



## PROFILES IN HISTORY

# The Evolution of the Manitoba Optometry Act

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### Abstract

*The history of optometric legislation in Manitoba is discussed. Beginning with the passage of the Optometry Act in 1909, the evolution of the Act is followed, culminating in landmark amendments in 1983.*

### Abrégé

*L'auteur décrit l'histoire de la législation manito-baire en ce qui concerne l'optométrie. Cette histoire commence avec l'adoption de l'Acte d'Optométrie en 1909 et se déroule pour aboutir aux amendements marquants de 1983.*

On 10 March, 1909, Sir D.H. McWilliam, K.C., M.G., Lieutenant-Governor of Manitoba, gave Royal Assent on behalf of HRH King Edward VII to An Act to regulate the practice of Optometry in Manitoba, thus creating, along with a similar Act in Quebec, the first Optometry Acts in Canada and only the second in North America. The Manitoba Optometry Act subsequently went through four major and seven minor revisions culminating in a landmark amendment in 1983. Last year commemorated the 75th anniversary of the passage of the Manitoba Optometry Act. This article will highlight some of the important and interesting phases in the evolution of the Act to its present form.

The preamble to the Optometry Act of 1909 recognized Optometry as a learned profession with the statement

Whereas the profession of optometry is extensively practiced in the Province of Manitoba and it is expedient for the protection of the public that a certain standard of qualifications should be required of each practitioner of said profession and that certain privileges and protection should be afforded to said practitioners . . .

Thus, even at this early date, Optometry had received recognition of its professional status.

The second clause of the Act defined optometry as follows:

The practice of optometry is hereby defined to be the employment of any means, other than drugs, medicine or surgery, for the measurement of the powers of vision and the adaptation of lenses for the aid thereof.

This definition was undoubtedly an accurate reflection of the state of optometric education at the time. However, the definition proved to be inadequate in the context of the level of training of Optometrists in the second half of the century, but was not changed until 1983.

The Act set up a Board of Examiners, consisting of "five reputable and practicing optometrists," appointed by the Lieutenant-Governor-in-Council, charged with the responsibility of examining the character, competency and qualifications of applicants for the practice of Optometry in Manitoba.

The requirements for practicing Optometry in Manitoba at the time were 1) being more than twenty-one years of age; 2) being of good moral character; 3) having completed the equivalent of two years of high school; and 4) having graduated from a school of Optometry maintaining a standard acceptable to the Board of Examiners or having practiced optometry under the supervision of a registered Optometrist for at least one year. Subsequently, an applicant was required to submit to an examination of his qualifications. Anyone who was able to prove that he or she had practiced Optometry for one year prior to the passage of the Act, was exempted from the requirement for an examination.

All optometrists with a certificate of registration, or of exemption, were required to display the certificate where he or she carried on the practice of Optometry. An interesting sidelight was that an optometrist practicing away from his or her place of business was then required to ". . . deliver to each *customer* (author's italics) or person fitted with glasses a bill of purchase, which shall contain his signature, his post office address and the number of his certificate of registration or exemption, together

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with a specification of the lenses and frames or mountings supplied, and the prices charged therefore."

The Act of 1909 allowed all registered Optometrists to use the word "Optometrist" and all those who were exempted from writing the examinations were allowed to use the title 'exempt'. However, there was a prohibition against anyone using the title 'Doctor' unless he or she was a graduate of a School of Medicine.

Those interested in how costs have accelerated over the decades would not be surprised at the fees legislated in 1909. The examination fee was set at \$15, the registration fee was \$10, and the annual renewal fee was \$4. It is curious, though, that these fees did not change until 1957 when the examination fee was increased to the lofty level of \$25. All other fees were removed from the Act and left instead to be specified by the Manitoba Optometric Society's bylaws.

The Act also provided for penalties in law for conviction of practising without registration or of fraudulently obtaining a certificate of registration. Anyone found guilty under this section was subject to a fine of between \$25 and \$100, or three months in prison.

Finally, the Act included a clause which exempted physicians or surgeons from the provisions of the Act. Furthermore, the Act did not apply to "persons who sell glasses as on prescription from an oculist or duly registered optometrist, nor to persons who sell complete, ready-to-wear glasses as merchandise from a permanent place of business."

