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## **I. INTRODUCTION**

[1] Marc Genest was an employee of Bell Mobility in June 1995 when a new group insurance plan for employees came into effect. The Complainant, who is homosexual, claimed that the Respondent denied him the right to purchase life insurance for his same-sex spouse. Marc Genest believes that, in doing so, Bell Mobility discriminated against him by treating him in an adverse fashion in the course of employment because of his sexual orientation (homosexual) and marital status (same-sex relationship) contrary to section 7 of the *Canadian Human Rights Act* (the "Act").

## **II. EVIDENCE**

### **A. Complainant's evidence**

#### **(i) Marc Genest**

[2] Marc Genest was hired by Bell Mobility in March 1994 as a full-time temporary employee. He held a position at 1425 Trans-Canada Highway, Dorval. He achieved permanent part-time status on June 28, 1995.

[3] He was part of a group of about 30 employees assigned as customer service representatives under the supervision of Karine Mariasine. The customer service department occupied one part of a floor in the building and was divided into workstations in small cubicles. Another part of the floor was occupied by about 12 employees in the collections department. Executives occupied the offices near the employee work areas. The ground floor was occupied by the human resources department and administration department. Approximately 80 people working for Bell Mobility were in this building. About 30 of them had disclosed their sexual orientation, but it was not a subject that was discussed. He therefore did not reveal his orientation except for one instance under very specific circumstances. In April 1994, he was in training for a month under an instructor. He had been very upset after his partner was involved in a car accident, and he confided in his instructor.

[4] Marc Genest related that in 1995 he had been in a relationship with a spouse of the same gender for almost eight years.

[5] After becoming a permanent employee in June 1995, his employer gave him a brochure with information on the group insurance plan for Bell Mobility employees and instructed him to indicate his insurance selections by filling out the insurance options form attached to the brochure and send it to the human resources department via internal mail. He stated that he did not recall whether information sessions were given to employees for explaining the group insurance plan to them.

[6] After reviewing the brochure, Marc Genest believed that it provided no information on purchasing life insurance for same-sex spouses.

[7] He therefore made an appointment with Lucie Laroche in the human resources department to obtain more information and complete the insurance options form (Exhibit P-4) to make sure he was making well-informed selections. That meeting was held in Lucie Laroche's office around 11:00 a.m. on August 28, 1995.

[8] The witness stated that he informed Lucie Laroche that he had a spouse of the same sex and that he did not understand why the group insurance plan allowed an employee to insure his/her same-sex spouse for accidental death and dismemberment but not for life insurance. At the witness's request, Lucie Laroche told him that she had been living with her husband for four years. He retorted that it was unthinkable that after only four years of living together she could purchase life insurance for him when he himself, despite living with his partner for over

seven years, could not do so. Lucie Laroche listened carefully to his arguments, but told him that he could not obtain life insurance for his spouse because he was living with a same-sex spouse.

[9] He recalled that Lucie Laroche told him that he could inform his supervisor, Karine Mariasine, about his complaints. She told him that nothing could be done to rectify the situation and to talk about it to Sylvie Sauvé, who was also a supervisor. The latter told him that she did not have the same problem as he had because in her case her female partner was also a Bell Mobility employee, which allowed her to be a beneficiary of her partner's life insurance and vice versa. Marc Genest realized that he could not enjoy the same prerogatives as his supervisor because his partner was not a Bell Mobility employee. Even though he believed he was being adversely differentiated against, he did not pursue the matter for fear of losing his job, which had only just recently become permanent.

[10] Marc Genest explained the selections he made when filling out his insurance options form (Exhibit P-4). Some of the options he selected were paid by the employer and the rest by him. He decided to become a member of the health insurance plan for himself alone because he did not see the need to register his spouse as well, who did not have the privilege of group insurance.

[11] The Complainant decided to take dental insurance for both himself and his partner. He selected the life insurance option for himself that represented twice his annual salary. He acknowledged that he designated his mother as the beneficiary of that insurance. The Complainant selected accidental death and dismemberment insurance (AD&D) for himself at the rate of five times his annual salary. Since his partner had been in a serious car accident in 1994 without being injured and that his work as real estate broker required the constant use of his vehicle, the Complainant selected AD&D for his spouse in the amount of \$200,000. He felt that, in the event of the accidental death of his spouse, this amount would allow him to deal with the financial consequences with no problem. Finally, the Complainant purchased long-term disability insurance. This option was not available to his partner.

[12] Marc Genest also indicated his partner as a dependant on the form. When he finished filling out the options form, he sent it via internal mail to the human resources department, which sent the Complainant a confirmation sheet (Exhibit P-6) showing that his insurance plan matched the options he had selected for the period of June 29, 1995 to May 31, 1996. The witness stated that he did not recall renewing these insurance benefits in 1996 and 1997 because his insurance options stayed the same.

[13] The witness stated that, at that time, his spouse had \$50,000 in life insurance, for which he was the beneficiary. He wanted to purchase life insurance for his

spouse for the maximum amount provided for by the group insurance plan to ensure his financial security in the event of his spouse's death.

[14] Marc Genest related that in 1997 his spouse, employed by Royal LePage as a real estate broker, lost his employee status when he became self-employed. On the due date for paying his \$800 life insurance premium, his spouse could not meet this obligation. His spouse's father agreed to pay the premium, provided that he would be made the beneficiary of the policy. His spouse's father became the beneficiary of the policy.

[15] The witness mentioned that his spouse's father, an Egyptian, never accepted his son's homosexuality.

[16] The witness stated that between August 28, 1995, when he met with Lucie Laroche, and June 15, 1998, the employer did not provide its employees with any information on the group insurance plan or information sessions to explain changes to the group insurance plan. The Complainant, for his part, acknowledged that he had no discussions during that time with Lucie Laroche dealing with the situation.

