

# Green statutory interpretation by environmental courts and tribunals

Tracy D Hester<sup>1</sup> *University of Houston Law Center*

Environmental courts and tribunals (ECTs) have dramatically surged in growth since 2010. According to the UN Environment Programme, by 2016 44 nations had established over 1,200 of these specialised bodies, and another 20 countries had begun work on creating ECTs. Employing international goals for the environmental rule of law in the United Nations' Agenda for Sustainable Development as a foundational ethos, ECTs have been accepted by jurisdictions as an important tool to buttress sustainable development through fast, effective, inexpensive, and technically sophisticated environmental adjudication. And given their rising acceptance and deployment, ECTs will likely keep growing in importance and become increasingly visible and valuable platforms to solve ecological disputes and promote creative environmental legal thought.

This boom in ECTs highlights shortfalls in the ways that conventional judicial and administrative bodies handle environmental and land use claims. In particular, ECTs seek to cure the delay, expense, and daunting technical barriers to complex litigation by creating specialised fora with the expertise, resources, and mandates to effectively and speedily resolve environmental and land use disputes at lower cost and with greater transparency. Beyond being faster, cheaper, and more sophisticated, however, many of the ECTs carry a broader goal: to expressly seek the promotion of sustainable development through their decisions, and to incorporate ecological considerations in their judicial analysis. By 'greening' judicial review (particularly in regard to disputes that involve climate change claims) these ECTs arguably could provide an important and new additional ecological element to judicial analysis and court

decision-making. Some judges have embraced this mandate enthusiastically, and they have advocated the incorporation of ecologically-driven legal principles such as the precautionary principle or *in dubio propria natura* as rules for decisions in future cases under domestic laws.<sup>2</sup>

One way to explore whether the expanding use of ECTs has fundamentally changed the nature of judicial review – for better or worse – is to focus on a key aspect of daily judicial craft: the interpretation of statutory text. This foundational task occupies the majority of judicial opinions in environmental disputes, and it lies at the heart of routine judicial operations. If ECTs parse environmental statutory text differently than a general jurisdiction court because of their ecological mandate or substantive expertise, the degree of that variation – and the way that it affects the quality, acceptance, and legitimacy of judicial review by environmental specialist courts – merits much deeper scrutiny.

## The rise of ECTs and their underlying mandates

As described exhaustively by other scholars,<sup>3</sup> ECTs have become a fast-growing and increasingly important branch of the judicial and tribunal systems of nations on a global scale. By sheer number, scope, and docket size, ECTs are poised to evolve into a driving force to create ground-setting precedents and develop legal theories that will shape future environmental case law on both a domestic and international level.

This article looks beyond that familiar story. In particular, behind the impressive numbers about the growth and impact of ECTs, their legal foundations deserve separate scrutiny. Each ECT was created by the legislature or judiciary with the specific intent that it would operate differently from traditional courts and tribunals in important ways. Beyond providing ECTs with resources, expertise,

<sup>1</sup> Tracy Hester is an Instructional Professor at the University of Houston Law Center. He is a member of the American College of Environmental Lawyers, an elected member of the American Law Institute, and served several years on the governing Council of the American Bar Association's Section on Environment, Energy & Resources. He previously led Bracewell LLP's environmental section in its Houston office for 16 years prior to joining the University of Houston Law Center faculty. He has received numerous professional honors, including designation as the top environmental lawyer in Houston for 2011 by Best Lawyers in America. His full biography is available at [www.law.uh.edu/faculty/thester](http://www.law.uh.edu/faculty/thester).

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<sup>2</sup> In particular, the International Union of Conservation Naturalists' World Environment Law Congress recently helped establish the Global Judicial Institute for the Environment. The Institute includes as members judges and tribunal members from ECTs throughout the world, and it seeks to 'support[]<?> the role of courts and tribunals in applying and enforcing environmental laws and in promoting the environmental rule of law and the fair distribution of environmental benefits and burdens': [https://www.iucn.org/sites/dev/files/content/documents/2016/elp\\_2016\\_judges\\_establish\\_the\\_global\\_judicial\\_institute\\_for\\_the\\_environment\\_1.pdf](https://www.iucn.org/sites/dev/files/content/documents/2016/elp_2016_judges_establish_the_global_judicial_institute_for_the_environment_1.pdf).