### **The Act of 1913**

In 1913, the Optometry Act went through a revision consisting mainly of grammatical or numerical changes. The only substantive change that was incorporated by this Act dealt with the penalty section of the Act. This change provided for payment of half the fine to the party procuring the conviction.

### **The Act of 1920**

The Act (now known as the Manitoba Optometry Act) of 1920 resulted in the formation of the Manitoba Optometric Society. Prior to this, the professional Association for optometrists was the Manitoba Association of Optometrists and Opticians whose organization may predate the first Optometry Act of 1909. Along with the formation of the Society was a Council of five registered Optometrists (three from Winnipeg and two from outside Winnipeg) elected at the Annual Meeting of the Society. The Council was given the power to make rules and regulations for "the proper performance of its duties". All registered optometrists were required to become members of the Manitoba Optometric Society.

The power to appoint the Board of Examiners was taken away from the Lieutenant-Governor-in-Council and given instead to the elected Council of the Society. With this Act, many of the powers formerly assigned to the Board of Examiners were turned over to the Council, the Board itself being left simply with the duty of "conducting the examinations of the Society and passing upon the qualifications of applicants for admission to the Society." With small revisions, this relationship has remained up to the present time.

The requirements for practising in Manitoba were changed by requiring graduation from a School of Optometry *and* practising under the supervision of an optometrist for one year, instead of requiring one or the other as the previous Acts did.

### **The Act of 1927**

This amendment gave the Society the powers to make by-laws for:

- (a) the government and discipline of its members;
- (b) the management of its property;
- (c) all such purposes as may be necessary for the operation and management of the affairs of the said society.

Interestingly, these by-laws could not "prohibit the employment of a Member of the Society by a person, firm or corporation not a Member of the Society". This latter provision was to remain in effect for the next 30 years.

### **The Act of 1957**

This Act was characterized mainly by some adjustments to the composition of the Council of the Society. Now nine registered optometrists, instead of five, were to be elected to Council. There was no longer any reference as to whether the optometrists were to be from Winnipeg or from rural locations. The Council was now to elect, from its own Members, the President of the Society. In the past, the Society elected a President, Vice-President, and Secretary-Treasurer separate from the Council which elected, from its own Members, a Chairman and Secretary. With the passage of this Act, the separate organizations ceased to exist and the President/Chairman became the Chief Executive Officer of the Society. The Council was also to elect, again from among its own Members, Vice-Presidents, a Secretary-Treasurer and, for the first time, a Registrar who was also to be the Chairman of the Board of Examiners.

Undoubtedly reflecting the changing educational standards of optometrists, the minimum requirement of two years of high school was removed from the legislation. Graduation from a college of Optometry was, of course, still required and, no doubt, Colleges of Optometry of the day required more than two years of high school for entry to their programmes. Also at this time, the term "preceptor-



ship' was used for the first time in reference to the one-year period spent under the supervision of a registered optometrist. (Less than one year later, an amendment to the Act changed the term from 'preceptorship' to 'apprenticeship'.

The Society was still allowed to make by-laws as first formulated in 1927. In addition, the by-laws could legislate

- (d) the remuneration, if any, to be paid to the members of the board of examiners or the members of the council or both.

As well, the prohibition of bylaws that affect the employment of optometrists which, implemented in 1927, was now removed.

This Act brought in a new clause that applied to a situation where an optometrist had not been registered with the Society as an optometrist for a period of five years. In this case, the council was given the power to re-issue the certificate of registration "upon such conditions as it may deem fit and as are approved by the society at a general meeting . . .".

The Act also instituted procedures by which an optometrist could appeal a revocation of the optometrist's certificate of registration. The optometrist was no longer entitled to a public hearing but did obtain the right to be heard by council and to produce witnesses in his defense. If unsuccessful in his appearance before council, he could appeal to the Court of Queen's Bench within six months of the revocation. He was also given access, upon notice, to the evidence against him in the hands of the council.

One final change is worthy of note at this time. The legislation finally recognized that some optometrists were entitled to use the 'Doctor' title. Now, optometrists who had received the "degree of 'doctor' from a school of optometry approved or recognized by the Senate of The University of Manitoba . . ." would be allowed to use the title if ". . . at the same time he displays or makes use of the word 'optometrist' immediately following his name."