[17] Marc Genest recalled that on June 15, 1998 Lucie Laroche held an information session to explain to employees the changes to the group insurance plan. She stated that same-sex spouses were now eligible for all insurance options in the group insurance plan. The Complainant publicly stated [translation] "What happens to me now that my spouse is dead?" (Volume 1, page 127). Lucie Laroche replied that he could find consolation in the fact his struggles would benefit other employees in the same situation.

[18] After his spouse died on February 16, 1998, he told Lucie Laroche about it. He was very surprised that she told him on the spot that his spouse had no life insurance coverage. She then informed him that he would have three days of bereavement leave.

[19] Marc Genest was asked to review the group insurance contract with Aetna Canada (1995) for Bell Mobility employees (Exhibit P-2) and an excerpt from that contract (Exhibit P- 3). He stated that he had never seen them before.

[20] The witness was affected by the death of his partner and had great difficulty doing his work; he felt a pressing need for psychological help. He asked the human resources department to provide him with the services of a psychologist through the employee assistance program (EAP) set up by the company and to which employees financially contributed. It was not until a year later that he was able to meet with a psychologist, who was of no help.

[21] Marc Genest stated that starting in March or April 1998, after his spouse's death, he increased his requests to Angello Santullo of the human resources department for a copy of the group insurance contract. He told him that he did not have a copy of the contract. Then in September 2000, he contacted Julie Walbrecq, also in human resources, but his efforts were again unsuccessful. The document in question was obtained through the inquiry in connection with this complaint.

[22] Marc Genest was renting a house in Île Perrot with his spouse. They were joint owners of a sailboat. The Complainant owned his vehicle while his spouse used a rental vehicle. Through his work as a real estate broker, his spouse had a net annual income of approximately \$70,000. However, the witness recalled that, as of July 1997, his spouse slowed his pace of work due to fatigue and a drop in the real estate market. The Complainant stated that his spouse previously had excellent health. Although not a serious athlete, he sailed and went dancing three times a week. He expended a great deal of energy at work. In September 1997, after his spouse returned from a trip to Florida, he noticed that his spouse was again affected by fatigue. He advised him to see the doctor, but he did not go. He was no longer working and his health was deteriorating; his weakened state required him to be hospitalized on October 27, 1997 at the Montreal General Hospital. After numerous examinations, his spouse was diagnosed HIV-positive. He was able to leave the hospital for the Christmas holidays and was then admitted to a home-care centre and passed away on February 16, 1998.

[23] Marc Genest disclosed that during his spouse's illness he himself had to cover all the expenses that they had formerly shared, including the housing expenses, and be away from work for six weeks. In addition, even though it was not recommended, he obtained some marijuana to stimulate his spouse's appetite. At the time of his spouse's death, his financial situation was shaky and everything worsened after his death. He had to use the \$5,000 line of credit he had obtained. He put \$20,000 on credit cards. He had to pay \$4,000 to clear his spouse's debt. His mother advanced him \$8,000, which he has not repaid. He had an annual income of approximately \$23,500. In addition to the trauma of losing his spouse, Marc Genest stated that the weight of his financial obligations caused him a great deal of stress and anxiety. The Complainant stayed in the residence he had shared with his spouse in Plateau Mont-Royal until July 1999 because he could not bring himself to deal with it any sooner. He rented an apartment for \$700 a month plus heat. In August 2001, he rented a less expensive apartment and in 2002 his financial situation forced him to rent a room in a friend's home for three months. When he returned to work in October 2002, he rented an apartment for \$550 a month.

[24] In October 1998, he suffered hyperventilation, which required him to be hospitalized for a day and be away from work for several weeks. In October 1999,

he suffered severe depression resulting from incomplete mourning. This required him to be away from work for several weeks.

[25] Marc Genest quit his job with Bell Mobility in February 2001 and was unemployed for one year. He had to liquidate all his assets to provide for his needs. He started working again in the fall of 2002 as a representative with a trust company with yearly earnings of \$28,000. The Complainant had gone to school for tourism, specifically as a travel agent and tour guide. He also had training as a real estate agent and broker.

[26] The witness stated that he was unaware that a life insurance beneficiary must claim the benefit within six months after the death of the insured.

[27] In an email to Julie Walbrecq (Exhibit I-1, Tab 7) on September 11, 2000, the witness wrote that the information meeting in 1998 attended by about 20 people was led by Geneviève Britt from the human resources department. The purpose of that meeting was to inform employees of changes made to the group insurance plan.

[28] The Complainant acknowledged that on September 26, 2000 he sent a letter to the Canadian Human Rights Commission. He wrote that his not being able to purchase life insurance for his spouse in 1995 was overt discrimination. In his testimony, he maintained that he had complained to Lucie Laroche, Karine Mariasine and Sylvie Sauvé, but conceded that he did not use the term "overt discrimination". He stated that he had indicated that the situation he was faced with made no sense at all and was unfair.

[29] Marc Genest sent Aetna Canada a formal notice on February 15, 2001 (Exhibit I-1, Tab 9) in which he claimed payment of \$20,000 due to the death of his spouse on February 16, 1998. He claimed that the \$20,000 he was claiming was the basic life insurance amount. He sent this formal notice because, despite repeated requests, he was unable to obtain a copy of the group insurance contract.

[30] On April 29, 2002, the witness communicated his version of the facts in writing to the Canadian Human Rights Commission. He said that, during his meeting with Lucie Laroche in August 1995, she had put an "X" on the page dealing with life insurance in the brochure explaining the group insurance plan.

[31] He added that Lucie Laroche had told him that basic life insurance coverage for a spouse of the opposite sex was \$20,000, which could be increased by paying additional premiums. However, this was not available to him under the circumstances.

[32] In that same document, the Complainant revealed that in the fall of 1999, during a meeting with Geneviève Britt, Director of Human Resources, she indicated to him that in 1995 it would have possible to insure his spouse's life. It simply involved identifying him with his last name and the feminine version of his spouse's first name.

[33] At that same meeting, he informed Geneviève Britt that he needed help because he was depressed and felt discouraged by life. Geneviève Britt referred him to a psychologist who told him he should go directly to emergency at the hospital. He refused to go because he did not believe that the psychologist's recommendation was valid. He did not consider it appropriate to keep going back to someone in the human resources department to use the employee assistance program.

