

Northumbria Research Link

Citation: Gill, Gita (2014) National Green Tribunal: Judge Craft, Decision Making and Collegiality. National Green Tribunal International Journal of Environment, 2. pp. 43-52.

Published by: The National Green Tribunal India

URL: [http://greentribunal.gov.in/Writereaddata/Download...<http://greentribunal.gov.in/Writereaddata/Downloads/Presentation%20\(1\).pdf>](http://greentribunal.gov.in/Writereaddata/Download...<http://greentribunal.gov.in/Writereaddata/Downloads/Presentation%20(1).pdf>)

This version was downloaded from Northumbria Research Link:
<https://nrl.northumbria.ac.uk/id/eprint/23173/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)

NATIONAL GREEN TRIBUNAL: JUDGE CRAFT, DECISION MAKING AND COLLEGIALLY*

Introduction

Justice Oliver Wendell Holmes wrote his understanding of 'the law' was simply "the prophecies of what the courts will do in fact."¹ It was the American Realists who promoted the principle that the courts' decisions constitute the law.² Whilst outcomes may constitute the law what is less well known is the process by which these decisions are reached. The exercise of judicial decision making is shrouded in mystery. The canons of confidentiality and legal ethics preclude the possibility of academics listening to the judicial deliberations that lead to judgments. What happens behind those closed doors? Do the judges argue, shout or rage or do they remain silent in the face of a senior or determined colleague? Is conviviality the order of the day over sweetened tea and biscuits? Are political positions silently advanced to underpin a legal argument and how important is ideology in the decision making process? Is consensus reached by a process of attrition, time constraints, simple exhaustion, personal domination or genteel discussion and debate amongst a group of equals who carefully review and collectively consider the relevant facts and law? Historically, judges have been very reluctant or unwilling to discuss such issues with academics or indeed anyone. Pandora's judicial Box has remained firmly shut.

More recently, senior judges in UK have been willing to talk, lecture and even write about their professional lives and discuss their judicial decision making with academics.³ Indian judges have been similarly reluctant to engage in open discussions about their judicial decision making. However, in 2013 I contacted the Honourable Mr. Justice Swatanter Kumar, Chairperson National Green Tribunal for permission to interview him and also approach fellow bench members of the National Green Tribunal [NGT]. He graciously agreed to support my research and provided a letter of support regarding a research application I subsequently made to the British Academy, UK.

*Dr Gitanjali Nain Gill, Reader in Law, Northumbria Law School, Northumbria University, Newcastle upon Tyne, gita.gill@northumbria.ac.uk

**I recognize and thank the British Academy/Leverhulme Small Research Grants for supporting this research.

¹Oliver Wendell Holmes, 'The Path of the Law ' (1897)10 *Harvard Law Review* 457 at 461

² Karl Llewellyn, *The Bramble Bush: On Our Law and Its Study* (Oceana Publications 1951)

³ A recent example is the work of Alan Paterson who interviewed the UK Law Lords and subsequently members of the Supreme Court. See, *The Final Judgment: the Last Law Lords and the Supreme Court* (Hart Publishing 2013)

At the beginning of 2014 I was informed that I was a successful applicant for a British Academy Research Grant. This allowed me to travel to India and conduct nationwide research on the NGT.⁴ I spent July and August 2014 visiting the five benches where I interviewed the Chairperson and Bench Members,⁵ Registrar General and the Registrars of zonal benches,⁶ advocates and litigants.

This article focuses, in the first instance, on the writing of Harry T. Edwards⁷, Emeritus Circuit Judge, United States Court of Appeal for the District of Columbia, Washington Circuit, by specifically addressing his paper entitled, "The Effects of Collegiality on Judicial Decision Making" (2003)151 *Pennsylvania Law Review* 1639. Thereafter the article proceeds to apply to his theory the empirical data recorded in the interviews conducted with bench members in Delhi, Pune, Bhopal, Chennai and Kolkata. This combination of theory and practice offers an account of the processes by which

⁴ My previously published research on the NGT includes- Gill, G.N. 'The National Green Tribunal of India: A Sustainable Future Through The Principles of International Environmental Law', *Environmental Law Review*: (2014) Vol. 16, No. 3, pp. 183-202 doi: <http://dx.doi.org/10.1350/enlr.2014.16.3.217>; Gill, G.N. 'A Green Tribunal for India', *Journal of Environmental Law* (2013) Special Virtual Issue, Online ISSN 1464-374X - Print ISSN 0952-8873; Gill, G.N. 'Access to Environmental Justice in India with special reference to the National Green Tribunal: A Step in the Right Direction' *OIDA International Journal of Sustainable Development* [2013] 06:04 25-36; Gill, G.N. [forthcoming 2015] "Human Rights and Environment Protection in India: A Judicial Journey from Public Interest Litigation to the National Green Tribunal" in a book titled *Thought, Law, Action and Rights in an Age of Environmental Crisis* edited by Anna Grear and Evadne Grant, Edward Elgar Publishers UK]

