



New Brunswick
Massotherapy Association
Association de massothérapie
du Nouveau-Brunswick

There are no massage therapy laws in New Brunswick ... or are there?

Presented to the NBMA Annual General Meeting on May 24, 2008 by
Robert B. Jackson

N.B. Laws affecting massage therapists

Topics to be covered today:

1. Law and ethics
 2. Human Rights
 3. Obligation to help
 4. Mandatory reporting of abuse or neglect
 5. Age of consent for medical treatment
 6. Incapacitated clients
 7. Workers' Compensation
 8. Privacy laws
 9. SOCAN
 10. Motor Vehicle Insurance and the AXA case
-

N.B. Laws affecting massage therapists

Before we look at laws, let's look at ethics.

As a massage therapist, you need to act ethically because:

1. You are in a position of trust.
2. You are accountable to yourself, employees, colleagues and society.
3. You have made a commitment to the public good.
4. To avoid sanctions, litigation.



N.B. Laws affecting massage therapists

Examples of ethical issues and dilemmas:

1. Practicing beyond your scope



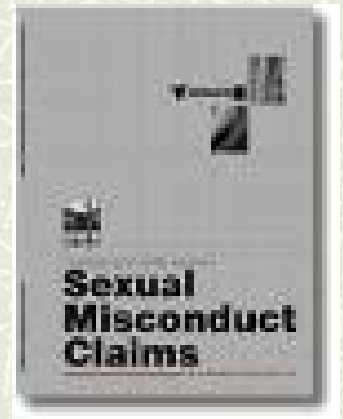
2. Breach of confidentiality



N.B. Laws affecting massage therapists

Examples of ethical issues and dilemmas:

3. Sexual misconduct



4. Misrepresenting your educational status



N.B. Laws affecting massage therapists

Examples of ethical issues and dilemmas:

5. Financial (not claiming cash revenue)



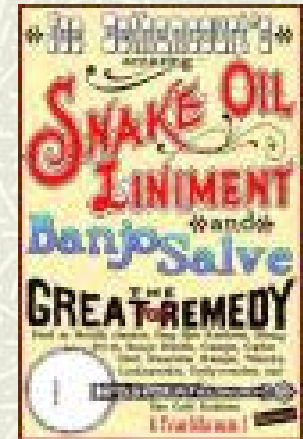
6. Exploiting a power imbalance



N.B. Laws affecting massage therapists

Examples of ethical issues and dilemmas:

7. Misleading claims of ability to heal or cure



8. Dual relationships



N.B. Laws affecting massage therapists

Examples of ethical issues

9. Misleading advertising



10. Human rights violations



N.B. Laws affecting massage therapists

Examples of ethical issues and dilemmas:

11. Treating family members (with an insurance plan paying for the treatment)

Immediate family – children, mother, father, sister, brother, spouse’s parents, brothers and sisters.

“Spouse” includes same-sex and common law spouse.

Also, cannot treat other persons living in your primary residence.



12. Making improper referrals

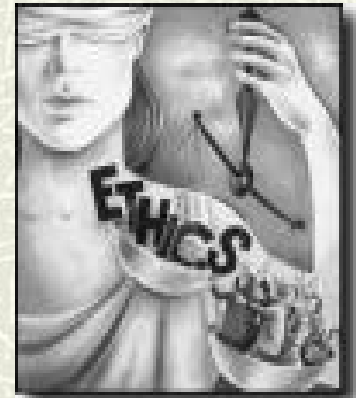


N.B. Laws affecting massage therapists

Law and Ethics – Is there a difference?

Ethics – is all about group values, principles, rights and obligations – for you, as this applies to the massage therapy profession.

Law – principles and regulations established by government/Courts, applicable to people and enforced by Judges.



N.B. Laws affecting massage therapists

Can something be legal, and yet unethical?

1. Slavery in North America in the 1800's was legal.
 2. Women were not "persons" until 1929.
 3. Native people could not vote until 1960.
 4. Patients in mental institutions did not have the right to vote until 1988.
 5. Prisoners did not have the right to vote until 2002.
 6. In 2008 we still have the right to use plastic grocery bags; we have the right to not recycle and we can be environmentally unfriendly.
-

N.B. Laws affecting massage therapists

If there is no massage therapy law in your province, are you exempt from being sued for ethical violations?

No, you are not exempt. You will be judged by your association or in civil court, on the basis of the prevailing standards in your profession.



N.B. Laws affecting massage therapists

Human Rights Act – What are the prohibited grounds of discrimination?

1. Race and colour
2. Religion
3. National origin, ancestry and place of origin
4. Age
5. Physical or mental disability
6. Marital status
7. Sexual orientation
8. Sex (including pregnancy)
9. Social Condition (January 31/05)
10. Political beliefs or activity (January 31/05)



N.B. Laws affecting massage therapists

Could you refuse to treat:

1. All teachers?
 2. All members of the Canadian Armed Forces?
 3. All government employees?
 4. All members of the Rotary Club?
 5. All lawyers?
-

N.B. Laws affecting massage therapists

What is the parable of the Good Samaritan?

