

ClientEarth CEO James Thornton acceptance speech: FT Award for European Innovative Lawyer of 2016

Delivered 5 October 2016

Good evening.

It never occurred to me that an aggressive American litigator, who morphed into an English solicitor, could be honoured in this way.

It is humbling and exciting.

Law practice is wonderful for those who like to innovate. Every dimension of law captures an angle on how society arrays itself against the world of fact at a given moment in time. Since the constellation of facts is always changing, legal responses evolve.

Let me give you an example from my practice. We are all familiar with the legal duties of company officers and directors. Duties are not stationary, though. They are evolving constructs. As the facts shift, we need to reinterpret duties.

In the Paris Agreement, every country in the world agreed that climate change is a clear and present danger, and agreed on steps to mitigate it.

At my organisation, ClientEarth, we argue that officers and directors now have a duty to take account of climate change risk. We are meeting with actors at each step in the investment chain to point out that climate risk represents systemic, material financial risk, and thus the duties need to respond to it.

Now let me tell you a little more about how I like to use the law to innovate. Inherent in law is tremendous power to help society address the pressing problems of environment and human health.

Ten years ago I studied the landscape of environmental actors throughout Europe and saw that law was little used. While there were about 500 practicing lawyers in environmental groups in the US, there were only a handful in all of Europe, and those played a small role in strategy.

Being an aggressive, and perhaps overconfident, American litigator, I set about to change that.

So I started ClientEarth 9 years ago. We now have almost a hundred full time staff, the majority of them lawyers. We have offices in London, Brussels, and Warsaw. We work in 5 African countries. We are establishing a program in Beijing at the request of the Supreme People's Court, and have just opened a small office in New York.

Many of you will be in firms that have offices around the world.

ClientEarth, though, is a charity. We raise our money philanthropically. This is difficult to do. It means you work for charity wages, but you gain a certain freedom.

The name ClientEarth is accurate: we really do take the Earth as our client. Having no clients in the normal sense, we are free to choose strategic directions that we believe will lead to the greatest public good.

We work at all stages in the lifecycle of laws. We start with the science. Nature speaks to us in the grammar of science. We listen to our Client. We then develop policy, and work in parliaments to help write laws. We also work to implement laws, something I found that EU environmental groups had not done. And finally we enforce laws.

For example, we brought a case to enforce the air quality law against the UK. I wanted to show that citizens could enforce environmental laws in Europe. No one had enforced the air law against a country. We won in the UK Supreme Court, which gave us its first ever environmental injunction. The government, already 6 years out of compliance, with 40, 000 annual deaths as a result, is flouting the injunction. So we are back in court in two weeks.

This effort is going Europe-wide. We brought 10 air quality cases in Germany last November. In Dusseldorf recently, the judge ordered all diesel cars off the road in the most polluted part of the city by January 2018. A breakthrough kind of injunction for a German court.

Going back to climate, scientists are clear that burning coal is public enemy number one.

I set up an office in Poland, and we sued all 14 of the huge coal fired power stations they planned. They hoped to perfectly replicate the Soviet energy policies of the 1950s. Five of those plants have been withdrawn, the rest are on hold.

Not easy work. We were denounced by the Treasury Minister, who is also the head of the Secret Police, as enemies of the State. The Secret Police investigated us, believing we were agents of Gazprom. There were death threats. The morning we were in the Supreme Court in Warsaw on 6 cases, the main Polish business newspaper called us ecoterrorists. At least it was on the front page.

But persistence and calm logic sometimes prevail. Three years later, the same paper asked us to do an editorial on the energy future for Poland. The debate had shifted.

The skilful use of strategic litigation shifts priorities. It can make a recalcitrant government comply with the law, by giving good people in ministries, who want to do the right thing, the political cover they need to do so.

Exciting as litigation is, the quieter work of advocacy and capacity building are equally important. When I started ClientEarth, I concluded that the number one biodiversity issue in the EU was the destruction of our fisheries through overfishing. We became deeply involved in writing the new

Common Fisheries Policy, crafting key provisions. These provisions, if properly implemented, will allow both fish and fishermen to prosper for a long time.

In Africa, we are working in five countries to build the capacity of local lawyers and NGOs who serve forest dependent communities. The idea is to increase the communities' voice in decision making, and to make sure they get a benefit when forests are legally harvested. And it is working.

China particularly interests me right now. There is a sea change going on there about protecting the environment.

We have been invited to train judges, including members of the Supreme People's Court. We are also training prosecutors, and plan to train NGOs. Remarkably, China last year gave citizen groups the right to bring cases against polluters. Citizens can't do this in the UK, but they now can in China. And if they lose the case, Chinese citizens pay no costs to the other side. Which is something we would do well to copy.

We are training the Chinese judges, and prosecutors, and soon, citizens to bring good enforcement cases and decide them well, so they have a direct and powerful role in protecting their environment. An innovation they are keen on.

My Client, the Earth, has great needs. I would invite you all to consider how you can help. Pro bono work is wonderful. There is also a critical role you have in advising your clients about the financial risks of climate change.

We all share the Earth. Let us all consider the Earth our Client. For lawyers, the best way to celebrate the Earth is by lawyering for her.

Thank you for your attention, and good night.