

First climate lawsuit against a commercial bank: NGOs take legal action against BNP Paribas for funding fossil-fuel development

APRIL 27, 2023 5 MIN READ

Related Expertise

- [Climate Change, Carbon Markets and Environmental Finance](#)
- [Corporate and Commercial Disputes](#)
- [Corporate Governance](#)
- [Energy](#)
- [Environmental](#)

Authors: [Jennifer Fairfax](#), [Ankita Gupta](#)

On February 23, 2023, three NGOs – Friends of the Earth France, Notre Affaire à Tous, and Oxfam France – announced they commenced legal proceedings against BNP Paribas, challenging the bank's energy loans policy under the French *Duty of Vigilance Law*. This is the first climate-related lawsuit in the world involving a commercial bank.

This claim comes only a few weeks after ClientEarth, a NGO based in London, commenced the first climate litigation claim against a company's board of directors by filing a derivative action in the High Court of England and Wales alleging that Shell plc's climate strategy is unreasonable (see our previous post discussing that claim [here](#)).

Action challenges BNP Paribas's investment activities

The legal basis for the NGOs' claim is France's *Duty of Vigilance Law* passed in 2017, which added Article L. 225-102-4 to the French *Commercial Code*. Article L. 225-102-4 requires that certain companies operating in France, including French companies with more than 5,000 employees, establish and implement a vigilance plan that describes how they will prevent human rights and environmental violations. If a plan is not properly formulated or fails to effectively assess and mitigate such violations, the company can be held responsible for the damages it could have prevented. Additionally, any party with a valid interest has the option to seek injunctive relief to compel the company to comply with the law. Article L. 225-102-4 constitutes a pioneering preventive measure in the context of French legal proceedings. However, so far, no company in France has been compelled by a court to alter its behavior under the law even though various lawsuits have been brought under the law since its enactment in 2017.

In the present case, the three NGOs are arguing that BNP Paribas has contravened France's *Duty of Vigilance Law* by failing to provide a robust plan to identify, mitigate and prevent risks related to climate change. The NGOs stated that, while BNP Paribas has developed several policies aimed at limiting its support of fossil fuels, these policies are too limited and will not comply with the objective established during the Paris Agreement to limit global warming to 1.5°C. The NGOs are ultimately demanding that the bank reduce its financing of fossil fuel production by adopting a plan to exit the oil and gas sectors by 2050.

In response, BNP Paribas denied the allegations and expressed regret that the advocacy groups chose litigation over dialogue. BNP Paribas agreed that an ecological transition is the only sustainable path for the future economy and reiterated its focus on accelerating renewable energy financing and supporting customers transitioning to renewable energy sources. However, the bank stated that that it could not immediately stop all fossil fuel financing, as demanded by the NGOs.

Corporate accountability legislation in Canada

Other countries around the world have established or are in the process of establishing laws somewhat akin to France's *Duty of Vigilance Law*, requiring that companies operating in their jurisdictions take specific due diligence procedures to implement sustainable and environmentally responsible business practices.

One such proposed law is the European Union's (EU) *Corporate Sustainability Due Diligence Directive*. The proposed Directive would impose a corporate duty to identify, prevent, mitigate, and account for any adverse impacts on the environment resulting from a company's operations. Moreover, some large corporations would be required to develop a plan to ensure that their business strategy aligns with the Paris Agreement's goal of limiting global warming to 1.5°C. The proposed Directive is currently going through the EU's ordinary legislative procedure which requires approval by the European Parliament and Council before adoption. Once adopted, EU member states would have two years to transpose the Directive into national law.

Canada does not currently have a due diligence law comparable to France's *Duty of Vigilance Law*. However, federal legislation has been introduced that would impose a similar due diligence reporting responsibility on corporations. As of March 2023, four bills have been introduced in Parliament: (i) Bill C-243, *An Act respecting the elimination of the use of forced labour and child labour in supply chains*; (ii) Bill C-262: *An Act respecting the corporate responsibility to prevent, address and remedy adverse impacts on human rights occurring in relation to business activities conducted abroad*; Bill S-204: (iii) *An Act to amend the Customs Tariff (goods from Xinjiang)*; and (iv) Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*. Of these four proposed statutes, Bill S-211 has advanced the furthest and is in its final reading before the House of Commons and is expected to become law. Bill S-211 proposes to introduce an annual reporting regime that will require certain companies to submit a public annual report of the due diligence measures used to prevent and reduce the risk of forced labour and child labour in their supply chains. In addition, in February of this year, the Canadian federal government revealed its plans to update the *Canadian Environmental Protection Act, 1999*, and acknowledge the right to a healthy environment.

Should these proposals be approved, it remains to be seen whether such laws could provide a basis of liability along the lines of the French *Duty of Vigilance Law*. Osler continues to stay abreast of these developments and is ready to advise clients operating in this space.

At this point, it is premature to predict the effect this case could have on businesses operating in Canada. Nonetheless, considering the possible establishment of a legal precedent, the lawsuit should be closely monitored as it proceeds through the French court system.