

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

Citation: *T.E.A.P. International Inc. v. Murphy*,  
2004 YKSC 85

Date: 20041029  
Docket: S.C. No. 04-A0106  
Registry: Whitehorse

Between:

**T.E.A.P. INTERNATIONAL INC.**

Petitioner

And:

**PETER MURPHY  
and  
SHAUN MELVILLE**

Respondents

Before: Mr. Justice R. Veale

Appearances:

James R. Tucker and Gareth C. Howells  
Sean M. Kelly and Rodney A. Snow

For the Petitioner  
For the Respondents

**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): Do you have a recommendation then on a deadline date that would be appropriate, given that there will be proxy solicitations by both sides? I am prepared to have you talk about that, actually, if you wish. Counsel can discuss it and simply any date that is put in the order and signed by both sides, both counsel,

approved by both counsel will be satisfactory to the Court. Would that be an appropriate way to leave it?

[2] MR. TUCKER: Yes, My Lord, that would be satisfactory. I believe we would have to speak to our clients to see what their schedule is. They do have business to conduct also but knowing that you are keen to have the meeting held within a relatively short period of time.

[3] THE COURT: Thank you.

[4] MR. TUCKER: Thank you.

[5] THE COURT: My inclination – Mr. Kelly?

[6] MR. KELLY: Perhaps, My Lord, you can set an outside date or something. I am sure my clients would be concerned that this could be seen as a good foothold by T.E.A.P. if we had a further delay of the meeting. They might say “well, six months” or something.

[7] THE COURT: Well, no. What I am asking you to do, what I have said is I want you and – it may be Mr. Snow dealing with the other side on it, but just to determine what a reasonable date is because there is no point in me putting a date that is unreasonable, considering proxy solicitations are going to be done, considering the fact that shareholders are all over the world, as I see the shareholders’ register. I just do not think it is appropriate for me to put a date that is going to be unreasonable and cause further difficulties.

[8] If the parties cannot agree on the appropriate date, come back to me. I would suggest, quite frankly, that we – well, just come back to me. Just speak to the trial coordinator and come back and make your submissions on the appropriate dates.

[9] MR. SNOW: That is fine. Thank you My Lord.

[10] THE COURT: With respect to costs, I am prepared to hear submissions, but my inclination is that both of you have had some success and it is probably appropriate to have no order as to costs. That is my inclination but I am prepared to hear submissions if any of you wish to make submissions on costs.

[11] MR. HOWELL: My Lord, I do not have a submission on costs but is it possible to speak on the location of the meeting as we were not given an opportunity to address that this morning?

[12] THE COURT: Well, you were but you didn't. But nevertheless, they specifically said in their response, they wanted it at Perth, but go ahead. The order is not filed so you are entitled to speak about anything.

[13] MR. HOWELL: Thank you, My Lord. We would submit that the appropriate location would be the Yukon, and the reason is corporate law dictates that the meeting must be held within the Yukon unless the articles otherwise provide. The articles do provide that meetings can be held in British Columbia or such other places the directors determine in their absolute discretion.

[14] Obviously, we are not going to get all three of the directors to agree on where the location is, so I think as a fallback position, the Yukon is reasonable. The dissidents, in

attempting to hold their meeting, chose the Yukon as an appropriate location. I know Your Lordship has expressed concern that there are a large number of shareholders in Australia. We submit that there are also a large number of shareholders in other places in the world, including Canada, and that they can vote by proxy, which is just as valid as appearing in person. The dissidents were prepared to accept that method of attendance at their meeting when they were proposing the requisitionists' meeting.

[15] Thank you, My Lord.

[16] THE COURT: Response?

[17] I can indicate your submission creates some difficulty in the sense that my order has ordered that an individual in Perth, Australia be the independent chair, but nevertheless, what do you have to say, Mr. Snow?

[18] MR. SNOW: Simply that as noted in your Reasons, that most, if not all of the – all but maybe one or two of the affidavits have come from Perth, Australia. The directors are there, the respondents are there. That is where the interest is in this company, and that would be certainly the most convenient place in which to hold a meeting, given all the people that have been proposed. I think, if I am not mistaken, the proposed nominees for the board are Australians, as well. It would be them that would be – that the shareholders would be deciding whether or not they would be placed on the board or not.

[19] That is the primary thrust of our opinion.

[20] THE COURT: Just with respect to your submission, are you saying it is not legal to hold it outside the Yukon?

[21] MR. HOWELL: If the articles do not provide otherwise, then there are limits, but you are ---

[22] THE COURT: Well, I am quite outside the articles in the sense that I am making a court order under s. 156, but ---

[23] MR. HOWELL: That is right, yes. That was going to be my submission but he can speak to this point. There is no dispute about what – it is 133. Section 133, which is in a separate part than s. 156, and I know ---

[24] THE COURT: You are talking about the *Act*?

[25] MR. HOWELL: Yes, My Lord, the *Business Corporations Act*.

[26] THE COURT: Let me just check that, please.

[27] MR. HOWELL: Section 113, specifically – well, really, the whole section deals with it. There is no provision there for the court to order a meeting to be held outside the Yukon or outside the locations indicated in the articles. We would submit that the corporation wants to hold a meeting as consistently as possible with corporate law and its bylaws, which also allowed for the meeting to be held in the Yukon and British Columbia.

[28] Your Lordship has expressed concern about the scope of remedies available under s.156. We submit that it would be reasonable to not attempt to provide a further remedy that is not available under either sections of the *Act* under this s. 156.

[29] As far as the dissidents, the chairperson having to come up here, the dissidents were quite prepared to hold a meeting in the Yukon previously and we see no reason why that approach in logic would not apply to this current proposed meeting.

[30] Thank you, My Lord.

[31] MR. SNOW: I simply want to note, I guess, that this proposal would require those who are going to attend from Australia, where most of the interested people are, to come here at some cost. We talked this morning about cost in another context as being onerous and such. It seems to us that you have the authority to make any order you see fit, that it is an appropriate condition that the meeting be held, and it be held where the people are located so that they can attend the meeting to say what they want to say and to be heard and for this business to be done.

[32] Our clients have been searching for accountability for some time and the questions were not being answered. They sought a self-help remedy of requisitioning the meeting. They are brought into court here and you made your determination, a meeting will be held. We are now talking about where it is. Most of the people who are concerned are in Perth, Australia, and we do not believe that the provisions of s. 133 have any bearing on – we do not think that they limit your ability to order that it be held in Australia. So it is a question of where would the most convenient place be for the meeting?

[33] Yes, our clients called the meeting for the Yukon but they were not acting under a court order. They had no choice but to come to the Yukon, we submit. They were prepared to have the meeting held here because they wanted some accountability. The best way to achieve accountability would have been to just to go where the people are and have the meeting there, and not run up the costs of requiring people needlessly to come from Australia, here, or to send proxies, in which case, there is no sense of accountability in the sense that we ordinarily think of it.

[34] THE COURT: Well, thank you, Mr. Howell and Mr. Snow, for your submissions.

[35] I think I will stay with the order that the meeting be held in Perth, simply because of the costs involved. Also, it appears to be the place where the corporate documentation is located and, in my view, it really is the appropriate place. I do not see that the Court is any way bound by the requirements of s. 133.

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VEALE J.