[34] In that document, Marc Genest stated that his partner was a member of a health insurance plan through his employer. He conceded in cross-examination that that was not the case. The witness stated that the "explanatory brochure" about the group insurance plan defined the word spouse without distinction as to same-sex spouses.

[35] The witness stated that in 1995 Bell Mobility employees generally did not publicly acknowledge their sexual orientation for fear of offending people or jeopardizing their chances for promotion. He claimed that, at that time, only three out of the 30 customer service representatives were homosexual. He denied that homosexual people joked about homosexuals, even during small theatre performances at social evenings.

[36] In cross-examination, the Complainant acknowledged that his partner's annual income, which he had confirmed as being around \$70,000 net, had instead been approximately \$40,000 gross for each of 1995 and 1996 and lower in 1997. He believed that, during those years, his and his partner's financial situations were good. In cross-examination, he conceded that his partner had filed an assignment in December 1996 and that he was informed about it in May 1997. He said that he had been very surprised because his partner had never told him about his financial difficulties and was frustrated that his partner had acted on his father's advice, without discussing it with him first.

[37] Marc Genest stated that, when his partner returned from a trip to Florida in September 1997 to visit his mother, he noticed that his partner had lost a great deal of weight and was having difficulty getting around. He then suspected him of having AIDS. He was unable to specify when he contracted the disease and he had never discussed it with him.



[38] Marc Genest revealed that in December 1996 his spouse told him that he had been around. The Complainant stated that he had understood what he meant and did not want to know any more about it.

[39] Marc Genest claimed that, as far as he knew, before his hospitalization in November 1997 his spouse saw the doctor about twice a year. He did not know if it was his own doctor.

[40] The witness was asked to verify the summary of his partner's medical consultations for the period of January 30, 1996 to January 18, 1998 (Exhibit I-2). This summary came from the Régie de l'assurance-maladie du Québec and showed that between February 28, 1997 and November 5, 1997 the Complainant's partner underwent 21 medical procedures. Marc Genest stated that his partner had not kept him up to date about his visits to the doctor.

**(ii) Angello Galletto**

[41] Angello Galletto worked at Bell Mobility for three years starting on August 11, 1997. After completing a three-month probation period, he achieved permanent employee status, which entitled him to the benefits that the Respondent grants its employees, including the group insurance plan.

[42] The witness said that he had attended an information session with about 12 other colleagues given by Katherine Daoust, a human resources advisor, to explain to them such things as the types of coverage provided for by the group insurance plan. Once given this information, employees had to indicate the insurance coverage options they wanted to purchase.

[43] The witness, who is homosexual, was living with a same-sex spouse in February 1996 after three months of dating. He maintained that, during the information session, insurance coverage for same-sex spouses was not brought up. Angello Galletto recalled contacting Katherine Daoust to find out whether he could designate his partner as a life insurance beneficiary. She replied that it was not possible but that what he could do was state the beneficiary's last name and just the first letter of the beneficiary's first name. He decided not to take that approach, particularly since his partner had life insurance through his employer's group insurance plan.

[44] The witness stated that, during the training session, he did not raise the issue of his partner's insurability because in his view it was a private matter. In addition, he believed that at that time sexual orientation was not recognized at Bell Mobility. According to him, it was a topic that was not brought up with management. Discussions may have been held among employees who were

friends. It was nevertheless recognized that a number of people employed at Bell Mobility were homosexual.

**(iii) Martin Pelletier**

[45] Martin Pelletier was Marc Genest's partner from September 1999 to April 2000. When they first met, the Complainant told him that his partner had died on February 16, 1998 and that his employer had previously not let him purchase life insurance for his partner. The witness later learned that the Complainant had had many financial difficulties following the death of his partner and that he had had no money. He had not been able to pay for his partner's funeral expenses and had to give up the luxury apartment they had shared together. Marc Genest attributed his financial difficulties to the fact that his employer denied him the chance to purchase life insurance for his spouse, for which he would have been the beneficiary.

[46] Marc Genest also informed him that, in the months following his partner's death, Bell Mobility modified the group insurance plan to allow employees to purchase life insurance for same-sex spouses. He also told him that he had tried to obtain a copy of the group insurance contract from both the insurer and his employer but that they never addressed his request.

[47] The witness stated that he took the first steps that led to the filing of the complaint because he realized that Marc Genest was not emotionally capable of doing so.

**(iv) Gisèle Tétrault**

[48] Gisèle Tétrault is Marc Genest's mother. She said that during the six months preceding the death of her son's partner, he started having financial problems due to his partner's lack of income since his partner was sick and unable to work. She had to assist her son financially by lending him \$2,500. After her son's partner died, his financial problems increased and she lent him \$5,500. These loans have not been repaid.

**(v) Karine Mariasine**

[49] Karine Mariasine was an employee at Bell Mobility in 1995 and 1996 as a supervisor in the customer service department. She recalled that in the spring of 1995 Marc Genest came to see her to inform her of the problems he was having in getting insurance coverage for his spouse. She told him that she could not help him. The witness stated that at that time there were at least 12 employees in the

customer service department who had publicly acknowledged their homosexuality.

**(vi) Lorenzo Casanova**

[50] The witness started with Bell Mobility at the same time as Marc Genest. He specifically worked with the Complainant in 1997 and 1998. The witness said that he was aware that, after his partner died, Marc Genest was having problems with the group insurance plan.

[51] The witness said that, during the time he was employed with the Respondent, several employees were homosexual and that some homosexual employees had partners who worked at Bell Mobility.

[52] The witness recalled that information sessions on the group insurance plan had been given in 1998 by human resource representatives and that he had attended.

**B. Respondent's evidence**

**(i) Sophie Boucher**

[53] Sophie Boucher was hired by Bell Mobility in 1986. She started as a clerk and was promoted to the customer service department, then the collections department, and finally the telecommunications department.

