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Non-compete clause in Quebec: Civil Code art. 2089 guide

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Why Quebec treats non-competes differently

In Quebec, an employment contract is governed by the Civil Code of Québec (CCQ), not by the common law that applies in the other provinces. The Code deals with restrictive covenants in a short block of articles in its chapter on the contract of employment: [article 2088](#) (loyalty and confidentiality), [article 2089](#) (non-competition) and [article 2095](#) (the effect of dismissal). Together they make an employment non-compete a regulated exception to the employee's freedom to earn a living, with the burden of proof on the employer. Covenants given when selling a business or between shareholders follow different rules (see below).

This article covers the Code text as it reads on LégisQuébec in October 2026, the Court of Appeal's reading of the statutory duty of loyalty, and a drafting checklist. It is general information; the facts of a particular hire or departure still need their own advice.

What article 2089 requires

The full text of [article 2089 CCQ](#) has three paragraphs:

1. "The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee may neither compete with his employer nor participate in any capacity whatsoever in an enterprise which would compete with him."
2. "However, the stipulation shall be limited as to time, place and type of employment, to what is necessary for the protection of the legitimate interests of the employer."
3. "The burden of proof that the stipulation is valid is on the employer."

Read as a checklist, a valid employment non-compete needs all of the following:

Requirement	What it means in practice	Where it comes from
In writing	An oral promise is not enough. The clause can sit in the employment contract or in a separate signed document.	Art. 2089 CCQ; Éducaloi
Express terms	The restriction has to be stated, not inferred from a general loyalty clause.	Art. 2089 CCQ
Limited in time	A defined period after the contract ends.	Art. 2089 CCQ
Limited in place	A defined territory where the employer actually competes.	Art. 2089 CCQ
Limited in type of employment	Specific jobs or tasks, not "any work" for a competitor.	Art. 2089 CCQ; Éducaloi
No broader than necessary	Each limit is measured against the employer's legitimate interests (clients, know-how, confidential information), not its wish to avoid competition.	Art. 2089 CCQ

The Code sets no maximum number of months and no maximum radius; what is reasonable depends on the job, the market and the employer's real exposure. Éducaloi, the public legal-information organization, lists the factors courts weigh: the employee's right to earn a living, the employee's position in the company and the employer's real need for protection.

One more point from Éducaloi changes how you should draft: the court will not rewrite the clause. It upholds the non-compete or cancels it, so drafting wide "just in case" can leave the employer with no protection at all.

Who has to prove what

Under the third paragraph of [article 2089](#), an employer seeking an injunction against a former employee has to show that the clause is written and express, that its duration, territory and activity are each limited to what protects its legitimate interests, and that it has not lost the right to rely on it under [article 2095](#). As Éducaloi puts it, the employer will have to show the court that the non-compete respects certain guidelines; the employee does not have to prove the clause unreasonable. Keep evidence from the day of signing: why this role, this territory, this duration.

Article 2095: the dismissal trap

[Article 2095 CCQ](#) reads: "An employer may not avail himself of a stipulation of non-competition if he has resiliated the contract without a serious reason or if he has himself given the employee such a reason for resiliating the contract."

So a well-drafted non-compete can still fall because of how the job ends. After a **resignation** or a **dismissal for a serious reason**, a valid non-compete can be enforced. After a **dismissal without a serious reason** (a restructuring or position cut, for example), the employer cannot rely on it, though the employee must still act loyally (Éducaloi). The same applies if the employer gave the employee a serious reason to quit.

"Serious reason" is the same concept that lets either party end the contract without notice under [article 2094](#). Separately, [article 2092](#) says an employee cannot waive the right to an indemnity for insufficient notice or abusive resiliation, whatever else the contract says.

Article 2095 also reaches a **client non-solicitation clause** in an employment contract. The Supreme Court in *Payette v. Guay inc.*, 2013 SCC 45 explains that the Quebec Court of Appeal, in *Robitaille v. Gestion L. Jalbert inc.*, 2007 QCCA 1052, applied the Code's employee-protection rules for non-competition stipulations to an employee's non-solicitation clause, requiring it to be limited in time and territory (paras. 70-71). The Supreme Court adds that, before ruling on any non-competition or non-solicitation clause, a court must identify the contract it is linked to, because article 2095 applies only to covenants linked to a contract of employment (para. 42). So after a dismissal without a serious reason, an employer cannot rely on a client non-solicitation clause in the employment contract either.

Duty of loyalty and confidentiality without any clause

Even with nothing signed, [article 2088 CCQ](#) requires the employee "to act faithfully and honestly and not use any confidential information he obtains in the performance or in the course of his work." Its second paragraph adds that "these obligations continue for a reasonable time after the contract terminates and permanently where the information concerns the reputation and privacy of others."