### **The Act of 1966**

This Act revised the entire section pertaining to charges which may be heard against a Member of the Society, which had recently been changed in 1957. The Council, at its discretion, was empowered to form a committee of three of its Members to hear the charges against the Member. Upon completion of a hearing, Council could

- (a) reprimand the Member; or
- (b) suspend or revoke the certificate of registration of such Member for such period of time as the Council considers appropriate.

The Member charged was given the right to be represented by Council at his or her hearing. Testimony of witnesses was to be under oath and full

rights to cross-examination of all witnesses was granted to both sides. The Council was given the right to request, from the Court of Queen's Bench, subpoenas of witnesses and evidence. The Member, whose licence has been revoked or suspended, retained the right to appeal the decision to the Court of Queen's Bench within one month of the decision by Council. An important provision of these amendments was that "no action shall be brought against the Council or the committee or any Member thereof for anything done in good faith under this Act. . . ."

### **The Act of 1970**

This Act changed the requirements for the right to practise so that no longer would a one-year apprenticeship be necessary. This change, no doubt, reflected the improvements in the educational programme which was now being provided for undergraduates in optometric programmes.

The only other significant change that came from this Act was the provision that the Council, if it felt that a charge against a Member was trivial or did not deserve a reprimand, was now given the power to dismiss the charges, a power that it did not have under law prior to this time.

### **The Act of 1971**

The only change that occurred at this time was the lowering of the minimum age for an applicant for practise in Manitoba to the age of 18. This coincided with the age of majority being reduced to this level by provincial legislation.

### **The Act of 1972**

Only one change occurred in 1972, but an important one it was. This allowed the use of the title 'Doctor' by all optometrists (regardless of whether or not they had had the doctorate conferred upon them by an educational institution) registered in Manitoba on 01 May, 1972. This 'grandfather' clause corrected the anomaly enacted in 1957 which created two classes of optometrists — those who were 'Doctors' and those who were not. The use of the 'Doctor' title, however, was allowed *only* if the word 'optometrist' was used immediately preceding or following his or her name.

### **The Act of 1983**

This Act represents the most significant changes that have occurred in 75 years affecting Optometry in Manitoba. First and foremost, the definition of Optometry was revised from the historical definition to reflect the many advances that Optometry has made over the years. The 'Practice of Optometry' is now defined as

the science related to the assessment of the health of the eye, its related structures and environment, and the diagnosis and treat-



ment of anomalies affecting the functional status and efficiency of the visual system including

- (i) the qualitative and quantitative characteristics of the refractive, accommodative, and sensory ocular motor and perceptual components,
- (ii) the employment of preventative, corrective, or rehabilitative procedures,
- (iii) the detection of disease evident in the examination process, and
- (iv) the offering of advice, consultation, and counselling.

Compare this with the very narrow (albeit reflective of contemporary Optometry) definition of the 1909 Act mentioned at the beginning of this article. In addition to these new clauses, persons were deemed to be practising Optometry if

- (a) he engages in the examining, refracting . . . or improving the human visual system by the employment of any means including the use of any computerized or automated measuring devices, or the fitting and adaptation of lenses or frames for the aid thereof; or
- (b) . . . he alleges . . . that he is . . . qualified, able, or willing to examine, diagnose, advise upon, prescribe for, prevent or treat with the intent to induce people to patronize him for the examination . . . of the human visual system, or
- (c) he employs in the examination . . . , any means, including the use of topically applied diagnostic pharmaceutical agents, for the measurement, improvement, or development of any or all functions of human vision . . . ; or
- (d) he sells or offers for sale, otherwise than on prescription, spectacles or contact lenses containing any lens of spherical, prismatic, or cylindrical power, for the aid of human vision . . . ; or
- (e) he prescribes or alters the prescription for lenses . . . or prescribes the use of any optical device in connection with ocular exercises, orthoptics, vision therapy or other physical means to correct defects or adjust human vision.

Thus, in one step, Optometry made a quantum leap from a narrow, out-dated definition to a modern and, perhaps, futuristic view of the practice of Optometry.