⁵ I wish to acknowledge my gratitude to the bench members of the NGT whom I interviewed and who made me feel welcome, were generous with their time and open with their recorded comments- Chairperson- Hon'ble Mr Justice Swatanter Kumar; Judicial Members- Hon'ble Mr Justice M Chockalingam, Hon'ble Mr V R Kinganonkar, Hon'ble Mr P Jyothimani and Hon'ble Mr Justice U D Salvi; Expert Members- Hon'ble Prof R Nagendran, Hon'ble Dr Devendra K Agarwal, Hon'ble Gopal K Pandey, Hon'ble Prof (Dr) P C Mishra, Hon'ble Mr P S Rao, Hon'ble Mr Ramesh C Trivedi and Hon'ble Dr Ajay A Deshpande. No one declined to be interviewed although as a result of time constraints or unavailability, I was not able to interview some members of the benches.

⁶ I wish to recognize the enormous support of the Registrar General, Mr Sanjay Kumar and thereafter the help of zonal Registrars/Deputy Registrars [Mr K L Vyas, Mr A K Senapati, Mr M P Tiwari, Mr S Kumar and Mr Subhodh Sharma]. I will be returning to India in March 2015 to complete the field work.

⁷ Judge Edwards served as Chief Judge of the D.C. Circuit from October 1994 until July 2001 and is a Professor of Law at the New York University School of Law <https://its.law.nyu.edu/facultyprofiles/profile.cfm?section=bio&personID=19895>

NGT Benches reach their conclusions through a process that Edwards describes as “collegiality”.

This article deals with the following issues that contribute towards the composite of collegiality: leadership, the bench [composition and team work practice], dissent, precedent and inter personal communication.

Collegiality

Edwards is clear that 'collegiality' reflects best practice that results in good appellate judgments. He bases his conclusion on his bench experiences over a period of twenty three years. Collegiality results in a 'process' that creates conditions that ultimately produce a principled agreement: the judgment.⁸ He does not accept that collegiality is founded simply upon friendship, homogeneity or conformity. Instead it is a matter of common concern to get the law right.⁹ To quote, “collegiality plays an important role in mitigating the role of partisan politics and personal ideology by allowing judges of different perspectives and philosophies to communicate with, listen to, and ultimately influence one another in constructive and law-abiding ways.”¹⁰

This is not to deny that individuals have personal, social or political positions that might influence their decisions but rather the overriding process of collegiality helps ensure that decisions are not pre-ordained as a consequence of these extraneous relationships, thoughts and influences. This process is not uni-structural. It is a sophisticated combination of rules, customs, routines, legal obligations, leadership skills, mutual trust, personal confidence and the shared belief in common goals. Together, they create the process of collegiality.

The elements of collegiality are as follows:

1. Leadership

Successful companies reflect the decisions of informed CEO's, organisations similarly benefit from the guidance of able chairpersons as do courts from strong leadership. Professor David Danelski applied 'small group' analysis to the decision making process in the US Supreme Court.¹¹ He identified two roles associated with a leader seeking effective decision making. The first is 'task leader' and the second is social 'leadership'. Tasking requires the “exercise of effective leadership concerning decisional outcomes. Leadership is affected by personality, esteem within the court,

⁸ H T Edwards, 'The Effects of Collegiality on Judicial Decision Making' (2003) 151 *University of Pennsylvania Law Review* 1639 at 1656

⁹ See Edwards above n. 8 at 1645

¹⁰ Ibid

¹¹ David Danelski, 'The Influence of the Chief Justice in the Decisional Process' in W.F.Murphy and C.Herman, (eds.) *Courts, Judges and Politics: An Introduction to the Judicial Process* (Random House 1961) 497-508

intelligence, technical competence and persuasive ability.”¹² On the other hand, social leaders look to the emotional needs of the court and tend to be warm, receptive, responsive and respected. He argued that it is possible for the 'leader' to undertake both roles successfully.

