

November 3, 2025

No Notice, No Claim: Ontario Courts Uphold Strict Notice Requirements in Construction Contracts

Key Takeaway

Reading a construction contract and following its terms are paramount, as Ontario courts continue to lean towards strict compliance with respect to notice provisions in construction contracts. In *Elite Construction Inc v Canada (Attorney General)*,¹ the Ontario Court of Appeal upheld a summary judgment dismissing a contractor's multimillion dollar claim for additional compensation and delay because it failed to give timely written notice as required under the contract.

The Court has reaffirmed the principle that contractual notice provisions in construction contracts will be strictly enforced, and this decision serves as a clear reminder that failure to provide notice in accordance with the contract can be fatal.

Background

In *Elite*, the Government of Canada ("**Canada**") contracted with Elite Construction ("**Elite**") to construct a penitentiary. The contract contained detailed provisions governing changes, delays and extension of time, and dispute resolution. Specifically, the contract required Elite to provide written notice of any intention to claim additional compensation or damages within ten working days of the date the neglect or delay first occurred.

After substantial completion of the project, Elite sought for approximately \$4.1 million in damages for alleged delays and extra work.

Canada moved for summary judgment alleging that Elite's claims were barred due to non-compliance with the notice requirements.

The Decision

The Court of Appeal dismissed the appeal and upheld the lower court's decision, which found that Elite's failure to comply with the contractual notice provisions extinguished its right to claim additional compensation. In short, compliance with a notice provision is a condition precedent to maintaining a claim in the courts.

While there are case law exceptions to notice requirements such as knowledge of the claim, waiver of strict compliance, or rights preserved under the *Construction Act*, parties must still carefully read the agreement thoroughly to ensure any claims they make align with their contractual obligations – less they be faced with a devastating summary judgment motion.

¹ *Elite Construction Inc. v. Canada (Attorney General)*, [2021 ONCA 803](#) [Elite].



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