

2B. BOX 3: EXTENDING LIMITATION PERIODS

A significant number of smoking and health claims have failed because the court has found they were time barred. All jurisdictions have time limits for bringing claims: three or six years is a typical limitation period in common law jurisdictions. There are two key requirements for rules on time limits if they are not to stifle all smoking and health tobacco claims:

- a) *Time should run from the date of discoverability of injury.*

Because of the long latency period between exposure to tobacco smoke and the onset of illness (often more than 20 years) time limits must begin to run only when the illness manifests itself, rather than when the exposure occurred. If time ran from the date of exposure, most smokers would not have suffered any injury (apart from addiction) by the time the limitation period expired. To remedy this problem, a number of jurisdictions have stated that in cases of personal injury, time begins to run only when the cause of action is “discoverable”. This could be, for example, when the injury is first diagnosed, or when the victim first experiences clinically observable symptoms that are more than de minimus.

- b) *‘Long stop’ limitation periods need to be abolished.*

In a number of jurisdictions where time limits can be extended or time begins to run from the date of discoverability of the injury, there are “long stop” limitation periods after which no claim can be brought under any circumstances. Typical longstop periods may be 10, 20, or 30 years after the date the tort occurred. Such longstop periods would be fatal to many or even most smoking and health claims if they applied. Accordingly smoking and health claims should be exempt from such long stop limitation periods.

In addition to these reforms, when enabling tobacco damages and health-care cost recovery legislation is implemented, the possibility of reviving causes of action (or prohibiting tobacco manufacturers from raising limitation periods as a defence) for any action on foot or commenced within a specified period of the passage of the legislation could be considered to allow potential claimants to take advantage of the rules set out in the legislation. The Canadian provinces enabling legislation does this. For example the Quebec Act provides:

Prescription

27. An action, including a class action, to recover tobacco-related health care costs or damages for tobacco-related injury may not be dismissed on the ground that the right of recovery is prescribed, if it is in progress on 19 June 2009 or brought within three years following that date.¹

¹ Tobacco-related Damages and Health Care Costs Recovery Act, CQLR c R-2.2.0.0.1.