[54] After she came to Bell Mobility, she always acknowledged her homosexuality. In 1995, her partner had also been working at Bell Mobility since 1990. She had been hired as a customer service representative and then became a supervisor and finally a director.

[55] She maintained that in 1995 management did not have a problem with employees' homosexuality. She recalled an example where she had told her boss about her desire to have a child and about the steps she had taken. She also recalled that several employees publicly acknowledged their homosexuality.

[56] Sophie Boucher stated that before 1995 there was a group insurance plan at Bell Mobility that controlled employee membership in the various insurance categories. As of 1995, the new group insurance plan allowed employees to select different types of insurance coverage. That was why human resource representatives held information sessions to explain to employees the types of

insurance coverage available and the costs involved for both the employer and employees.

[57] The witness stated that she had no interest in insurance coverage for same-sex spouses because her partner, also a Bell Mobility employee, could purchase life insurance.

**(ii) Sylvie Sauvé**

[58] Sylvie Sauvé was hired by Bell Mobility in March 1990 as an online representative. In 1994, she was promoted to supervisor and then in 1997 became Director of Customer Service.

[59] In May 1990, the witness met her partner, who was also a Bell Mobility employee. They always publicly acknowledged that they were gay. She stated that her sexual orientation never hindered her career. She said that several employees publicly acknowledged their homosexuality, including one of her gay colleagues, who was a director. Homosexual employees sometimes joked about her sexual orientation.

[60] The witness said that, with the arrival of the new group insurance plan in 1995, she was not concerned about life insurance for her partner since she too was a Bell Mobility employee.

[61] She stated that the Complainant had talked to her about the situation he was experiencing regarding life insurance coverage for his partner and that she had replied that she was not in the same situation because her partner was working for Bell Mobility.

**(iii) Geneviève Britt**

[62] Geneviève Britt was hired by Bell Mobility in 1995 for the position of Director of Organizational Training and Development. In 1996, she held the position of Director of Employee Relations and, at the end of 1997, Director of Human Resources at Bell Mobility Cellular. In 1999, she quit that job to become Director of Human Resources at Bell Express Vu.

[63] She met the Complainant in the spring of 1998 when he came to see her because of the difficulties he was having following the death of his partner. The Complainant had told her that his partner was Egyptian and that his family did not accept their relationship very well, which was stressful for him. In addition to being in mourning, he informed her that he had financial problems.

[64] Geneviève Britt asked the Complainant if he had purchased life insurance for his partner. He responded that he was unaware that he had that possibility and seemed very surprised to hear it.

[65] The witness stated that she suggested he use the employee assistance program. Because he appeared exhausted, she advised him to see a doctor. Geneviève Britt said that she could not have met with the Complainant in 1999 because she was working for Bell Express Vu.

[66] The witness revealed that, contrary to the Complainant's statements in his letter to the Commission dated April 29, 2002, she had not given him any information on the group insurance plan because her duties were never in that area. She categorically denied telling the Complainant that he could indicate his partner's first name in the feminine to allow him to purchase life insurance for him. She claimed that she would never have encouraged the Complainant to commit insurance fraud.

[67] The witness maintained that people were very open-minded at Bell Mobility and that no differentiation was made between homosexual and heterosexual employees. She stated that several employees in 1995 publicly acknowledged their homosexuality at work.

[68] The witness did not recall holding an information meeting on the group insurance plan in 1998 that the Complainant cried at.

[69] The witness stated that after she was hired in 1995, she was informed that the group insurance plan was offered to same-sex spouses. She reported that in 1998 staff meetings were held to explain the changes to the group insurance plan.

**(iv) Katherine Daoust**

[70] Katherine Daoust has been an employee at Bell Mobility since April 1, 1985. She was an executive assistant. Since September 1995, she has held the position of Executive Director of Benefits.

[71] She was asked to meet with employees in small groups to provide them with information about the benefits that Bell Mobility offered, such as the group insurance plan. She stated that she indicated that the group insurance plan was available to same-sex and opposite-sex spouses, provided that it was publicly known that the couple had been living together for at least 12 months.

[72] In this regard, she conceded having told Angello Galletto that he could not insure his partner because he had not been living with him for at least 12 months. The witness revealed that there were many employees, both male and female, who acknowledged their homosexuality without any problems.

[73] She stated that, at each meeting she held with groups of employees, she made it her duty to inform them because she was concerned that new employees would not raise the issue of insurability of same-sex spouses.

**(v) Michel Côté**

[74] Michel Côté started working at Bell Mobility in 1988 on a special telemarketing project. He was promoted to telecommunications coordinator and then administration coordinator. In 1996, he held that position in Toronto. In 2002, he had the same responsibility with Bell Express Vu.

[75] The witness stated that he is gay. He believed that Bell Mobility management did not discuss employees' sexual orientation. He stated that he was able to conduct his life as a homosexual in peace. For example, the witness recalled that, during the holiday period, performances were organized that often dealt with homosexuality, particularly since the two hosts were gay. These performances were recorded and a video was sent to Bell Mobility managers who wanted to see the performances. The performances that the witness had participated in for six or seven years were approved in advance by the management committee.

[76] The witness said that a committee consisting of a manager and about 12 employees was established. The committee's mandate was to educate management about problems that employees were having at work and to develop solutions. The witness stated that during one of the committee's meetings he suggested that insurance benefits should be the same for both heterosexual and homosexual couples. He claimed that his suggestion was adopted for the June 1995 deployment of the group insurance plan.

[77] When the new group insurance plan came into effect, the witness was living alone but was seeing someone of the male gender who was working at Police Credit Union in Ottawa. In 1996, that person became his partner. He purchased life insurance and accidental death and dismemberment insurance for his spouse.

**(vi) Lucie Laroche**

[78] Lucie Laroche has been a Bell Mobility employee since September 29, 1986. From January 1992 to November 1998 she held the position of human resources administrator and was then assigned to the payroll department.

