

# COURT OF APPEAL OF YUKON

Citation: *North America Construction (1993) Ltd. v.  
Yukon Energy Corporation,*  
2018 YKCA 13

Date: 20181015  
Docket: 16-YU787

Between:

**North America Construction (1993) Ltd.**

Respondent  
(Plaintiff)

And

**Yukon Energy Corporation**

Appellant  
(Defendant)

Before: The Honourable Mr. Justice Frankel  
The Honourable Madam Justice MacKenzie  
The Honourable Madam Justice Fisher

Further Supplementary Reasons to: *North America Construction (1993) Ltd. v.  
Yukon Energy Corporation, 2018 YKCA 6.*

Counsel for the Appellant:

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M.L. Burris

Counsel for the Respondent:

H.D. Edinger

Place and Date of Hearing:

Vancouver, British Columbia  
March 8, 2018

Place and Date of Judgment:

Vancouver, British Columbia  
May 15, 2018

Further Written Submissions Received:

September 6, 21, and 28, 2018

Date of Further Supplementary Judgment:

October 15, 2018

**Further Supplementary Reasons of the Court**

**Summary:**

*Costs of the appeal were awarded to Yukon Energy Corporation and no order as to costs was made on the cross appeal (2018 YKCA 7). The parties were unable to agree on the costs of the original trial and filed written submissions. Held: costs of the original trial are to be determined by the judge hearing the new trial.*

**Further Supplementary Reasons of the Court:**

[1] In reasons for judgment indexed as 2018 YKCA 6, we allowed the appeal of Yukon Energy Corporation (“YEC”) and set aside the order made at trial as it related to CRX 20, CRX 100 and the counterclaim for deficiencies. We also allowed the cross appeal of North America Construction (1993) Ltd. (“NAC”) as it related to CRX 111. We ordered a new trial as to those four claims.

[2] In supplementary reasons released May 24, 2018, indexed as 2018 YKCA 7, we awarded YEC costs of the appeal, but made no order as to costs of the cross appeal as success was divided.

[3] In those supplementary reasons, we invited written submissions as to the costs of the first trial if the parties were unable to agree. They have accordingly filed written submissions.

[4] YEC asks that the trial judge’s costs order be set aside and the new trial judge be left to determine costs after deciding the other issues.

[5] NAC’s primary submission is the trial judge’s costs order should be maintained. In the alternative, given the limited nature of the appeal and the cross appeal, NAC acknowledges this Court is not in a position to embark on a detailed analysis of the issue at trial and the matter should be remitted to the trial court.

[6] The usual order where a new trial is ordered is that the costs of the original trial are in the discretion of the judge hearing the new trial: *Melgarejo-Gomez v. Sidhu*, 2002 BCCA 400; *Gordon v. Ahn*, 2017 BCCA 334. Having considered the parties' written submissions and in all the circumstances, we are not persuaded to depart from the ordinary rule. In the result, we set aside the costs order from the first trial and remit that matter to the judge hearing the new trial.

"The Honourable Mr. Justice Frankel"

"The Honourable Madam Justice A. MacKenzie"

"The Honourable Madam Justice Fisher"