

**IN THE SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Burns v. Sobeys Group Inc., 2007 NSSC 363

**Date:** 20071210  
**Docket:** S.K. 217352  
**Registry:** Kentville

**Between:**

Deborah Irene Burns

Plaintiff

v.

Sobeys Group Inc., a body corporate

Defendant

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**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** June 26, 27, 28, and July 3, 2007, at Kentville, Nova Scotia

**Subject:** Employment Law; Constructive dismissal

**Summary:** A Sobeys employee was advised by a Vice President that her position was terminated without warning at the end of a work day. She was offered a vague, mostly undefined position in another division at the same salary, benefits and work location. She was asked to respond by the next morning.

She had held several senior non-management positions and at least one low-level management position over 17½ years of employment. She received excellent annual performance evaluations and was described as a valuable employee. The Plaintiff was upset at the termination interview, and did not sleep well that night. Early the next morning, in an abrupt interview with the Vice President, she expressed her displeasure, said she was sick and going home, turned in her pass and asked the Vice President to have her superior or someone from personnel call her. She did not expressly quit or resigned. The employer assumed she had. The employer did

not do contact her. The next day a lawyer for the Plaintiff wrote the Vice President asking for a description of the position that was offered so that the Plaintiff could assess her situation. Two weeks later the employer replied, without answering the inquiry, stating that she had resigned and offering her a small severance package.

**Issue:**

1. Did the employee quit?
2. If so, was she constructively dismissed?

**Result:**

1. The Employee did not quit.
2. If the court is wrong and she did have the subjective intent to quit and objectively communicated it to the employer, the vague offer of alternative employment was a unilaterally-imposed fundamental change to the employment contract. She was thus constructively dismissed.
3. 16 months notice was awarded.
4. The Plaintiff did not fail to mitigate by declining to accept the employer's offer on November 27<sup>th</sup>, while looking for other work.

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