[79] She was in charge of managing the various benefits programs such as the insurance plan, retirement plan, employee assistance program and share purchase plan.

[80] Lucie Laroche said that when an employee achieved permanent employee status he/she was eligible for the benefits programs. The human resources department had a kit specially prepared for permanent employees. It contained a brochure explaining the group insurance plan called [translation] "Flex Benefits", along with an insurance options form. It also contained information on the other benefits programs. Employees were then invited to attend an information session in small groups given by a human resources representative who was very familiar with the benefits programs. During the session, the kits were issued to employees and the information was conveyed. Employees then had to decide which insurance coverage they wished to purchase. If they needed clarification on the insurance options, they could obtain information from a human resources administrator. Employees then had to fill out the insurance options form and forward it to the human resources department via internal mail. Finally, an insurance coverage confirmation sheet from the insurer would be sent to employees through the human resources department.

[81] The witness revealed that the [translation] "Flex Benefits" brochure listed the insurance plans available, the content and the rates. It explained each of the plans. For example, the brochure contained information on the employee life insurance plan. It specified that the basic employee life insurance was \$10,000. An employee could increase the insurance benefit twice up to seven times his/her salary. The witness explained the accidental death and dismemberment insurance plan (AD&D). This insurance coverage applied only to the accidental death of employees. In practice, in the event of accidental death, AD&D coverage and life insurance coverage would apply, but not in the case of natural death. In the event of dismemberment, a percentage of the insurance coverage would apply. The percentage varied according to the seriousness of the dismemberment. The brochure also contained information on the dental insurance, health insurance, and long-term disability.

[82] The brochure also offered life insurance for spouses in increments of \$25,000, and the premium was to be paid entirely by the employee. The witness explained the requirements for a person to be considered a spouse: married through a civil or religious marriage or common-law spouse. To be a common-law spouse, the person must have been living with another person for at least 12

months and publicly acknowledging that they were a couple. She maintained that same-sex spouses were recognized in the same capacity as heterosexual spouses.

[83] According to the witness, the brochure also indicated the possibility of AD&D coverage for spouses and children as well as life insurance coverage for children.

[84] The witness said that, before the advent of the "Flex Benefits" program, the insurance options of the group insurance plan in effect at the time were not as diversified as the new program and that the plan did not give employees the opportunity to select insurance options that fit their particular needs.

[85] The witness pointed out that in 1994 she was part of a working group consisting of consultants and Bell Mobility representatives who were involved in developing the "Flex I" program with the insurance company Aetna Canada and implementing it on June 1, 1995. With reference to the group insurance contract in effect in 1995 (Exhibit P-2), the witness indicated that all applications for life insurance coverage for employees or their spouses did not require proof of insurability if they were made within 31 days of the date that an employee became eligible for the group insurance program. Eligibility was conferred on the date an employee achieved permanent status. If the insurance application was made after that time period had expired, the insurer required proof of insurability.

[86] According to Exhibit P-2, page 7 ELIB, the witness explained the various life insurance options available to employees. The first option was the mandatory \$10,000 of basic life insurance; the second option was insurance representing one times an employee's annual salary up to seven times the annual salary. As for spousal life insurance (Exhibit P-2, page 7, 2-DLIB2), we see that an employee can select life insurance coverage for his/her spouse ranging from \$25,000 to \$250,000. However, an employee could not purchase life insurance for his/her spouse for an amount higher than the life insurance he/she had purchased for him/herself.

[87] Moreover, if the spouse's life insurance coverage was higher than \$25,000, proof of insurability was required. In addition, when renewing the life insurance each year, any increase in spousal life insurance coverage required proof of insurability.

[88] Finally, on page 9 of Exhibit P-2, Lucie Laroche indicated that all life insurance benefit claims had to be submitted to the insurer within six months of the death of the insured.



[89] Lucie Laroche explained that employees' insurance option selections were valid until the renewal date of June 1, 1996. In the spring, employees would receive a new kit containing items such as the brochure explaining the group insurance program and the options form. Information meetings were held, and employees wanting to make changes to their insurance selections could do so by filling out the options form. The employee was to send the form to the human resources department, which would forward it to the insurer. Once the changes were approved, the insurer would issue a confirmation sheet to the employee via the human resources department. The same procedure was followed each year.

[90] The witness was asked to comment on the insurance options form filled out by Marc Genest on August 28, 1995 (Exhibit P-4). The document shows that Bell Mobility made \$411.12 available to the Complainant to pay the costs of some insurance plans. It also shows that Marc Genest chose to purchase health insurance for himself and dental insurance for himself and his partner. As for life insurance, Marc Genest selected life insurance coverage representing twice his annual salary. He did not purchase spousal or child life insurance. He selected AD&D for himself with coverage of five times his annual salary and AD&D for his partner with coverage of \$200,000. He also purchased long-term disability insurance for himself.

[91] The form also shows that the Complainant designated his mother as the beneficiary of his life insurance and AD&D, and his partner as a dependant.

[92] Lucie Laroche revealed that when Marc Genest became a member of the group insurance plan his annual salary was \$24,226.80 in August 1995. Therefore, since he had purchased life insurance representing twice his annual salary, he had \$49,000 of life insurance. If Marc Genest had selected life insurance for his partner, it would have been for \$25,000, according to the witness's version. She explained that spousal life insurance was offered in increments of \$25,000 and that \$50,000 of life insurance for his partner would have exceeded the amount of his own life insurance, which the insurer did not allow.

[93] Lucie Laroche stated that in 1995 she had been married for nine years and was the mother of two children.

[94] The witness said that in 1998 the "Flex I" program was replaced by the "Flex II" program. The new program did not involve major insurance coverage changes. The program was modified to enhance the flexibility of insurance selections.

[95] When this program came along, Lucie Laroche helped prepare the document called [translation] "Flex Benefits 2" that was issued to employees at the

information sessions. She also trained the human resource representatives who were called upon to hold the information sessions. She also held some herself.