The Quebec Court of Appeal explained the limits of this statutory duty in *Sahlaoui c. 2330-2029 Québec inc. (Médecus)*, 2021 QCCA 1310, decided on 1 September 2021. An orthotist-prosthetist resigned after about ten years and his new competing business was then chosen by surgeons he had worked with. The Court of Appeal set aside a \$135,238 damages award and dismissed the employer's action. Its main points:

- **Before leaving**, an employee may prepare a departure, but not on work time or by making heavy use of the employer's tools, and may not take confidential information, client lists or business opportunities, or start recruiting the employer's clients (para. 38).
- **After leaving**, an employee who is not bound by a non-compete, non-solicitation or extended confidentiality clause may use the expertise and knowledge acquired at the former employer, including to compete and to seek its clients, "even vigorously" (para. 53).
- **For a few weeks or months**, the former employee must still not use confidential information, aggressively solicit clients with whom they had a privileged relationship, or systematically disparage the former employer (para. 54).
- **Duration**: outside the most serious cases, the "reasonable time" of article 2088 should not ordinarily exceed three or four months, more rarely six months, and will often be shorter (para. 48).
- **Intensity** increases with seniority: more is expected of senior managers and key employees (para. 55). An employee dismissed without good and sufficient cause may be released from the post-contractual loyalty duty, except for protecting confidential information (para. 56).

[Stikeman Elliott's summary](#) is a plain-language read. The takeaway: the statutory duty is real but short; protection beyond a few months needs a clause.

Writing a confidentiality clause that holds

A confidentiality clause does not stop the employee from working for anyone; it stops them from using or disclosing specific information. A good one clarifies and extends the article 2088 duty rather than repeating it.

What to include:

- **A definition that fits your business.** Éducaloi's examples: [trade secrets](#), [client lists and contact details](#), [financial data and business strategy](#). Add your own (pricing models, source code, supplier terms).
- **Exclusions** for public information and general know-how. Éducaloi notes that an employee can keep [using the skills and general knowledge acquired on the job](#); a clause claiming otherwise invites a challenge.
- **Duration.** [Article 2088](#) protects business information for a reasonable time; a clause can set a longer period for information that stays valuable. Information on the reputation and privacy of others is protected permanently by the Code.
- **Return of material** on departure, including files in personal cloud accounts, with written confirmation.

Non-solicitation and other alternatives

Often the real fear is not that a salesperson joins a competitor, but that clients follow. Narrower covenants target that risk:

- **Client non-solicitation:** no soliciting of clients the employee dealt with during, say, the last 12 or 24 months of employment, for a defined period.
- **Employee non-solicitation** (no-poaching): no recruiting former colleagues for a defined period.
- **Extended confidentiality:** see the previous section.

Restricting less, they are easier to justify as "necessary for the protection of the legitimate interests of the employer" under [article 2089](#). The Court of Appeal in [Sahlaoui](#) treats non-compete, non-solicitation and extended confidentiality clauses as distinct tools (para. 53). Draft non-solicitation as carefully as a non-compete: in writing, with defined clients or look-back period and a defined duration.

Clause	Stops the employee from	Main legal test	Can the employer rely on it after a dismissal without serious reason?
Statutory loyalty (art. 2088)	Using confidential information, aggressive solicitation and disparagement for a short time	"Reasonable time", usually a few months	Confidentiality, yes; the rest may fall away (Sahlaoui, para. 56)
Confidentiality clause	Using or disclosing defined information	Must be clear; cannot cover general skills	Art. 2095 names only non-competition stipulations; confidentiality also survives under art. 2088 (Sahlaoui, para. 56)
Non-solicitation clause	Soliciting defined clients or staff	Art. 2089 limits applied by analogy (time, and territory or a defined client list)	No: treated as a non-competition stipulation (Payette, paras. 42, 70-71)
Non-compete (art. 2089)	Working for, or running, a competing business	Writing, express terms, time/place/type limits, employer's burden	No (art. 2095)

Illustrative example: one clause, two drafts

Illustrative example. A Montreal software startup hires an account executive who sells to retailers in Quebec and Ontario.

Draft A: "For 24 months after the end of employment, the employee shall not work in any way whatsoever for a competitor, anywhere in Canada."

- Type of employment: none defined ("in any way whatsoever").
- Territory: all of Canada, while the startup sells in two provinces.
- Duration: 24 months, with no reason in the file.
- Each limit is wider than the interest it protects, and the court will not rewrite it.

Draft B: "For 12 months after the end of employment, the employee shall not hold a sales or account-management position selling point-of-sale software to retailers, in Quebec or Ontario, for a business that sells products competing with those the employee sold during the last 12 months of employment."