The Council's composition was altered by the replacement of one of the elected optometric Members by a lay Member appointed by the Lieutenant-Governor-in-Council. This Member serves to represent the public's interest in the practice of Optometry in Manitoba. A lay Member was also appointed to the Board of Examiners to provide additional assurance that the public will receive optometric services from competent practitioners.

Of great significance to Canadian Optometry is the provision that optometrists who have satisfied the Board of Examiners that they are competent in

ocular pharmacology as a result of the completion of a course in pharmacology in a School of Optometry, would be allowed to use certain diagnostic pharmaceutical agents. Additionally, the Council of the Society was given the authority to provide a course in ocular pharmacology to those optometrists who wish to use these agents. This course, as well as the designation of the agents and their dosages, are to be determined in consultation with the College of Physicians and Surgeons of Manitoba. The College, in fact, was instrumental in influencing the government in favour of optometric drug legislation.

Other significant, but less important, changes were included in this landmark legislation. For the first time, a 'discipline committee' (although previously included in the Society by-laws) was formulated in law, with lay representation to insure public access. The Council was now able to fine a Member for a breach of the Act, Regulations, or By-Laws in addition to its previously established rights to reprimand, suspend or revoke registration, or to dismiss the charge. The penalties for practising Optometry without a licence were increased for the first time in three-quarters of a century. Conviction on a first offence was liable for a fine of between \$500-\$1000, or 6 months in jail, while a second conviction made one liable for a fine of from \$1000 to \$2000, or 12 months in jail, or *both*. Finally, *prima facie* proof of practising Optometry, now included, in addition to the 1909 provision of 'the use of test lenses or trial frames', the use of

- (b) instrumentation to measure or refract the human visual system; or
- (c) instrumentation to detect or diagnose defects of the human visual system . . .

Like all things, some concessions often have to be given in order to make gains. In the case of this legislation, that which was given up was minor when compared to that which was gained. At the insistence of the government, the legislation included a clause which states

. . . that every member of the Society shall observe the usual and customary procedures in consulting with or referring to a duly qualified medical practitioner a suspected medical problem where the consultation or referral is in the best interest of the patient.

Although some may say that this is understood in the practice of Optometry, this clause assured physicians that referrals would be made and was much preferred to the clause on mandatory referral that was first proposed. The other major concession made was to include a clause indicating that nothing in the Act would pertain "to ophthalmic dispensers to the extent that they are authorized to practise



under the provision of The Ophthalmic Dispensers Act." Since the Ophthalmic Dispensers Act does not allow opticians to do eye examinations, it was felt that, even with this clause, opticians could be prevented from practising Optometry without a licence.

Thus it can be seen that the Optometry Act in Manitoba has undergone substantial changes since its institution over 75 years ago. Many of the decisions have helped Optometry make the vast

strides that it has over the years in Manitoba and in Canada. It is my hope that changes will come in the future that will further improve the practice of Optometry in the country.

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### **Editorial (Concluded from p. 151)**

optometrists and, therefore, no legal qualifications in optometry; anyone can call himself an optometrist. I hope that the EEC will make rules which will promote full optometric education and lead to adequate laws for the registration and control of optometry."

Fortunately, Italy is the only EEC nation which has not given legal status to Optometry. However, this does make the task of the IOOL more difficult in its attempts to establish a legal status for Optometry in Third World countries. Two developed countries in which Optometry has been legally banned are Israel and Greece, a very strange attitude because optometrists do practise in both countries. Stranger still because, in Israel, optometrists have access to the country's hospitals.

The IOOL has prepared a minimum course outline for the acceptance of optometric credentials in developing countries. Officials of the League act as consultants and lobbyists for local optometric groups who have approached their governments for statutory recognition. Model statutes, legal opinions and, in some cases, personnel to help establish these new schools are included in these discussions.

In some areas, success may be possible due to the lack of ophthalmologists, the cost of their training and the sheer numbers of people requiring vision and eye care. In fact, some ophthalmologists view favourably the development of these "Phase I" Optometry schools.

Canada is a member nation of the IOOL. We must do our share, individually and collectively, to promote Optometry through the League and by providing our services on screening projects sponsored by service clubs, Optometry schools or church groups in the Third World countries.

What better way to maintain our professional freedom than through a strong Optometry world-wide?

**GMB**

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