<sup>3</sup> See, for example, G Pring and C Pring, United Nations Environment Programme, *Environmental Courts and Tribunals: a guide for policy makers* (2016); R. Percival 'The "greening" of the global judiciary', *J Land Use & Evt'l L* (2017, forthcoming) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2923249](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2923249).

and increased flexibility to create procedural rules and handle their own dockets, the underlying organic statutes and orders for these bodies sometimes give them express direction to consider cases in ways that vary from traditional judicial review. In addition, the structure of many of these courts and tribunals – which can include the placement of non-legal experts on the bench as co-equal partners in decision-making with judges or legal officers – reflects a desire to depart from the traditional craft in reviewing environmental claims.

To mark out how far the mandate of ECTs varies from a traditional court, this article will explore the statutory or judicial mandates for three notable ECTs: India's National Green Tribunal, New Zealand's Environment Court, and Vermont's Environmental Court. These three courts do not even remotely cover the gamut of types of ECTs that deserve exploration, and this type of assessment can – and should – be expanded in the future to include other leading bodies in Australia, Kenya, Thailand, China, Chile, Hawai'i, Switzerland, and many others.

### The National Green Tribunal of India

The National Green Tribunal (NGT) is the primary forum in India to resolve claims that involve substantial damage to natural resources or violations of environmental statutes. The NGT hears cases related to seven major environmental laws, and it does not have any criminal jurisdiction. The Tribunal, however, does have the same powers and procedural devices as a civil court, which would include the ability to impose sanctions for contempt, issue injunctions, summon parties and witnesses, and conduct discovery. Appeals from the NGT go directly to India's Supreme Court, and its members include benches evenly divided between former Supreme Court justices or High Court justices and expert members with scientific or technical expertise.<sup>4</sup>

The federal Indian Parliament established the Tribunal with the passage of the National Green Tribunal Act in 2010. The NGT Act provides for the jurisdiction and powers of the Tribunal, but some of its provisions also shape the type and degree of judicial review by the Tribunal that affect its approach to statutory interpretation. After noting that the NGT Act aims to carry out India's commitments under various international treaties and public international law principles, the statute specifies which cases the Tribunal will hear and the avenues to appeal decisions from the Tribunal. After laying out these uncontroversial lines of authority, the NGT Act adds two new layers that compel the Tribunal's judges and experts to depart from traditional statutory interpretive approaches that focus solely on textual parsing and determinations of legislative intent.

First, section 20 of the NGT Act provides that:

[t]he Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

<sup>4</sup> Pring (n 2) at 34–36.

These principles, therefore, should apply to any action by the Tribunal, including its analysis of statutory language. To the extent that a strictly textual assessment of language would lead to an interpretation at odds with these three environmental principles, section 20 directs the Tribunal to select instead an interpretation that would respect sustainability, precaution and polluter liability.

Second, outside the Tribunal's application of substantive legal principles to reach verdicts, the NGT Act also addresses the types of procedural rules and evidentiary standards that the Tribunal can use. Under section 19(1), the statute exempts the NGT from the strictures of the Code of Civil Procedure and instead allows the Tribunal to select its own procedures 'guided by the principles of natural justice'.

Other provisions of the NGT Act may affect the methods that the Tribunal uses to analyse statutes, but those influences are neither clear nor explicit. For example, the NGT Act incorporates by reference the definition of any term in several other Indian statutes (as long as the NGT Act does not have its own definition of the term). In addition to these definitions, the NGT Act also explicitly lists the standards and requirements of several underlying organic statutes that set out environmental permitting and authorisation systems.

