scale, as distinct from bogging away at the coal face'.⁸ Whatever her motivation, it was here that she performed much of the work for which she is so fondly remembered by the legal profession. Apart from her crucial role in administering the voluntary legal aid provided on a rostered basis by the profession, her duties included an array of organisational activities on its behalf – co-ordinating the first Law Society Summer Schools, overseeing the restoration of the Old Supreme Court building as the Law Society headquarters, and informally watching over the welfare of many members of the profession in a personal way. The Legal Contribution Trust Act 1967 (WA) came into effect during her stewardship of Law Society affairs. It was during her time with the Law Society that she also became a foundation member of the State Parole Board (of which she remained a valued member for almost 20 years) and a member of two other government bodies, the Commonwealth Council on Discrimination and Employment and the Services Canteen Trust Fund Regional Committee, both of which she chaired. But it was the Legal Aid Scheme that was her chief interest and she said of it that in her view it was 'our [ie, the Law Society's] greatest achievement'.⁹

Nevertheless, in 1971 she decided that she had become 'too closely involved with Legal Aid'¹⁰ and returned to private practice – as an employee solicitor in the firm of Geoff Hammond, who had bought her practice from her in 1960. There she remained until her retirement in 1980.

THE BIOGRAPHY

Davies' biography is a mostly straightforward account of the public life of Sheila McClemons based on interviews and documentary sources, as well as the writer's own acquaintance with his subject in the course of their respective legal careers.

7. Ibid, 136.

8. Ibid, 141.

9. Ibid, 163.

10. Ibid, 164.

Davies was a young lawyer when he first came across McClemons, who had a reputation as a leading practitioner in matrimonial and divorce work. He came to admire her and this biography reflects his view (for which he gives some credit to the influence on him of another prominent Western Australian woman lawyer, Moira Rayner) that, because she was a woman, McClemons did not receive the recognition due to her. She spent her life in service to others and her reward was to be valued personally – lauded for her self-sacrificing dedication to the interests of indigent clients, family law and the legal profession – but never to be considered a candidate for the usual forms of recognition in the law. Though she was awarded the Queen's Silver Jubilee Medal in 1977 for her 'outstanding services to law and the community', and made a Companion of the Most Distinguished Order of St Michael and St George in the 1978 New Year Honours list, neither Silk nor a position on the Bench came her way.

According to Davies, 'there came a time in Sheila's life when, had she been a man, she could legitimately expect to have been asked if she was interested in an appointment as a judge, yet she was passed over'.¹¹ This time was, he says, in the years immediately before 1960, when she decided to quit private practice to administer the Law Society. Another time when he believes she might have been honoured was after the establishment of the District Court in 1969. Sheila was working for the Law Society in 1969, but returned to practice in 1970. Could it be that she hoped in that way to place herself in line for such an appointment? One of her contemporaries, Bob Jones, had been a foundation appointment to the District Court, and it would not have been outlandish to believe that she might be approached.

It appears that nobody gave it a thought. The explanation for this offered to Davies by Sir John Lavan was simply: 'I suppose it didn't occur to anyone to do so. People didn't think in terms of women on the bench in those days'.¹²

In this respect, Davies points out, she was less fortunate than her South Australian peer, Roma Mitchell, who in 1962 became Australia's first female QC and in 1965 the first woman to be appointed to a State Supreme Court. From there Roma Mitchell went on to become the founding Chair of the Human Rights Commission in 1981, the first woman Chancellor of Adelaide University in 1983, and later (in 1991) as Governor of South Australia, the first woman governor of an Australian State.

Sheila McClemons herself said that she was 'never aware of any discrimination because [she] was a woman',¹³ but judging by the history of her career she undoubtedly suffered from the prejudices of her time. Her experience is representative of the sort of disadvantage which affects many women lawyers and militates against

11. *Ibid*, 181.

12. *Ibid*.

13. *Ibid*, 186.

their acquiring the sort of experience that would make them more obvious and visible candidates for Silk or the Bench.

The inability of young women like her to train as lawyers through the system of articles is a clear example. It set young women training as lawyers apart from their male peers and excluded them from the male networks from the start. Another example is the fact that she was never offered a partnership in the law firm she worked for before and after the War, and that when the firm of Hardwick, Slattery & Gibson dissolved in 1953 there was no room made for her in either of the resulting firms. She was driven by exclusion from the male network into the isolation of sole practice, and although she proved very successful in that she became 'one of the leading legal practitioners in Perth'¹⁴ her practice was based largely on what was then called 'matrimonial work'. Matrimonial work was (and still is) an area of practice with little kudos and, prior to the establishment of the Family Court in 1976, mostly a dead-end for lawyers with aspirations to higher office. Until 1976 divorce was a Supreme Court matter, but it only rarely involved the sort of appeal work that led to the High Court or to reported decisions. Probably because of her speciality, Sheila took no cases to the High Court and her name never appeared in the Commonwealth Law Reports – and only once in the West Australian Reports,¹⁵ as a junior to Cliff Gibson. The segregation of women lawyers into matrimonial work was itself a form of discrimination typical of the times.

The comparison of Western Australia with South Australia, and Sheila McClemons with Dame Roma Mitchell, highlights the conservatism of the legal profession and government of Western Australia, but also draws attention to some of the factors that even now contribute to success in the legal profession: unremitting hard work, access to traditional male legal networks, experience in the 'right' areas of law, and visibility – as well as stamina and a strong constitution.