I now apply this analysis to the NGT and in particular to the role of the Chairperson, Justice Swatanter Kumar. Justice Swatanter Kumar told me that he saw himself as the leader of a team that he was involved in selecting. He sought experience, character and awareness that would make them effective judges of environmental matters throughout India. Justice Swatanter Kumar stated “I am really very happy with the experts. All the experts have been picked up by me. I was a judge of the Supreme Court and the Chairman of the Selection Committee. So I have made some contribution in this regard. I find these people extremely good in their field.”

Justice Swatanter Kumar’s standing is described by the members of the bench and the bar in the following terms: “He is a great judge. He is well known for his honesty, integrity and excellent behaviour. In his court the scales of justice have always been even and it has been a great temple of justice. He is a clear example of a lighthouse in the sea which is unruffled by the turbulent sea and approaching ship. He has been a great source of inspiration to his colleagues and members of the bar. In the quest for justice he has never wavered or swayed and has maintained an unbiased approach in delivering justice. His dedicated hard work, sincerity and unbiased attachment to the matters before him are well known.”¹³

After assuming his position at the NGT the International Union for Conservation of Nature Academy of Environmental Law reviewed his contribution in the following terms: “Since taking over chairpersonship of NGT from 20th December, 2012, he has contributed tremendously in the growth of the NGT providing it requisite infrastructure and jurisdiction.”¹⁴

The inevitable conclusion is that the leadership qualities identified by both Edwards and Danelski are abundantly present in the current Chairperson.

2. The Bench: Composition and Team Work Practice

Strong, positive collegial relationships allow and promote judicial independence of mind and discussion resulting in an interdependent decision making process. This interdependence ensures that each person's intellectual and judicial strengths are recognised and introduced to the collective decision making process. It allows each judge to check his personal position with that of an

¹² David Danelski, 'Conflict and its Resolution in the Supreme Court' 11 *Journal of Conflict Resolution* 71 at 79 (1967); See also, Lynn A. Stout, 'Judges as Altruistic Hierarchs' 43 *Wm. & Mary L. Rev.* 1605 (2002), <http://scholarship.law.wm.edu/wmlr/vol43/iss4/12>

¹³ www.delhihighcourt.nic.in/writereaddata/.../FarewellFile_MDIJWECJ.PD accessed 20.9.2014. This farewell speech was delivered on Justice Swatanter Kumar’s elevation from the Delhi High Court to the position of Chief Justice of the Bombay High Court

¹⁴ <http://iucnacademy2013.org.nz/profiling-justice-swatanter-kumar/> accessed 21.9.2014. See also, *infra*, comments by the Chairperson and also Bench members about his role in sections, The Bench: Composition and Team Work Practice and Inter-Personal Communication

alternative view from a possibly better informed or experienced colleague. Edwards welcomes and promotes diversity. He welcomes "differences in professional and personal background, areas of expertise...diversity among the judges make for better informed discussion."¹⁵

A unique feature of the NGT's adjudicative process involves legally qualified judges working alongside scientific and technical experts with environmental knowledge as joint decision makers of equal standing.¹⁶ The principal bench has five members [two judicial and three experts] whereas the regional benches are comprised of one judicial and one expert member. This duality of legal and scientific expertise produces a coherent and effective institutional mechanism to apply complex laws and principles in a uniform and consistent manner. It reinvigorates and expands the judicial function and existing remedies by seeking to solve the basic environmental problem at source rather being limited to the pre-determined legal remedies.

The value of expert bench members to the collective decision making process is acknowledged and appreciated by the Chairperson and the judicial members. Justice Swatanter Kumar opined "the expert members come with wide knowledge. Professors, technocrats and administrators with wide environmental knowledge are a part of the NGT decision making process. Their contribution is very substantial." Justice P Jyothimani stated "the real solution comes from the expert members. The input of expert members is much more valuable for environmental matters." Justice U D Salvi commented "this is the speciality of the Tribunal which has not only judicial talent but also expert talent. This is a peculiarity of the Tribunal. It is a balanced way of doing work." Mr R C Trivedi, an expert member stated "as expert members we have equal standing with the judicial members and we are a part of the judgment."

Deliberation is one of the most valued components of collegiality. The rules that structure this activity bring the judges together as a group. Collegiality has a function in institutionalising judges into shared understanding and action particularly if the size of the bench is small. Chief Judge James Harvie Wilkinson of the Fourth Circuit argued that "one engages in more fruitful interchanges with colleagues whom one deals with day after day than with judges who are simply faces in the crowd.... Smaller courts by and large encourage more substantial investments in relationships and in the reciprocal respect for differing views that lie at the heart of what appellate justice is about."¹⁷ For example, Edwards cites that the senior judge may preside and either commence discussion or conclude it or both. A draft opinion might be written, circulated in advance and then considered by the bench members. His point is that a structure is established by agreement and thereafter applied. These procedures and deadlines promote a routine and understanding of how to work together.