This statutory guidance on how to conduct interpretations has led the NGT to follow several approaches that vary from a strict textualist interpretative approach. First, the NGT has frequently adopted a liberal construction of statutory text because it classifies environmental laws as social welfare statutes that require a broad interpretation to promote their purposes.<sup>5</sup> Second, the Tribunal has noted that the environmental and ecological harms alleged in complaints risk irreversible and broad damage, and as a result the NGT has granted requests for broad relief and remedies.<sup>6</sup> It should be noted, however, that the NGT has not taken a similarly broad and purposive reading of the NGT Act's jurisdictional provisions.<sup>7</sup>

- <sup>5</sup> See, for example, *Ardent Steel Ltd v Ministry of Environment and Forests*, 2014 All (I) NGT Reporter (Delhi) at 16–19; *Haat Supreme Wastech Pvt Ltd v State of Haryana*, 2013 All (I) NGT Reporter (2) (Delhi) 140; *Choudhury v Union of India*, 2016 All (EZB) NGT Reporter (Kolkata) at 13 ('[w]hen construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation. Traditional norms of statutory interpretation must yield to broader notions of the national interest') (citing *U.P. Avas Vikas; Biodiversity Management Committee v Western Coalfields, Ltd*, 2015 All (CZB) NGT Reporter (Bhopal) at 16–30 (using principle of purposive construction and international legal guidance under the Convention for Biological Diversity to find that coal is not a 'biological resource').
- <sup>6</sup> *Saldhana v India*, 2013 All (SZ) NGT Reporter (Chennai) at 241 (using principle of sustainability to interpret statutory provision).
- <sup>7</sup> See, for example, *Baregard v State of Maharashtra*, 2015 All (WZ) NGT Reporter (Pune) 12–13, 15; *Bhargav v Ministry of Environment and Forests*, 2013 All (Central) NGT Reporter (Bhopal) at 33–37 (finding action time-barred despite broad purpose and reading of NGT Act's statutory terms). But see *The Braj Foundation v State of Uttar Pradesh*, 2014 All (WZ) NGT Reporter (Delhi) at 20–22 (interpreting statutory grant broadly to find that tribunal had power to issue necessary orders).

## The Environment Court of New Zealand

The Environment Court of New Zealand is the national court that determines disputes under the Resource Management Act 1991 (RMA) – a holistic Act that provides for the management of land, air and water in New Zealand – and various other environmental statutes. It consists of a bench with nine judges and 14 technical expert commissioners who are permanently located in three registries.<sup>8</sup> Pursuant to its grant under the RMA, the Environment Court has broad powers to review most of the fundamental issues arising under the RMA such as appeals of regional and district plans, applications for resource consent, enforcement proceedings, abatement notices, and declarations to determine the legal status of environmental activities and instruments.<sup>9</sup> Appeals from the Environment Court are to the generalist superior courts, on points of law only.<sup>10</sup> Like the NGT, the Environment Court has wide abilities to specify its own general rules of procedure and approach to evidence.<sup>11</sup>

The RMA expressly directs the Environment Court to promote the principle of sustainable management in all of its judicial functions and determinations, which would include statutory interpretation.<sup>12</sup> While the Environment Court initially displayed some initial reluctance to interpret the statutory mandate of sustainable management as a substantive standard to review specific applications,<sup>13</sup> the court later energetically incorporated sustainability management goals in its statutory analyses.<sup>14</sup>

The court's approach has now grown into an 'overall broad judgment' test when it exercises its policy-making,

planning, and consent-granting functions.<sup>15</sup> Notably, the Environment Court initially adhered to the traditionally conservative approach to statutory interpretation by cabining the scope of section 5's sustainable management dictate to issues where an 'absence of express statutory guidance for the particular discretion' allowed the court to rely on broader statements of purpose to resolve the ambiguity.<sup>16</sup> After the New Zealand Parliament amended the RMA to override the court's interpretation, the Environment Court has increasingly recognised the primary role played by the sustainable management principle in statutory interpretation.<sup>17</sup> As a result, the court now will typically seek to harmonise the plain textual interpretation of statutory language with the 'dual requirements of section 5' of the RMA.<sup>18</sup>