In many countries, including Italy, Japan, France, Spain, Germany, Holland, Greece and Turkey, (and Quebec) just to name a few, there is a statutory duty to rescue persons who are in life-threatening situations.

In Canada, however, there are no such federal or provincial laws that require people to help others.



N.B. Laws affecting massage therapists

British Columbia, Ontario and Nova Scotia have legislation protecting good Samaritans.

In N.B. you are not required to help, unless you have a special relationship (employer, taxi driver, hotel owner, etc.) or you have placed the person in danger.

What is your responsibility to clients in your clinic and/or during your treatment of them?

N.B. Laws affecting massage therapists

Legal Obligations of Professional Persons in NB Regarding Children

Any person with information causing him or her to suspect child abuse or neglect must inform the Minister of Social Development.



A professional person must inform the Minister.

If the professional does not inform the Minister, he/she may be prosecuted any time within six years after the incident; may also be sued civilly and be disciplined by his/her organization.

N.B. Laws affecting massage therapists

Legal Obligations of Professional Persons in NB Regarding Elderly or Disabled Adults

Professional person may disclose information to the
Minister of Social Development

Victim must be 19 or over and disabled, or 65 or over
and:

- not able to care for him/herself or refusing or
unable to do so; or
- is a victim of physical or sexual abuse or mental
cruelty

So, for your 60 year old client who is not disabled, but
is being physically abused, you cannot report the
matter to the Minister?

N.B. Laws affecting massage therapists

Legal Obligations Regarding Treatment of Minors in NB

Age 16, not 19, is the age of consent for medical treatment.

If under 16, a person can consent with the proper opinion from a medical practitioner, dentist, nurse practitioner or nurse.

N.B. Laws affecting massage therapists

Legal Obligations Regarding Incapacitated Persons
(who cannot give consent)

Power of Attorney for Personal Care

- must have a copy of it in file

- should have opinion from doctor that person incapable of giving consent

What if the person does not have a Power of Attorney document? Is there a hierarchy of persons who can give consent? (see Human Tissue Gift Act as a possible guideline)

N.B. Laws affecting massage therapists

Workplace, Health, Safety and Compensation
Commission (WHSCC)

Otherwise known as “Workers’
Compensation”

http://www.whscc.nb.ca/index_e.asp

First aid kits, first aid providers and first aid
rooms.



N.B. Laws affecting massage therapists

Personal Information Protection and Electronic Documents Act

As of January 1, 2004 applies to all commercial activity in Canada, unless a province has similar privacy legislation.



All businesses must follow 10 principles:

1. Accountability
 2. Identifying purposes
-

N.B. Laws affecting massage therapists

3. Consent
 4. Limiting Collection
 5. Limiting use, disclosure and retention
 6. Accuracy
 7. Safeguards
 8. Openness
 9. Individual access
 10. Challenging compliance
-

N.B. Laws affecting massage therapists

Secure handling of confidential information and corporate records is no longer just a prudent choice; it's the law.

Active information management programs should be a priority for massage therapists. They must develop guidelines to determine how information is protected on site, in transit and upon destruction.

N.B. Laws affecting massage therapists

For example, principle 4.5.3 of PIPEDA states that “personal information that is no longer required to fulfill the identified purposes should be destroyed, erased, or made anonymous.” Organizations “shall be open about their policies and practices with respect to the management of personal information. Individuals shall be able to acquire information about an organization’s policies and practices without unreasonable effort.”

N.B. Laws affecting massage therapists

Penalties for non-compliance range from \$10,000.00 for summary convictions to \$100,000.00 for indictable offences.

Punitive damages for individuals embarrassed or humiliated due to a security breach are unlimited.

N.B. Laws affecting massage therapists

Personal Information Protection and Electronic Documents Act

Designate a privacy official in your office and make the name known internally and externally.

Review current collection of private information including how and why it is collected, where and how is it secured, who has access to it, to whom is it disclosed, and when is it destroyed?

N.B. Laws affecting massage therapists

Develop written policies and procedures regarding personal information.

Inform and train staff on policies and procedures.

Make the information available to the public through websites, brochures, etc.

<http://www.privcom.gc.ca/>

N.B. Laws affecting massage therapists

SOCAN – Society of Composers, Authors and Music Publishers of Canada

If you play background music in your clinic, or if your telephone answering system plays music while callers wait, or if you use music in a fitness class, you are required to pay an annual fee to SOCAN. For background music the fee is \$94.51 per year.