[96] The witness recalled that all types of insurance coverage including health insurance, dental insurance, life insurance and AD&D were offered to same-sex spouses as well as opposite-sex spouses.

[97] The witness was asked to comment on a letter that the Complainant sent to the Commission on September 26, 2000 (Exhibit I-1, Tab 8). Paragraph a) reads as follows:

[translation]

"The group insurance program in effect does not provide life insurance coverage for same-sex spouses, despite the fact that this same policy accepts same-sex spouses for all the other types of coverage, which I signed my spouse up for."

[98] In paragraph b), the Complainant maintained that:

[translation]

"The policy in effect requires that payment be made through direct deductions from the pay of all employees for a basic premium that covers things such as basic life insurance protection of \$20,000 for employees' opposite-sex spouses."

[99] Lucie Laroche stated that the insurance contract did not require payment by direct deductions from employee pay for a basic insurance premium. She also maintained that there had never been basic life insurance coverage for same-sex or opposite-sex spouses. Moreover, the group insurance plan contained no mention of \$20,000 in basic life insurance for spouses.

[100] Lucie Laroche stated that Bell Mobility had established an employee assistance program (EAP) to provide timely support services to employees experiencing personal problems or requiring psychological, financial or legal assistance. The EAP had a call centre that an employee would contact. Once the problem was submitted, arrangements were made to refer the employee to a consultant who would be able to assist him/her.

[101] The witness was asked to comment on the Complainant's claim that during a meeting she had put an "X" on the page of the brochure explaining the life insurance and stating that he was not entitled to it for his spouse. Lucie Laroche denied the claim and was certain that all types of insurance coverage applied to same-sex spouses.

[102] Lucie Laroche recalled a conversation the Complainant had had with her, not to inform her of the death of his partner, but several months later. The Complainant had informed her that he was having financial problems and that he was saddened by the death of his partner.

[103] The witness stated that she had no recollection of an information session with employees in June 1998 during which she would have stated that "Flex Benefits 2" now allowed complete insurance coverage for same-sex spouses. She is also certain that she would not have said such a thing because the "Flex Benefits" program had already been allowing insurance coverage for same-sex spouses since 1995 and that the "Flex Benefits 2" program had not changed in that regard.

[104] Lucie Laroche stated, with reference to the document showing Marc Genest's annual salary progression (Exhibit I-1, Tab 2), that he had achieved permanent part-time status on June 28, 1995 and permanent full-time status on April 27, 1998.

[105] In cross-examination, the witness was asked to comment on the fact that in 1995 insurance coverage for same-sex spouses did exist but was not advertised. The witness stated that in 1995, after receiving training on the group insurance program, she developed her own method after training the other employees who were to hold the information sessions. Therefore, she claimed that, at the training sessions and the information sessions for employees, she gave all the information regarding insurance for same-sex spouses. She stated that the information was given during the training sessions in small groups of employees.

[106] The witness stated that she recalled a meeting with two employees in an office. She was unable to state whether one of them was Marc Genest. However, she recalled that one of them asked questions about the insurability of same-sex spouses. She had been surprised by this type of question because she had not often heard it during the information sessions with the small groups of employees.

[107] With reference to the document called [translation] "Marc Genest's attendance record" between November 1997 and December 2000, Lucie Laroche pointed out that the Complainant was away from work on short-term disability from November 6 to December 19, 1997, from September 22 to October

19, 1998, from October 12, 1999 to February 8, 2000 and finally from November 9 to December 4, 2000. During these absences, the Complainant received 90% of his salary in accordance with the short-term disability plan, which was borne entirely by the employer. Long-term disability insurance applied after 26 weeks of absence due to disability.

[108] Lucie Laroche submitted the brochure explaining the "Flex I" group insurance program that was issued to employees in the spring of 1995. The document is called [translation] "Flex Benefits" (Exhibit I-6). This program came into effect on June 29, 1995.

[109] The witness referred to page 2 of the document, which reads:

[translation]

"Bell Mobility wants to ensure that all employees have basic life insurance and long-term disability insurance protection. Therefore, minimum protection is mandatory for both plans. For the other plans, you are free to select no protection if you want."

[110] The witness referred to the definition of dependant on page 6 of the same document. It reads as follows:

[translation]

"Dependant - Members of your family may be members of the following plans: health insurance, dental insurance, life insurance and accidental death and dismemberment.

The following dependants are eligible:

\* your spouse, to whom you are legally married or with whom you have been cohabitating for at least 12 months;

\* your dependent children under 21 years of age, your dependent children under 25 year of age who are regularly attending school, or your disabled children regardless of age, if they are solely dependent upon you for financial support."

[111] Page 18 of the document provides information on spousal life insurance options. It states:

[translation]

"Flex Benefits allows you to choose life insurance for your spouse for an amount of up to \$250,000. The cost of this insurance depends on the age and gender of your spouse and on whether he/she is a smoker.

If your spouse must provide a health statement, his/her life insurance shall not be effective until Aetna Canada has approved the health status questionnaire. In the interim, the Bell Mobility life insurance that you already have for your spouse shall be maintained."

[112] Page 19 deals with annual renewal and states:

"If you wish to increase your spouse's life insurance protection when you renew your selections for next year, your spouse must fill out a health status questionnaire."

[113] The witness explained that the document indicates that the spousal life insurance premium must be paid entirely by the employee.

[114] From the section of the brochure called [translation] "Changing your selections", the witness cites the following (page 4):

[translation]

"You renew your Flex Benefits selections every spring. This gives you the opportunity to review your benefit needs once a year and ensure that your coverage still fits those needs.

You can change your selections in the current year if there is a change in your family situation: marriage, divorce, birth or adoption, death of a family member or loss of the protection of a spouse. If applicable, please contact the Human Resources Representative in your region within 30 days of the change."

[115] In 1998, the "Flex II" program replaced the "Flex I" program. An explanatory brochure called [translation] "Flex Benefits 2" was again prepared and issued to employees (Exhibit I-8).