As a result, this interpretive approach does not expressly require judges on the Environment Court to adopt a radically new path for statutory interpretation. Essentially, the court will seek to harmonise the reading of the plain text of the statute, the effect of any more specific statutory directives that the New Zealand Parliament may have given in a subsequent law that underlies the dispute, and then – if needed – the role of a contextual interest in sustainable management provided by section 5 of the RMA. Under this approach, section 5 provides an important imperative as part of the context and purpose surrounding statutory text, but the judges on the court have not used that directive to adopt any fundamentally new or different approaches to statutory interpretation.<sup>19</sup>

## Vermont's Environmental Court

Vermont's Environmental Court is a specialised environmental trial court<sup>20</sup> with full power to hear cases within

8 The Environment Court has permanent registries in Wellington, Auckland and Christchurch. The judges, however, travel to other locations as needed to hear matters, and they seek to convene as close as possible to the site of the dispute. Environment Court of New Zealand, *Jurisdiction*, at [www.environmentcourt.govt.nz/about/jurisdiction](http://www.environmentcourt.govt.nz/about/jurisdiction) (verified 28 July 2017).

9 *ibid*; B Birdsong 'Adjudicating sustainability: New Zealand's Environment Court' 29 *Ecology L. Q.* 1, 4 (2002); R Pring and C Pring (n 2) at 22–23.

10 Resource Management Act of 1991 at § 299(1).

11 *ibid* at §§ 269(1), 276(1) to (2).

12 *ibid* at § 5; *TV3 Network Services, Ltd v Waikato District Council*, [1998] NZLR 360, 364–65 ('[Part II of the RMA] requires Courts and practitioners to approach the new machinery provisions, and the resolution of cases, with the hortatory statutory objectives of sustainable management firmly in view'); *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70, at 86 ('[Section 5 of the RMA] expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not part of the Act which should be subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way. Indeed, it is for that purpose that [the Environment Court], with special expertise and skills, is established and appointed to oversee and promote the objectives and policies and the principles under the Act').

New Zealand also has a more general statute that addresses statutory interpretation. This law, however, does not expressly address the RMA or the use of sustainable management principles in statutory interpretation, and it permits the interpretation of statutory text 'in the light of its purpose' in a fashion that would allow incorporation of sustainable management goals: Interpretation Act 1999 at § 5(1). See also *Beach Road Preservation Society v Whangarei District Council* [2001] NZRMA 176 (HC) (finding that the Interpretation Act 1999 applies to Plan rules via section 76 of the RMA).

13 D Grinlinton 'Sustainability in New Zealand Environmental Law and Policy' in Salmon and Grinlinton (eds) *Environmental Law in New Zealand* at ¶¶ 4.3–4.4 (Thomson Reuters, Wellington 2015); *Batchelor v Tauranga District Council* [1992] NZRMA 266 (PT) at 268–69.

14 Grinlinton (n 5) at ¶ 4.3.

15 Salmon and Grinlinton (n 5) at ¶ 4.3.1, pp 116–17. In addition to the Environment Court, New Zealand's other judicial bodies have also adopted a similar approach to interpreting the RMA and other statutes. See, for example, *Environmental Defence Society Inc v The New Zealand Salmon Co Ltd* [2014] NZSC 38, [2014] NZLR 593 (interpreting RMA section 5).

16 *Batchelor v Tauranga Dist. Council* (n 5) at 268–69; Birdsong (n 5) at 40 to 41.

17 *New Zealand Suncern Construction v Auckland City Council* [1996] NZRMA 411, 425; *Hall v McDrury*, [1996] NZRMA 1, 9; *Falkner v Gisborne Dist. Council*, [1995] NZRMA 462, 478; *Te Runanga o Taumarere v Northland Regional Council* [1995] NZRMA 37; *Minister of Conservation v Kapiti Coast Dist. Council* [1994] NZRMA 385, 393.

18 *Greenpeace New Zealand Inc v Genesis Power Ltd* [2008] NZSC 112 at [25]; *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] 3 NZLR 767 at ¶ 22. Note, however, the continuing controversy of this approach post *Environmental Defence Society Incorporated v Marlborough District Council* [2014] NZSC 38.