N.B. Laws affecting massage therapists

Summary of direct and indirect regulation of
massage therapy in New Brunswick:

1. NBMA and its code of ethics ([here](#))
 2. PIPEDA privacy legislation ([here](#))
 3. SOCAN ([here](#))
 4. Human Rights Act
-

N.B. Laws affecting massage therapists

Summary of direct and indirect regulation of massage therapy in New Brunswick:

5. Family Services Act re: reporting of child abuse, elder and disabled abuse.
 6. Medical Consent of Minors
 7. Powers of Attorney – incapacitated clients
 8. WHSCC – First Aid ([here](#))
-

N.B. Laws affecting massage therapists

You have been hurt in a car accident.

Your doctor recommends that you see a registered massage therapist for treatment, as part of your rehabilitation.

You are concerned about automobile insurance laws in New Brunswick. You have some questions:



N.B. Laws affecting massage therapists

1. Will my automobile insurance policy cover the cost of massage therapy?

Yes. All New Brunswick standard automobile insurance policies include “Section B” benefits, which will pay for massage therapy.



N.B. Laws affecting massage therapists

2. Is there a limit on the amount I can claim under Section B?

Yes. That limit remains at \$50,000.00, for all reasonable expenses for necessary medical, surgical, dental, chiropractic, hospital, professional nursing, ambulance service and other services which in your doctor's opinion are essential for your treatment, occupational retraining or rehabilitation.

N.B. Laws affecting massage therapists

3. So, is massage therapy a medical service?

Yes. In February 2004 the New Brunswick Courts ruled that it is, when prescribed by a doctor.

4. What about the \$2500.00 cap on automobile insurance claims?

That cap came into effect on July 1, 2003 and does not apply to the Section B benefits, which still have a \$50,000.00 limit. It applies to minor injuries – these are injuries which do not result in permanent serious disfigurement or permanent serious impairment of an important bodily function.

N.B. Laws affecting massage therapists

5. How long can I continue to use the Section B fund?

For up to 4 years after your accident.

6. Can my insurance company stop paying my massage therapist?

No. As long as your doctor prescribes massage therapy for your rehabilitation, your insurance company must continue to pay, up to the amount and time limits mentioned above.



N.B. Laws affecting massage therapists

7. Will I have to pay my massage therapist first, or will my insurance company pay directly?

That will depend on the administrative arrangements in your massage therapist's office. Most massage therapists have a system of direct billing to insurance companies, but you should check with your massage therapist.

N.B. Laws affecting massage therapists

8. Will my insurance premiums increase if I make a claim under Section B for massage therapy?

If you were not at fault in the accident, there will be no effect whatsoever on your insurance premiums. The Section B fund is intended to help you in your recovery, without penalizing you when the other driver is at fault in the accident. If you were at fault, your premiums will increase in any event when your claim is processed. Making a claim under Section B will not add anything further to your premium increase.

N.B. Laws affecting massage therapists

As a massage therapist, will you be affected by the “no frills” insurance policy which came into effect on January 1, 2005?

No, because it was eliminated in December 2007.

Previously, the \$50,000.00 limit under Section B was reduced to \$25,000.00.

Income replacement was reduced from \$250.00 per week to \$125.00 per week. The deductible was \$1,000.00.



N.B. Laws affecting massage therapists

AXA Insurance Company vs. Brenda Rolfe.

Decision of NB Court of Appeal February 26, 2004.

April 26, 1999 Ms. Rolfe from Miramichi, NB was involved in an MVA. To May 10, 2000 she received 61 MT treatments. On June 28, 2000 AXA's medical advisor looked at her case and said "I don't think much will be achieved by additional treatments".



N.B. Laws affecting massage therapists

AXA then refused to pay for Ms. Rolfe's additional treatments after June 28, 2000, saying that it was not mandatory to pay for them, since MT was not a necessary medical service. So Ms. Rolfe sued AXA for \$966.00.

AXA lost the Small Claim trial and appealed the case to a 'real' Judge.

On March 6, 2002 AXA lost again. They paid Ms. Rolfe the \$966.00 plus costs of \$750.00, for a total of \$1416.00. But it wasn't over yet.



N.B. Laws affecting massage therapists

AXA wanted to appeal the case and had until April 6, 2002 to do so. But they missed the 30 day time limit. On August 21, 2002 they went to Court and obtained permission to appeal.

On January 13, 2003 the ANBMT and the NBMA applied to Court and were given permission to intervene in the case, to argue on behalf of their members.

N.B. Laws affecting massage therapists

On October 23, 2003 three Judges of the NB Court of Appeal heard AXA's appeal, and on February 26, 2004 made a decision.

They decided that MT is a necessary medical service when a client's doctor prescribes it. Therefore the insurance company cannot veto it by saying it is not essential for rehabilitation of the client.





N.B. Laws affecting massage therapists

Thank you!