¹⁵ See Edwards above n. 8 at 1668

¹⁶ Section 4(1) of the NGT Act 2010 provides that the NGT consists of a full time Chairperson, not less than ten but subject to a maximum of twenty full time judicial and expert members. Section 5(2) of the NGT Act 2010 spells out that the judicial members will have requisite legal expertise and experience and the expert members will include either technical experts from life sciences, physical science, engineering or technology

¹⁷ James Harvie Wilkinson 111 'The Drawbacks of Growth in the Federal Judiciary' 43 *Emory L.J.* 1147at 1173 (1994)

Thereafter, new members of the bench are introduced to an established procedure based upon collaboration and collegiality.¹⁸

The NGT is collegial as illustrated by its deliberative process of drafting a judgment. Conformity and cohesion is reflected in the team work and collective practice exercised throughout the five benches. The lead provided by Justice Swatanter Kumar to the team work practice is based upon a collaborative approach. According to the Chairperson "what we do is to have a pre-hearing conference and a post hearing conference. Normally even while passing a small order, I like to interact with the judicial and expert members so that there is complete coherence and unanimity because sometimes what you think may be wrong and what the other person may suggest is right. I give full margin to that possibility. Secondly, whosoever authors the judgment, we have a pre-writing session where we discuss the facts and I and other judicial members state what is the law and the legal position. Then the experts tell us the technical aspects. I ask the technical members to give me a short note. Then we consider it. Then I or another judicial member or expert member prepares a draft. Next we deliberate the draft. Then we get in writing an agreement by each expert and judicial member. Ultimately, the judgment is finalized. It is a process so far we are handling well. I hope that things will go even better with time."

The three experts, Mr R C Trivedi, Mr D K Aggarwal and Mr G K Pandey sitting on the Principal Bench in Delhi find this process of drafting a judgment extremely valuable. All agreed that "we always have a discussion before we go to the court on the important issues in the morning at 10.00am in the Conference Room. We sit together and talk. This is one platform. But also for writing every judgment a technical note is required by the judicial member who is writing the judgment. Many a time the entire technical note is reproduced and forms part of the judgment. We have never had a dispute as we always discuss and have an agreement before we pronounce the judgment. The final judgment is always written in a draft form circulated to all the members who will sign the judgment. Every member reads it and has a right to correct or delete or modify even if it is a major part of the judgment. This is allowed at this point. Finally the judgment is signed and pronounced. This is a practice followed in NGT and is a procedural requirement as stated by our Chairperson. Though there are no written rules it is a practice we follow. The Chairperson always says that you have the full right to make any correction or addition or deletion or suggestion. Everything is allowed."

The Kolkata Bench follows a similar procedure. According to Justice P Jyothimani and Prof (Dr) P C Misra "before the matter is taken up, the papers are circulated to us. Individually we go through the papers. Both of us come prepared. We sit in the court with an open mind. We hear the parties. In a case where technical issues are raised, we discuss the matter in the court. After the hearing is concluded we sit together in the chamber and discuss the way the judgment is to be delivered and environmental material given by the expert member. Based on that the judicial member drafts a judgment and that is circulated to the expert member. Sometimes the judicial member also invites the expert member to draft the judgment. Additions, deletions and modifications or suggestions are permissible in the draft judgment. Then the final judgement is formulated and delivered."

Team work spirit is acknowledged by the Bhopal Bench. For Justice U D Salvi and Mr P S Rao, "before the matter is heard, we do not engage ourselves in any type of discussion. We hear the matter.

¹⁸ See Edwards above n. 8 at 1665-1668

Before hearing the matter, we go through the records and prepare ourselves before hearing. After the matter is heard, we enter into discussion. In the NGT, we are helped by the advocates. There is no original trial but being a Tribunal, we have to hasten the process and not leisurely decide any case where we can call witness. First assistance is by way of advocates. Many advocates are not familiar with environmental issues. There may be gaps. These gaps are understood and recognized by the Expert Member. Merely reading an affidavit would not make complete sense. The expert member provides the technical knowhow. A technical note is submitted by the expert member. Thus, with this assistance, we come to our conclusion and then we discuss and come to our answer so that we can arrive at a decision. This is reflected in the judgement. The judgements are drafted and circulated. As we understand each other, it becomes easier to reach a conclusion and dispose of the case.”