19 While the Environment Court benches may also include non-legal technical expert Commissioners, the judges will have the leading role in resolving legal questions such as statutory interpretations: Birdsong (n 5) at p 67 n306 ('[I]t is difficult to say how inclusion of non judicial commissioners on Environment Court panels might have affected statutory interpretation. However, several provisions of the RMA suggest that Environment Court judges would have primacy over commissioners on issues of law'). Note, however, G Ruka and C Iorns Magallanes 'Environmental law or palm-tree justice?' [2009] NZLJ 185 (criticising the role of the two Expert Commissioners in 'outvoting' the judge in an interpretative exercise in one case).

20 Vermont reformed its trial court system in 2010 to make all trial courts into divisions of a single Superior Court. As a result, the Environmental Court is now officially named the Environmental Division of the Superior Court: M Wright 'The Vermont Environmental Court' 3:1 J. of Court Innovation 201, at 201 n 1 (2010). To avoid confusion, I will refer to the court by its former name.

its defined jurisdictional areas. The court hears four types of cases: (1) the enforcement of Vermont's state environmental laws; (2) appeals from decisions of Vermont's Agency of Natural Resources; (3) appeals of municipal planning and zoning decisions; and (4) appeals from decisions by regional district environmental commissions and district coordinators under Act 250 (Vermont's state land-use law).<sup>21</sup> Like the NGT and New Zealand's Environment Court, Vermont's Environmental Court has flexible procedural rules tailored for its environmental docket, but those rules are set by the Vermont Supreme Court rather than the Environmental Court itself.<sup>22</sup>

The Vermont Legislature established the Environmental Court in 2010 to promote consistent environmental enforcement,<sup>23</sup> and the statutory basis for the Environmental Court has since grown to give it jurisdiction for *de novo* review of a wide array of environmental permitting, authorisation and enforcement actions.<sup>24</sup> This statutory authorisation, however, does not contain any directive or guidance on the substantive environmental goals that the Environmental Court should seek outside of the specific statutory issues presented by an immediate controversy. The Legislature instead noted that the creation of a specialist environmental court would promote efficiency, speed, and consistency in environmental decisions.<sup>25</sup> As a result, while the Environment Court has proven sensitive to the environmental contexts and purposes underlying a particular enforcement matter or permit dispute, it has not sought to pursue a larger interpretive goal such as sustainable management or a constitutional right to a clean and health environment.<sup>26</sup> Instead, it has hewn to traditional approaches to statutory interpretation without recourse to larger environmental principles or legislative directions.

21 *ibid* at 203–204.

22 R Pring and C Pring (n 2) at 46–47.

23 Uniform Environmental Law Enforcement Act, *Vt. Stat. Ann. Tit. 10, ch. 201* (2017).

24 10 V.A.C. § 8504(h); *In re Entergy Nuclear Vermont Yankee Discharge Permit No. 3-1199*, 2009 VT 124, 989 A.2d 563, 584 (Vt. 2009). See also V.R.E.C.P. 5(g) (special rules of procedure for Environmental Court).

25 10 V.A.C. § 8501 ('Purpose').

26 See, for example, *In re The Snyder Taft Corners LLC JO*, *Vt. Sup. Ct. Env'tl Div. Unit*, No 15-2-15, at p 6 (Jan. 27, 2016) ('[w]hen interpreting a provision of a statute, our primary objective is to effectuate the intent of the Legislature. In doing so, we adhere to familiar principles of statutory interpretation. We begin with the plain meaning of the statute, and if the plain language of the statute resolves the conflict without doing violence to the legislative scheme, we look no further') (citations omitted); *In re Martin & Perry, LLC Final Plat Application*, *Vt. Env'tl Ct.*, No. 222-10-08, at p 3 (Jan. 22, 2010) (invoking the last antecedent canon to interpret challenged statutory language); *In re Irish Construction Application*, *Vt. Env'tl Court*, No. 44-3-08, at p 4 (Nov. 2, 2009) ('... a municipal ordinance is construed in the same fashion as a statute, by according effect to its plain and ordinary meaning, trying to give effect to every word, sentence, clause, and section title'); *In re Appeal of McCarthy*, *Vt. Env'tl Court*, No. 99-5-02, at 2 (July 3, 2002) ('[t]he Court must interpret the Zoning Regulations using the rules for statutory construction, including the obligation to give effect if possible to all portions of the regulations, and to avoid interpreting any portion as surplusage. The effort is to discern the intent of the legislative body and to give effect to that intent ... Moreover, as zoning regulations are in derogation of common law property rights, any ambiguity must be resolved in favor of the property owner').

