

**Introduction of the Hon Keith Mason AC QC**

**by Dr Don Markwell**

**(Head of College at St Paul's College within the University of Sydney)**

**at the first Robin Sharwood Lecture in Church Law**

**hosted by Trinity College in conjunction with the St James' Institute**

**St James' Hall, Sydney**

**19 April 2018**

What a delight to be able to introduce so distinguished and so widely and warmly admired a lecturer as the Honourable Keith Mason AC QC at this inaugural Robin Sharwood Lecture in Church Law!

My only sadness is that this is a lecture in *memory* of Robin Sharwood, rather than in the presence of Robin Sharwood.<sup>1</sup>

As has been mentioned, Robin Sharwood was my predecessor bar one as Warden of Trinity College in the University of Melbourne. It was my privilege to get to know him in the last 20 years of his life, including – amongst much else – to work closely with him for many years on the Management Committee of the Trinity College Theological School, who are, of course – together with the St James' Institute – hosts of this lecture in his memory.

Robin would have been profoundly honoured and quietly delighted to see a lecture on this important subject given in his honour by this exceptional lecturer, hosted by Trinity and St James' - and he would have welcomed also the link with St Paul's College, with its long and close ties both with St James' and with Trinity.

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<sup>1</sup> Robin Lorimer Sharwood AM (1931-2015): Professor of Law, Australian National University (1963-65); Warden of Trinity College, University of Melbourne (1965-73); Executive Director, Victorian Law Foundation (1974-81).

A person of deep learning, elegant taste, and much discernment, such links meant a great deal to Robin.

Like Robin Sharwood, our lecturer tonight, the Hon Keith Mason, is a lawyer of great distinction and of high legal scholarship who has devoted much of his life to the service also of the Anglican Church. Where Robin chose the path of the academic lawyer, Keith Mason chose the path of legal practice – though he has acknowledged that he “almost became a teacher rather than a lawyer”.<sup>2</sup>

Keith Mason was born in Scotland in 1947. He graduated as a Bachelor of Arts and Bachelor of Laws with First Class Honours from the University of Sydney. Where Robin chose postgraduate study in the United States, Keith Mason went on to secure a Masters of Laws at the University of London.

After practice first as a solicitor and then as a barrister, he was appointed Queen’s Counsel in 1981, and in 1985 became Chairman of the NSW Law Reform Commission. From 1987 to 1997, he served as Solicitor-General for New South Wales, and from 1997 to 2008 on the bench as President of the NSW Court of Appeal.

On Keith Mason’s early retirement as President of the Court of Appeal a decade ago, he was warmly praised – in the words of Chief Justice Spigelman – for “intellectual leadership”, understanding “the interface between government and the law”, the quality of his judgements, his “formidable intellectual skills”, his “personal empathy”, and his “high standards” of “civility”.<sup>3</sup>

Responding that “only [his] mother will have failed to detect the exaggerations”, Keith went on to discuss some wrong turns in judicial method, urging “the High Court ... to keep other appellate courts in Australia in the loop”, and going on to say “my family is the most important thing in my life”. He paid warm tribute to his parents, his two children, and above all his dear wife Anne. Amongst the things he said he would miss in retiring from the Court were, in his words, “communal lunches with colleagues, a judges’ bible study group led by a distinguished theologian, and the judges’ yoga class”.<sup>4</sup>

Following his retirement from the Court, Keith Mason has served as a professorial fellow of the University of New South Wales, just as Robin Sharwood did at the University of Melbourne, where Keith has also taught. He

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<sup>2</sup> “Personalia: The Hon Justice Keith Mason AC”, *Bar New*, Winter 2008, p. 87.

<sup>3</sup> *Ibid.*, p. 86.

<sup>4</sup> *Ibid.*, pp. 86-7.

has been practising in mediation since 2008, and has been Chair of the NSW Electoral Commission since 2014.

Along the way, Keith Mason has published remarkably extensively. Alongside learned papers in law journals, importantly including on judicial method, this has included three editions of Mason and Carter's *Restitution Law in Australia*, most recently in 2016, and successive editions also of resources on NSW *Succession Law and Practice*.