[116] The witness stated that it contained the following definition of spouse:

[translation]

" - the person to whom you are legally married; - or the person with whom you live and whom you publicly represent as your spouse."

[117] On page 9, the brochure also describes the process in the event of the accidental death or dismemberment of an insured person: inform the benefits department as soon as possible and file a claims submission accompanied by substantiating documentation within six months of the event.

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[118] In 1995, she held the position of senior medical underwriter with the Aetna life insurance corporation, which had the group insurance contract for Bell Mobility employees.

[119] The witness revealed that employees had to purchase a minimum of \$10,000 in life insurance. They could also choose life insurance for an amount equal to one times their annual salary up to six times their annual salary rounded up to the nearest thousand dollars. As such, for employees choosing life insurance representing one times their salary and whose income was \$24,000, their insurance would be rounded up to \$25,000.

[120] The witness said that the insurance application had to be filed within 31 days from the date an employee became eligible for insurance. Otherwise, a medical certificate is required, in other words a health questionnaire prepared by the insurer.

[121] Regarding the insurance options that employees can select for their spouses, the witness revealed that the minimum amount was \$25,000. They may also increase that in increments of \$25,000 up to \$250,000, with a medical certificate.

[122] The witness explained that, in the event of death, the beneficiary needs to have a physician fill out the death claim form and obtain the original proof of death. A claim accompanying these documents must be sent to the insurer within six months of the death. Otherwise, the claim may be denied.

[123] The witness explained that if a plan member tests positive for AIDS or immune system disorder, insurance will be denied.

[124] The witness was asked to review the definition of spouse in the 1995 group insurance contract, which reads as follows:

"Spouse means a husband or wife by virtue of a religious or civil marriage ceremony, except that, a person living with a member will be deemed to be the member's spouse, if such person:

- is publicly represented as the member's spouse; and,
- has been living with the member for a period of at least one year (12 continuous months)."

[125] The witness stated that this definition of spouse applies to same-sex partners. She added that she had never seen a group insurance plan that excluded same-sex partners from part of the protection available to dependants.

[126] To conclude the Respondent's evidence, a letter was filed (Exhibit I-10) attesting that the life insurance contract that the Complainant's spouse had had with Sun Life for \$10,000 was cancelled on June 12, 1995 retroactive to July 1, 1994 due to unpaid premiums in July and October 1994 and January 1995.

### **III. THE LAW**

[127] Section 7 of the *Act* states that "It is a discriminatory practice, directly or indirectly in the course of employment, to differentiate adversely in relation to an employee on a prohibited ground." In addition, section 3 of the *Act* lists the prohibited grounds, which include sexual orientation and marital status.

[128] The jurisprudence teaches that, with respect to discrimination, the Complainant must establish a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and which, if believed, is complete and sufficient to justify a decision in favour of the Complainant in the absence of an answer from the respondent.

### **IV. ANALYSIS**

[129] Counsel for the Complainant acknowledged that in June 1995 the group insurance plan for Bell Mobility employees provided the life insurance option for same-sex spouses as well as the options for health insurance, dental insurance and accidental death and dismemberment insurance. He maintained, however, that the Respondent's representatives did not provide the Complainant with relevant information enabling him to purchase life insurance for his partner and that they did not allow him to do so.

[130] In his testimony, Marc Genest stated that he did not recall whether human resource representatives in 1995 had held information sessions with employees to give them information on the group insurance plan. The preponderance of evidence is to the contrary, through both Lucie Laroche's testimony and the documents sent to employees by Bob Ferchat, President of the Board, President and Chief Executive Officer, and Marc-André Malboeuf, Human Resources Administrator (Exhibit P-11).

[131] Marc Genest maintained that, after reading the information brochure on the group insurance plan, he met with Lucie Laroche on August 28, 1995 for clarification. He stated that during that meeting she told him that she had been living with a husband for four years. Lucie Laroche categorically denied that statement and explained that at that time she had had a husband for nine years and was the mother of two children.

[132] Marc Genest claimed that during that meeting Lucie Laroche told him that the spousal life insurance option did not apply to same-sex spouses. The preponderance of evidence did not demonstrate the validity of that claim. In fact, the evidence revealed that Lucie Laroche worked with a task team to deploy the new group insurance plan and was therefore very knowledgeable of the content. She was asked to train the human resource representatives who held the information sessions for groups of employees. She herself conducted training sessions for employees. She stated that, during both the training courses for human resource representatives and the information sessions for groups of employees, she always mentioned that the life insurance option applied to same-sex spouses.

[133] I accept Lucie Laroche's testimony rather than the Complainant's where she denied indicating to him that the group insurance plan did not allow employees to select the life insurance option for same-sex spouses. Moreover, I do not see what Lucie Laroche's interest would have been in hiding this information from the Complainant.

[134] For the foregoing reasons, I cannot believe the Complainant's testimony where he stated that, during an information session held on June 15, 1998, Lucie Laroche announced that homosexual spouses were now eligible for all insurance



options provided for in the group insurance plan. That claim is even less credible when considering the testimony of the insurer's representative, who stated that she had never seen a group insurance plan that excluded same-sex partners from part of the protection available to dependants.

[135] In his testimony, Marc Genest maintained that in 1995 he informed Lucie Laroche during a meeting with her that he was the victim of discrimination since he was not allowed to purchase life insurance for his spouse. In his complaint, he also said:

[translation]

"Right after receiving this information, I vehemently protested and pointed out that it was overt discrimination. Every step I took was unsuccessful and I was told that nothing could be done."

[136] In cross-examination, he conceded that he had not stated being the victim of discrimination but rather of an unfair situation. He further acknowledged that, faced with being unable to obtain life insurance for his spouse, he did not dare press the issue because he had just achieved permanent employee status and was afraid of losing his job. This explanation may seem credible. However, why did he not bring it up again when renewing his group insurance plan in 1996 and 1997? Fear of losing his job cannot, in my view, be a valid reason. However, he did not do anything.