## Statutory interpretative approaches by ECTs

As a basis for comparison, general statutory interpretation by US courts tends to rely on unclear conceptual bases and parameters. On the environmental front, however, several features stand out. First, virtually all federal and state judiciaries launch their interpretation of statutes from a textual starting point. US courts begin with a close focus on the language of the statute at issue, and they only turn to contextual or external aspects of a statute when its plain meaning fails to answer the question at issue. As a result, the courts typically will not focus on the environmental or ecological subject matter of a statute if the statutory text itself clearly communicates the legislative intent underlying the statute, and they typically will not avoid overt clear and plain statutory meaning even if that interpretation risks unfavorable ecological consequences.

Second, federal and state statutory interpretive doctrines in the United States do not offer any specific canons or precepts for environmental statutes. While some commentators have urged the courts to adopt an explicit environmental dimension in their interpretation of statutes, they have not yet taken up the call. And third, general principles of international or common law that might urge a more environmentally driven model of interpretation – such as the need for sustainability or the precautionary principle – have not influenced or driven interpretations of federal or state statutes unless the statute itself invokes those legal concepts.

By contrast, the approaches taken by the National Green Tribunal, New Zealand's Environment Court, and Vermont's Environmental Court offer key differences in their statutory interpretations. The NGT and New Zealand's Environment Court, for example, have shown much greater willingness to refer to public international customary international environmental law principles (such as the precautionary principle) to support interpretations of statutes. In general, these courts will seek to harmonise their interpretations of domestic statutes with international obligations under these customary principles. By contrast, the incorporation by reference of international or foreign legal precepts as a tool to interpret domestic statutes has proven controversial in the United States,<sup>27</sup> and the Vermont Environmental Court does not appear to have had the opportunity to rely on such principles in its statutory interpretations.

In addition, the New Zealand Environment Court and the NGT will often refer to their organic statutes as a source of authority for them to explicitly account for environmental factors in their interpretations of statutory language. For example, the NGT frequently refers to the sustainability goals laid out in the NGT Act, and the New Zealand Environment Court often highlights the sustainable management goals provided under section 5 of

27 Justice Stephen Breyer *The Court and the World: American Law and the New Global Realities* at 236–39 (Vintage Books 2016) ('[t]he acceptability of referring to foreign court decisions has become the subject of considerable debate in political, judicial, and scholarly forums').

the RMA. By contrast, the Vermont Environmental Court's enacting statute does not set out any substantive environmental legal standard or goal that should drive its interpretations. The Vermont legislature instead sought to promote consistency and efficiency in resolving environmental trial dockets through a unified decision-making body with technical expertise. While those qualities undoubtedly affect the content and quality of the Environmental Court's decisions, the statute does not give it supplemental express authority to pursue environmental goals or principles.

Last, the NGT and the New Zealand Environment Court have developed expertise with technical non-legal experts who join the judges in panel deliberations. These internal constitutional arrangements have had a significant impact on how those courts have interpreted their powers to impose remedies by, for example, responding creatively to the imposition of conditions in order to minimise the adverse environmental effects of activities. In contrast, the Vermont Environmental Court has notably found itself limited in its ability to add or impose any additional conditions to environmental permits unless the underlying administrative record supported those changes.

### Conclusions and future directions

Although environmental courts and tribunals have begun to proliferate widely throughout the global judiciaries, the rationale for creating them remains partially unsettled. ECTs undeniably offer some of the advantages that specialisation can bring: greater technical expertise, opportunities for creative and flexible docket management, speed and cost advantages, more uniform decisions, and (in some cases) an opportunity to have non-legal experts join in the deliberative process. These advantages, however, are procedural at heart. They provide the same judicial services, albeit in a targeted and specialised form.