Between her admission in December 1934 and appointment as a QC in 1962, Roma Mitchell had 28 years of unbroken law practice (not including her 4-5 years as an articled clerk) before she attained Silk at the age of 49. When Sheila McClemons left private law practice to go into administration at the age of 50, she had 25 years of experience, but these had been broken by two years away on War service and half of them had been in firms with no male partners, without access to male networks. For men, War service appears to have enhanced their standing in the world and their desirability as members of the legal establishment.¹⁶ For women it may have been

14. *Ibid*, 139.

15. *Garnaut v Rowse* (1941) 43 WALR 29, 30.

16. Davies comments that the firm of Hardwick, Slattery & Gibson was enhanced in the post-War years by the arrival of two articled clerks, Cliff Gibson and Geoff Hammond, who had 'interrupted their University courses to join the RAAF' and who had both 'served with distinction' – Hammond being awarded a Distinguished Flying Cross and Gibson a Mention in Dispatches: *ibid*, 135.

the reverse. In talking of her career with the benefit of hindsight, Roma Mitchell acknowledged that, as one of the practitioners who stayed behind, she gained valuable experience during World War II. Looking back, Sheila McClemons also recognised that, from a professional point of view, the War presented the handful of women lawyers then practising with ‘ideal conditions in which to thrive’. Told that they were ‘doing more good by staying at home and minding the fort’ they enjoyed ‘plenty of work and opportunity to advance their careers’.¹⁷

From early on Roma Mitchell had greater access to the male legal establishment. Although, like Sheila McClemons, she grew up in a female-dominated household – her father was killed in action during World War I – and one where finances were strained, there was a history of lawyering in the Mitchell family.¹⁸ Both Mitchell’s father and grandfather were lawyers – and through her family connections she was able (like Enid Russell) to find a position as an articled clerk while she studied at Adelaide University.¹⁹ After admission she was one of only 10 of her graduating class to obtain a position in a law firm²⁰ (whereas McClemons and Molly Kingston were driven to establish their own firm by the impossibility of obtaining employment). In this Mitchell may have been assisted by the fact that she was the medallist in law in the year she graduated,²¹ not an insignificant factor in demonstrating her competence to her male classmates as well as the profession at large. McClemons, by contrast, was one of only four law graduates in her year – all women – and, while Davies describes her as having been ‘brilliant’, that may have escaped notice in a profession where few of the men had yet been trained at university.

Given that a prerequisite for appointment to the Bench is generally to become a senior barrister – even in a fused jurisdiction – Roma Mitchell was clearly fortunate to begin in a law firm where ‘70 per cent of the work was court work’²² and she could gain plenty of court experience ‘from an early stage. It is, however, work that demands long hours: Mitchell said in an interview that she regularly worked 12-13 hours a day and one day over weekends.²³ Accordingly, life at the Bar was (and is) not readily compatible with family life, and Mitchell herself expressed the view that, had she married, she would never have achieved the level in her career that she did.²⁴ By contrast in 1949, when she was 40 and perhaps at the height of her powers, Sheila McClemons married and thereby took on what Davies describes as the ‘very onerous

17. Ibid, 91.

18. J Faine *Taken on Oath: A Generation of Lawyers* (Sydney: Federation Press, 1992) ch 1.

19. Ibid, 3.

20. S De Vries *Great Australian Women: From Federation to Freedom* (Sydney: Harper Collins, 2001) 323.

21. Ibid, 322.

22. Faine *supra* n 18, 3.

23. Ibid, 10.

24. S Mitchell *The Matriarchs* (Melbourne: Penguin, 1987) 41.

personal responsibility'²⁵ of managing a household for her husband, Frank Kenworthy, and his two children, whose mother had died of cancer.

The long hours demanded by the legal profession not only impinge on family life, they can impact on health. Roma Mitchell was fortunate to be blessed with good health, Sheila McClemons was not. As mentioned, she suffered from back trouble which interfered with her ability to spend long hours standing in court and, although she never apparently complained to colleagues, she told those close to her that it was the reason she left private practice to work for the Law Society, a move many practitioners would regard as a backward step from a career point of view.

CONCLUSION

One thing Dame Roma Mitchell and Sheila McClemons shared was a deep sense of privacy.²⁶ Perhaps in this respect they both experienced the feeling that in a male-dominated profession they were particularly 'exposed'. As a result they both left few private papers (and little, if any, personal correspondence) for their would-be biographers. In Dame Roma's case the paucity of letters is compounded by a circle of friends who are reticent.²⁷ Our understanding of both women's lives is the poorer for that. Davies' biography cannot be impeached on this ground, but it alters its value. McClemons' determined privacy renders Davies' biography of greater interest as the history of one early woman lawyer in the Western Australian legal profession than of Sheila McClemons, the individual woman.

MARION DIXON

Honorary Visiting Fellow, The University of New South Wales.

25. Davies, 131.

26. Ibid, 187.

27. My own attempts to research the life of Dame Roma in July 2001 met with this obstacle.

* The portrait on page 261, Nora Heysen's *First Officer Sheila McClemons, WRANS 1943* (oil on canvas), is reproduced by permission of the Australian War Memorial (AWM ref no 23416).