

HISTORY OF THE ODAP PANEL

BROCK SMITH
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Mandate

The Occupational Disease Advisory Panel was created in 2001. Its primary purpose was “to recommend guidelines for the use of scientific evidence and legal principles for amending Schedules 3 and 4 of the Act, developing operational policies and adjudicating claims.”. The Panel decided that it would also make recommendations concerning how future policy should be developed.

Membership

The Panel’s membership consisted of labour and employer representatives, as well as several WSIB senior staff and representation from the ministry of Labour and the Institute for Work and Health. Most of the Panel meetings took place during 2002.

Modus Operandi

The Panel began with briefings from WSIB staff and from outside legal and scientific experts. Panel members then met to discuss various occupational disease issues. A first draft of the Panel report was prepared by WSIB staff under direction of the Chair of the Panel. This and subsequent drafts were circulated to all Panel members who would meet to discuss the draft and then provide their written responses.

Labour stakeholders always responded as a group represented by lawyer David Wilken (Industrial Accident Victims Group, nominated by the Ontario Network of Injured Workers). The bulk of the employer comments came from Mary Smith (Dudley Enterprise, nominated by the Employer’s Council of Ontario and Ontario Public School Boards’ Association) and Bruce Conard (Inco- Ontario Mining Association). The employer members did respond as a group to the second draft. The Canadian Petroleum Products Institute also provided separate comments on that draft.

In its responses, the labour stakeholders’ group submitted detailed rewrites of various sections of the report. At this stage the employer stakeholders did not provide major rewrites but rather highlighted areas where they recommended specific wording changes and/or further discussion by the Panel. The Chair of the Panel reviewed every suggested change by the stakeholders with the WSIB staff and many changes were incorporated into new drafts.

Third Draft of Report

At its December 2002 meeting, the Panel was told it had to complete its work in early 2003. Members were given the third (and “final”) draft for comment.

The response from labour stakeholders was a reiteration of their previous recommendations that had not been included in the final draft. Employer stakeholders, however, submitted a major “re-write” of the entire report, which differed significantly from their earlier input. The major concern of employer stakeholders lay with the draft

report's endorsement of the "significant contribution" test. They contended that the adoption of this recommendation would relax the way in which WSIB determined causation, leading to a higher claims acceptance rate and an increase in costs. (Labour and WSIB staff maintained that the recommendation simply acknowledged an established part of the law.)

In March 2003 the ODAP Panel was to hold its last meeting where it was immediately clear that the Panel would not reach a consensus on occupational disease issues. Accordingly, the Chair of the WSIB then instructed the Chair of the Panel to finish the report and ready it for public consultation as a "report of the Chair" rather than consensus report from the Panel.

Public Consultation Leading to Final Report

It was then determined that the report would be completed and sent out for public consultation in 2004. While it would reflect the views of the Chair, any dissenting views from stakeholders would also be included in the Report. Stakeholders were given an opportunity to review the consultation draft.

In 2004, the Report was publicly released and consultation meetings were held in various cities throughout the province in September (Sudbury, Timmins, Thunder Bay, Sarnia, Windsor, Hamilton and Toronto). There were 96 oral presentations and 77 written briefs.

On the whole, the briefs and presentations expanded on the stakeholder positions that were already documented in the Report. In summary:

Employers opposed recognition of the significant contribution test, advocated stricter criteria for the scheduling of diseases, and opposed the creation of any kind of permanent body to advise on future occupational disease policy development. They also argued that the ODAP report should be subject to an economic impact analysis before it was considered for adoption.

Labour supported the significant contribution test but opposed the levels of evidence recommendations, which they felt put too much emphasis on scientific evidence. They also advocated greater use of the schedules as an alternative to current "policies". Finally Labour recommended the creation of a body similar to the disbanded Occupational Disease Panel to advise on policy and conduct research.

A number of community groups and individuals also made submissions. These usually focused on individual cases that had been subject to long delays or had been appealed.

In February 2005 the Chair completed his final report.