At the Chennai Bench, presided by Justice M Chockalingam and Professor R Nagendran, consensus and clarity lead to an amalgam of views that seek to deliver environmental justice. According to the bench “most of the cases involve a technical point of view and technical expertise is required. Prior to the time of decision making both the judicial and technical members must necessarily have an in depth discussion on the matter. A clear mind and consensus is needed for a judgment. It must not only be unimpeachable but also stand and answer the question. We must work before writing a judgment. A clear discussion, consensus and the same frame of mind brings a good judgment. The judgment at no point of time should reflect two different views - that are placed juxtaposed or are vertical or a horizontal continuum. It should be an amalgamation of the whole thing: a blend of everything. Before the admission stage both of us go through the papers. We discuss the matter and after hearing counsel we decide whether it is a fit case for admission or not. Once admitted, we hear the arguments. We have a list of questions raised from technical and legal points for which we seek answers from the advocates. We note the answers given by the advocates. After the arguments are over and before the judgment is dictated, we take a decision whether relief sought is to be granted or not. We have a thorough discussion with a free mind, not committed to anything. As our minds are open, it helps us in deciding the matter. We always have a discussion. We have followed this procedure and want to continue with it. We never deviate. Our thoughts are always clear as to where we are. Then we make a nice decoction and brew the judgment.”

The blending of opinions and expertise is the essence for drafting a good judgment according to Justice V R Kingaonkar and Dr A Deshpande of the Pune Bench: “the matter is taken to a logical end and it is only possible with the blend of judicial and technical minds. We are two in number. In Pune we meet regularly - morning, afternoon and evening. Communication is not an issue. Formally as well as informally we discuss the issue before going to the hearing as well as before settling any judgment or theme of a judgment. We discuss and all the time we are on the same track. The judicial and technical inputs are given by the respective members. This happens because there is a regular communication. The thought process is the same. A common blend amounts to qualitative judgment and delivers justice from such a combination.”

3. Dissent

Edwards claims that inter-personal attrition and fixed positions are likely to produce ideological differences, intransigence and thereafter dissenting judgments whereas what litigants and the public request is a clear statement of the law rather than a collection of differing opinions.¹⁹

With this point in mind it is important to note that the NGT has yet to carry a dissenting judgment. For instance, the judges of the southern bench, Chennai, stated "As we are of the same mind, frequency and are on the same track there is no reason for dissent. We go through the papers, in detail, have discussions and thereafter we reach agreement. We have on no occasion dissented from one another. We hope that it will continue. We do not know the meaning of dissent in this context! We work towards our goal and see no reason to dissent. Both of us are interested in the environment and sustainable development. Dissent has never come and should not come."

According to the Pune bench "there is no dissent per se. What we try to do is discuss the matter and see that there is no controversy. There should be confluence of thought. We should give proper direction to the thinking process resulting in the delivery of justice. This is the proper methodology to apply to the matter. However, if disagreements ever come up, then they are sorted through discussions prior to writing the judgment."

The same procedural view was expressed by the Kolkata bench: "we arrive at a consensus. As per the NGT Act 2010 every member gives his opinion. There has been no situation where there is dissent. However, if there is disagreement we discuss with the other members to solve the matter. Dissent may happen in course of time but at present there is consensus."

Bhopal bench members reported "It is not that we don't disagree. We have to arrive at a conclusion. Therefore, we consult and arrive at a conclusion. Till this time we have not come across dissent. We are making law. We cannot say that everybody is 100% correct. Our judgements are going to be tested by the Supreme Court. So ultimately, the best thing will come out. In some cases, we may not agree on some points, but ultimately in the interest of environment, we come to an agreement."

4. Precedent

For Edwards the importance of precedent is associated with collegiality.²⁰ Collegiality functions as a catch phrase that captures these norms of judging. Justice Cardozo said "precedents fix the point of departure from which the labor of the judge begins."²¹ In *Allegheny General Hospital v. National*

¹⁹ See Edwards above n. 8 at 1646-1647

²⁰ Ibid 1682

²¹ Benjamin N Cardozo, *The Nature of the Judicial Process* (Yale University Press 1964) 20

Labour Relations Board²² the United States Court of Appeals for the Third Circuit stated “a judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts and arising in the same court or a lower court in the judicial hierarchy.”²³

The NGT applies precedent in deciding cases. In *Nirma Limited v Ministry of Environment and Forest*, Justice Swatanter Kumar, Chairperson stated “ from the above dictum declared by the larger Bench of NGT which is binding upon this Bench...”²⁴

All the zonal benches unequivocally affirmed the binding nature of the doctrine of precedent. The Chennai bench stated “ the doctrine of precedent is strictly followed. The already decided cases such as who is an aggrieved party, who can prefer an appeal, who can file an application under the Act, what is the decision of principal bench and the decisions of other regional benches is definitely taken into account. We have the benefit of our NGT journal in terms of the view taken by our brother judges on a particular bench. It is very helpful to us.”