[137] He also acknowledged that he did not seek recourse because he believed that there was nothing that could be done. Instead it was a friend who took steps for him that led to a complaint being filed on November 4, 2000.

[138] Marc Genest maintained that he had to purchase life insurance for his spouse in addition to accidental death and dismemberment insurance in order to have enough financial protection in the event of his spouse's death. According to him, his spouse had \$50,000 in life insurance at that time, for which he was the beneficiary. However, the evidence unequivocally showed that that it was \$10,000 in life insurance.

[139] Marc Genest stated that in 1997 his spouse could not pay his \$800 life insurance premium and that his father paid the premium in return for becoming the beneficiary of the policy. However, as the documentation supplied by Sun Life, his spouse's insurer, demonstrates (Exhibit I-10), the Complainant's spouse had not paid the insurance premiums due in July and October 1994 and January 1995, with the result that the insurance was cancelled retroactively to July 1, 1994.

[140] Marc Genest explained that it was important for him to obtain life insurance for his spouse because the couple had a relatively expensive lifestyle. They had a luxury apartment and they each had a vehicle. In 1995 and 1996 and until the fall of 1997, the couple's financial situation was good, according to the Complainant. After maintaining that his spouse's income was approximately \$70,000 net, he was forced to concede in cross-examination that for 1995 and 1996 his spouse's annual income was around \$40,000 gross and even lower in 1997 due to being away because of illness. He also had to acknowledge that his spouse had filed an assignment in 1996. He claimed that his spouse had never informed him about the financial problems he was having. I am not satisfied that the Complainant, who said that he had a very close relationship with his spouse, could not have been aware of his financial problems.

[141] The Complainant stated that the information on the spousal insurance options simply paid lip service to it because in 1995 homosexuality was not recognized and accepted at Bell Mobility. The preponderance of evidence shows instead that homosexual employees were treated in the same way that heterosexuals were. Employees publicly acknowledged their homosexuality and, during employee-organized social evenings, they put on performances that joked about homosexuality. Employees have had very rewarding careers at Bell Mobility and have reached important executive positions without their sexual orientation being at all a consideration. The preponderance of evidence fails to support the Complainant's case that, during the training sessions, the human resource representatives did not inform employees about the possibility of insuring the lives of same-sex spouses.

[142] The Complainant stated in his testimony that, between 1995 and 1998, Bell Mobility did not provide its employees with any information about the group insurance plan nor any information sessions for explaining changes to the insurance plan. This statement is in no way corroborated by the body of evidence on this point. In fact, when it was time for the annual renewal of the group insurance, employees received a brochure explaining the group insurance plan and were invited to make changes to their group insurance plan based on their needs and situation, which could have changed since the previous year. Information sessions for all employees were also held (Exhibit I-7).

[143] The evidence revealed that in 1996 Michel Côté, then administration coordinator at Bell Mobility and homosexual, purchased life insurance for his same-sex spouse.

[144] Marc Genest firmly stated that he had never emailed Julie Walbrecq. However, the evidence showed that he sent an email to Julie Walbrecq on September 11, 2000 (Exhibit I-1, Tab 7).

[145] In that email, Marc Genest referred to a basic life insurance option of \$20,000 for same-sex spouses. However, it is very clear on page 18 of the brochure called [translation] "Flex Benefits" (Exhibit I-6), even for someone with limited knowledge of the insurance field, that there was no basic life insurance option for same-sex or opposite-sex spouses. The only basic life insurance coverage was \$10,000 and it applied solely to employees.

[146] The Complainant also claimed in his complaint that the basic spousal life insurance premium had to be paid through direct payroll deductions. The evidence showed that this claim was incorrect.

[147] Marc Genest stated that after his spouse passed away he informed Lucie Laroche, who hastened to remind him that his spouse had no life insurance coverage. For her part, Lucie Laroche acknowledged having had a conversation with the Complainant, not right after his spouse's death but several months later, and she denied making such a statement to him. I do not see what Lucie Laroche's motivation could have been for acting in that manner.

[148] Counsel for the Complainant stated that Bell Mobility did not have a policy for clearly informing employees of the possibility of obtaining life insurance coverage for same-sex spouses. According to him, the information was conveyed on request only. If we apply this view to the Complainant's situation, he would have applied for accidental death and dismemberment insurance and dental insurance for his spouse and he would have been informed that these options were recognized and why would they not have provided the same information for the life insurance application? I do not see why they would have acted differently in the case of life insurance for same-sex spouses than they did for accidental death and dismemberment insurance and dental insurance.

[149] The preponderance of evidence leads me to conclude that, in June 1995 when the Complainant was making his insurance options selections for himself and his spouse, the [translation] "Flex Benefits" brochure provided him with very clear information for enabling him to understand that he had the option of selecting dental insurance, health insurance, accidental death and dismemberment insurance and life insurance for both himself and his spouse. Moreover, the information relayed by the human resources representatives enabled him to make well-informed selections. In fact, he selected dental insurance for his spouse because he believed that dental care was often needed. He did not see fit to select health insurance for his spouse because he was certain that his spouse was in good health. As for accidental death and dismemberment insurance, Marc Genest hastened to purchase this for his spouse in the amount of \$200,000 for completely valid reasons, which he expressed in his testimony. Regarding life insurance for his spouse, I do not believe that, through its conduct, the Respondent prevented him or disallowed him from obtaining it. I do not believe that Marc Genest,

knowing that his spouse had life insurance in the amount of \$50,000 for which he was the beneficiary, really intended to purchase life insurance for his spouse.

## V. CONCLUSION

[150] I believe that Marc Genest has failed to establish a *prima facie* case that Bell Mobility discriminated against him by treating him in an adverse fashion in the course of employment because of his sexual orientation and marital status by not allowing him to obtain life insurance coverage for his spouse.

[151] Therefore the complaint is dismissed.

Roger Doyon

June 4, 2004  
OTTAWA, Ontario

## PARTIES OF RECORD

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APPEARANCES:	
Noël Saint-Pierre	For the Complainant

Johanne Cavé

For the Respondent