

**SPECIAL EDITION: NEW BRUNSWICK COURT OF APPEAL DECIDES THAT
MASSAGE THERAPY IS A MEDICAL SERVICE!**

Welcome to this special issue of the Atlantic College of Therapeutic Massage News!

On February 26, 2004 the New Brunswick Court of Appeal released its decision in the case of AXA Insurance v. Brenda Rolfe. This case was heard on October 23, 2003 and the decision has been anxiously awaited by the insurance industry in general and by massage therapists in particular.

This case began its journey through the Court system on March 6, 2002 when a Judge in a Small Claims case in New Brunswick awarded Brenda Rolfe, her claim of \$996.00 for massage therapy treatments which had been prescribed by her physician. The case was contested by the Defendant, AXA Insurance Company. AXA took the position that it did not have to pay for the treatments because its own physician had given an opinion that "I don't think much will be achieved by additional treatments".

The Judge ruled that massage therapy fell within the first category of expenses covered under Section B of the Standard Automobile Policy and therefore did not require the opinion of the physician of the insured person's choice (AXA in this case) in order to be paid for under Section B. He ordered AXA to pay the full amount of \$996.00, plus costs of \$750.00.

On September 24, 2002 AXA Insurance Company launched an appeal of the decision. AXA had hoped to overturn the decision and relegate massage therapy to the third category of expenses, in which both the opinion of a physician of the insured person's choice AND the opinion of the insurance company's physician would be required in order that the expense be paid.

As stated by the Honourable Chief Justice Drapeau on behalf of the three (3) Judges of the New Brunswick Court of Appeal in his 33 page decision dated February 26, 2004:

“The precise issue that this Court must resolve is whether Subsection 1(1) of Section B in New Brunswick’s Standard Automobile Policy excludes recovery of reasonable expenses for massage therapy treatments prescribed by the insured’s physician and rendered by a professional massage therapist, if the therapy is not, in the opinion of the insurer’s medical advisor, essential for treatment, occupational retraining or rehabilitation”

and: “The outcome of the present appeal turns on whether massage therapy treatments administered in the circumstances mentioned above constitute Category 1 “medical” services. Like Justice Riordon of the Court of Queen’s Bench, who authored the decision under appeal, and the Small Claims Adjudicator whose decision he upheld, I conclude that they do.”

Massage therapists were represented at the Court of Appeal through presentations by

lawyers for the Association of New Brunswick Massage Therapists and the N.B. Massotherapy Association, both of whom had been granted intervener status. As stated in the decision:

“The interveners are provincial associations representing professional massage therapists. They rightly recognize that AXA’s interpretation would invest the insurer’s medical advisor - an individual who need not be independent of the insurer - with a veto power over access to Section B funding for their services.”

In recognizing the importance of this case to massage therapists and to a number of other interested parties, the New Brunswick Court of Appeal reviewed 28 precedent cases from other Courts, as well as 7 legislative Acts. The Court of Appeal stated:

“Massage therapy treatments consist primarily of manual manipulation of the soft tissues of the body for remedial purposes. Physicians are more and more disposed to prescribe professional massage therapy as part of the overall medical response to accident-related injuries to the soft tissues of the back. All recognize that massage therapy is not a quick fix; indeed, it typically involves numerous treatment sessions and can prove to be quite expensive. Those observations explain, at least in part, why the issue raised by the present appeal, one of first impression for this Court, is of interest to a host of stakeholders in the field of auto insurance, including coverage providers, consumers and professional massage therapists.”

and concluded:

“The expression “medical services” is commonly understood to describe a generic class of services whose common aim is healing. Unarguably, professional massage therapy treatments prescribed by a physician come within that description.”

This decision by the New Brunswick Court of Appeal is a significant step forward in the recognition of massage therapy as part of the overall medical treatment plan for persons recovering from injuries. AXA Insurance will have 30 days in which to decide whether to ask the Supreme Court of Canada to hear an appeal of the New Brunswick Court of Appeal decision.

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