The Pune bench opined “the judgments of the Supreme Court of India are binding. The judgments of the NGT benches including the principal bench are judgments of the coordinate bench and are to be respected. One has to go by them unless there are strong reasons to give a go by. In such a case reference of the judgment is to be given and the principal bench has to be informed. Reasons for such a dissent need to be given. This is our view.”

For the Bhopal bench “ doctrine of precedent plays an important role in exercising their responsibility on the bench.”

The Kolkata bench observed “we do not ignore the judgments of the other benches. We definitely read the judgment. If we do not agree, we give our own view and supply reasons for not following the already decided case/s. All benches are of the same value. Precedent only applies to Supreme Court judgments. One bench is not binding on the other bench. There is nothing like the principal bench superior or zonal benches inferior. Appeal is made to the Supreme Court against an order of the bench.”

5. Inter- Personal Communication

The experience of shared customs, procedures, rules, shared court, working and dining rooms along with regular formal meetings conducted either through personal contact or through video

²² 608 F.2d 965 (1979)

²³ Ibid 969-970

²⁴ Judgment dated 16 September 2014, para 5

conferencing and common bench hearings produces, according to Edwards, a cross fertilisation effect between collegiality and internal rules.²⁵

The cross fertilisation effect has been good for collegial relations and collaboration among the judges of the NGT. Formal full court meeting on a regular basis is one way of maintaining collegiality. The Chairperson explained “we hold full court meetings. We call all members together in Delhi or some other place. We not only discuss the administrative matters but also judicial matters with respect to improving the justice delivery system.”

Moving into the world of technology through video conferencing emails and the NGT’s website connects the benches in real time despite the significant geographical distances. Justice Swatanter Kumar introduced video conferencing to the NGT. For the Chairperson, “even if there is a smallest problem, I put them on video conferencing and have all the members deliberate on it and thereafter take the decision. This leads to a uniform and consistent approach.” The zonal benches appreciate the video conferencing facility. It not only provides a confidential, secure connection but also offers instant communication across the expanse of India thereby encouraging discussion between the benches.

Informal discussions and consultations through exchange of emails and reference to NGT’s website²⁶ promote a collegial environment. This is helpful in terms of sharing new information or broadening the knowledge base with respect to the environmental developments taking place nationally and internationally. Staying frequently connected helps promote objectivity, as Edwards, quoting Sharon Traweek, describes “as employed in physical sciences. ... [p]ure objectivity is tacitly recognized as impossible; but error can be estimated and minimized. The means is peer review, or collective surveillance; the final degree of order comes from human institutions.”²⁷ This applies equally to the disciplines of environmental studies, environmental management and environmental law.

Conclusion

The nature of judge craft is that ultimately the court is constrained to arrive at a decision and thereby establish the law. Over time judges become more confident in their roles and in their colleagues. They may become more flexible, open to persuasion and less entrenched. They may also become more ambitious in their thinking and thereby in their decisions. Initially, a new court such at the NGT may commence with narrow statutory interpretations and strict rule application. However, over time such thinking might be joined by purposive interpretations of statutes, policy based decisions and even policy development suggestions or requirements. Edwards’ assessment is that an experienced court, led by a strong leader, with a small, diverse bench that has worked together over

²⁵ See Edwards above n. 8 at 1664

²⁶ <http://greentribunal.gov.in/judgement.php> accessed 24.9.2014

²⁷ Sharon Traweek, *Beamtimes and Lifetimes: The World of High Energy Physicists* (Harvard University Press 1992) 125 in Edwards above n. 8 at 1685.

a period of time, enjoying a clear understanding of purpose and of the internal court rules will through the process of collegiality find common ground and arrive at better and better decisions. Such an analysis appears to this author to identify the NGT as “collegial” in terms of its establishment, strong leadership, small, diverse bench membership, its decision making processes and ultimately its decisions which reflect commitment to the environment and sustainable development and also to the larger interests of the people.