One potential substantive rationale for ECTs – the opportunity to inject environmental or sustainability goals into the judicial deliberative process itself – remains less clear. India and New Zealand have expressly included such goals for the NTG and the Environment Court in the Acts that created each adjudicative body, and those ECTs have relied on those principles when they parse statutory language. These goals, however, tend to arise as a contextual factor that allows clarification of unclear statutory language rather than as a substantive interpretive principle that alters the statutory analysis itself. By contrast, the Vermont Environmental Court does not have a similar directive in its statutory authorisation, and its statutory interpretations accordingly have not sought to incorporate such substantive environmental principles to guide its statutory parsing.

Given the early stages of development for ECTs and the murky rationales currently supporting their creation, several other issues will likely arise in the near future that ECTs, their appellate supervisors (if any), or their respective legislatures will need to address. For example, if an ECT adopts an overtly 'green' approach to statutory inter-

pretation and its decision remains subject to appeal by a generalist supreme court or appellate body, how will general jurisdiction courts review those rulings? The technical expertise and special mandate for ECTs would arguably support a more deferential standard of review, but so far appellate courts in India, New Zealand and Vermont have exercised *de novo* review of their ECT's legal conclusions.<sup>28</sup>

Beyond the question of generalist appellate review, ECTs may face challenges from other quarters. Notably, most ECTs share qualities with administrative courts and review tribunals that have wrestled with similar issues for decades under administrative legal frameworks and statutes. If ECTs possess judicial powers and characteristics, however, these administrative practices and precedents have limited relevance or applicability. And if ECTs share an essential judicial character with other generalist courts, an attempt by the domestic legislature to dictate that an ECT should use a different type of statutory analysis (even if this approach was desirably 'green') potentially could violate separation of powers limitations applicable to that legislature. For example, it remains uncertain how much power the US Congress possesses to dictate the methods and maxims that a federal court must use to interpret federal statutes.<sup>29</sup>

Last, this article has focused on how ECTs interpret statutes. To the extent their statutes give them the power to interpret their respective constitutions as needed to resolve environmental claims, the environmental precepts underlying their creation may apply in different fashions. Constitutional interpretation, while similar in many respects to statutory interpretation, offers fundamentally different questions and invokes wholly separate and inherent judicial powers. They may provide an opportunity for an environmental court or tribunal to wrestle overtly with normative goals and dimensions that would promote environmental values, including aspirations shared by other fields of law such as human rights law and animal welfare laws.

28 For example, in *Agency of Natural Resources v Weston* 2003 Vt. 58, 830 A.2d 92 (Vt. 2003), the Vermont Supreme Court noted that it should accord deference to the Environmental Court's interpretation of a land use permit, but it nonetheless relied on normal rules of statutory construction to construe the land use permit's terms: 830 A.2d at 97. See also *In re Appeal of Albert* 2008 Vt. 30, 33 at ¶ 6 (2008) ('[b]ecause the Environmental Court is part of the judicial branch, there is no separation-of-powers imperative for deferential review here. Moreover, whatever deference the Environmental Court is owed in the area of substantive environmental law does not apply to its construction of statutes governing general principles of law such as party standing').

29 N Rosencranz 'Federal Rules of Statutory Construction' 115 Harv. L. Rev. 2085 (2002); L Jellum "'Which is to be master' the Judiciary or the Legislature? When statutory directives violate separation of powers' 56 UCLA L. Rev. 837 (2009). See also A Scalia and B Garner, *Reading Law: The Interpretation of Legal Texts* at 244–45 (2012) ('[s]ome interpretive prescriptions contained in a statute might run afoul of the Constitution – for example, a prescription that legislative history *must* be considered or (at least arguably under the Due Process Clause) that the rule of lenity does not apply'); A Gluck 'The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism' 119 Yale L. J. 1750, 1827–29 (2010) (judicial rejections of legislative codes of construction in Texas and Connecticut).