In 2012 and in 2014, he published two books of what he modestly called "Australian legal miscellany". Amongst much else, these reflect interests he shared with Robin Sharwood, including in legal history and in the rule of law. One section in Keith Mason's second legal miscellany indeed discussed events in which Robin Sharwood had played some part. This was the saga of 1962 of the intended hanging in Victoria of the murderer Robert Tait, in which the Bolte Government in Victoria gave what Sir Zelman Cowen – a close friend of Robin's, and of mine – called "an extraordinary display of executive disdain for the judiciary".<sup>5</sup> Robin Sharwood was one of the academic lawyers who "spoke out strongly"<sup>6</sup> against the intended hanging. After much political and legal manoeuvring, Tait's sentence was ultimately commuted to life imprisonment. The rule of law had ultimately triumphed over the passions of politics, or as Keith put it more mildly, "at the end of the day, the government bowed to the Court whose will was obeyed to the letter".<sup>7</sup>

Keith Mason's first legal miscellany contains a discussion of law and religion, and his first book, in 1990, which arose from lectures he had given at New College, the Anglican college at UNSW, discussed "moral and religious values in the Australian legal system". This interest in law and religion is something Keith Mason also shared with Robin Sharwood.

Both were devoted servants of the Anglican Church, both with a keen interest in church law. What Bruce Kaye wrote of Keith Mason as long ago as 1990 could also have been said of Robin Sharwood: "He is ... a prominent Anglican layman who has made a distinguished and important contribution to the Anglican Church in Australia".<sup>8</sup>

Robin served as Chancellor of the Dioceses of Ballarat and Wangaratta, and Keith as Chancellor of the Anglican Diocese of Armidale from 1990 until last

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<sup>5</sup> Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen*, The Miegunyah Press, 2006, p. 214

<sup>6</sup> Ibid.

<sup>7</sup> Keith Mason, *Old Law, New Law: A Second Australian Legal Miscellany*, The Federation Press, 2014, p. 140.

<sup>8</sup> Foreword by Bruce Kaye in Keith Mason, *Constancy and Change: Moral and Religious Values in the Australian Legal System*, The Federation Press, 1990, p. iii

year. Keith Mason, of course, is widely respected for his various roles, including his legal work, in helping to enable women to become deacons, priests, and bishops in the Anglican Church of Australia.

The consideration of church law issues relating to this has included cases before the Appellate Tribunal of the Anglican Church of Australia, the national Church's highest court of appeals, of which Keith Mason has been a member since 2005, and President since 2010. He has thus served as an appellate judge in both secular and church courts, and referred in his remarks on his retirement as President of the NSW Court of Appeal in 2008 to what he called "often painful processes to secure or administer justice within the Anglican Church".

Robin Sharwood's deep and long-standing interest in church law and justice within the Church has, of course, found expression in the bequest creating this lecture series in church law in his memory.

In 2011, in introducing Keith Mason to give a lecture in Brisbane, the then President of the Queensland Court of Appeal, Justice Margaret McMurdo said of him:

"He has made and continues to make an enormous contribution to the law and the community as advocate, academic, writer, law reformer and judge, a contribution recognised by his receipt of the Companion of the Order of Australia in 2003 and an Honorary Doctorate of Laws from the University of Sydney in 2005. Keith Mason is not only a learned and experienced jurist and scholar, but also an engaging speaker and one of the most decent human beings you are likely to meet."<sup>9</sup>

It would, I think, be impossible to find a person in this country better or more fittingly equipped to inaugurate the Robin Sharwood lectures in church law than Keith Mason, and it is now my very great pleasure to invite him to do so.

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<sup>9</sup> Justice Margaret McMurdo AC, '[Address](#)' Speech to welcome and introduce The Hon Keith Mason AC, QC on his presentation of the lecture "The Distinctiveness and independence of intermediate courts of appeal" to celebrate the occasion of the 20th Anniversary of the Queensland Court of Appeal, 24 October 2011 at <https://www.sclqld.org.au/judicial-papers/judicial-profiles/profiles/mcmurdo/papers/2> (accessed 19 April 2018).