- Type of employment: a defined role and product line.
- Territory: matches where the employer sells.
- Duration: shorter, and the employer should document why (sales cycle length, contract renewal cycle).

Draft B is not guaranteed to hold, but it is built around the three limits the Code names.

The vagueness problem is not theoretical. In *Jutras c. La Presse (2018) inc.*, 2023 QCCS 2506, the Superior Court held invalid a non-compete barring a former La Presse employee from working "in any way whatsoever" for another business selling advertising space, because it did not define the prohibited activities and so went beyond what article 2089 allows. As McCarthy Tétrault's June 2024 summary reports, the employer kept seeking enforcement after losing at the provisional injunction stage, and the court found an abuse of procedure and ordered it to reimburse nearly \$200,000 of the employee's legal fees.

Sale of business and shareholder covenants

In *Payette v. Guay inc.*, 2013 SCC 45, decided on 12 September 2013, the Supreme Court of Canada dismissed the seller's appeal and upheld the Court of Appeal's injunction. Payette had sold his crane business's assets to Guay inc. for \$26 million; the sale agreement contained non-compete and non-solicitation covenants and led to a contract of employment with the buyer, which later dismissed him without a serious reason (para. 44). Writing for the Court, Wagner J. held:

- **Different regimes.** Restrictive covenants are judged by different rules depending on whether they are linked to the sale of a business or to a contract of employment: more generous in the commercial context, much stricter for employment, because the employment rules respond to the imbalance of power between employer and employee (paras. 2, 35-37).
- **Article 2095 is employment-only.** It applies to a non-competition clause only if the clause is linked to a contract of employment, so a court must first identify the juridical act the clause belongs to (para. 42).

- **The test is why the covenant was given.** The court identifies the reason the covenant was entered into, reading the wording of the obligations in light of the circumstances in which they were agreed, to determine "why and for what purpose" they were assumed (para. 45). Payette's covenants were given because he sold his business, not because of his later employment, and could not be dissociated from the sale (para. 46), so article 2095 did not apply even though he had been dismissed without a serious reason (para. 50).
- **Commercial covenants still need limits.** A commercial non-compete is valid if limited in term, territory and activities to what is necessary to protect the legitimate interests of the party it benefits, considering factors such as the sale price, the nature of the business, the parties' experience and their access to lawyers (para. 61). A five-year non-compete running from the end of Payette's employment was not unreasonable given the highly specialized business (para. 64).
- **Non-solicitation needs no territory in a sale.** A non-solicitation clause does not generally require a territorial limit: its object is narrower than a non-compete's and the target customers define its reach (paras. 69, 72-73).

The same words can be judged very differently depending on the document they sit in. Our guide to [Quebec shareholders' agreements](#) covers the governance and exit clauses those covenants usually sit next to. If a shareholder also works in the business, keep employment and shareholder covenants separate, each with its own stated reason.

For contractors, article 2089 applies only if the relationship really is employment; see [employee vs independent contractor in Quebec](#).

Practical drafting checklist for employers

1. **Decide whether you need a non-compete at all.** Confidentiality plus client non-solicitation often covers the real risk.
2. **Put it in writing, in express terms,** in the contract or a separate signed document, as [article 2089](#) requires. Have it signed at hiring, together with the job offer.
3. **Define the prohibited work** by role, function and product or service line. Never "any capacity" alone.
4. **Map the territory** to where you actually sell today.
5. **Justify the duration** with a documented business reason (sales cycle, contract length).
6. **Write a file note** at signing explaining each limit. You carry the burden of proof.
7. **Keep confidentiality and non-solicitation in separate clauses,** so one weak clause does not sink the others.
8. **Plan terminations with article 2095 in mind.** If you dismiss without a serious reason, the non-compete and any client non-solicitation clause in the employment contract are gone.
9. **Review the clause when the role changes;** a junior hire's clause may not fit a director.

For the rest of the hiring paperwork, see [hiring your first employee in Quebec](#).

If you are the employee: before signing or leaving

Before signing:

- Get the clause in writing before accepting, and ask what "competitor", "territory" and "clients" mean if undefined.
- Negotiate scope (named role, territory, shorter period) or a non-solicitation clause instead, and keep signed copies.

Before leaving:

- Reread the clause: whether you resign or are dismissed, with or without a serious reason, matters under [article 2095](#).
- Do not prepare your next move on work time or with the employer's tools, or take files or client lists, as explained in [Sahlaoui](#) (para. 38).
- Even with no clause, expect a short period of restraint with former clients you were close to (para. 54).
- Before accepting a job at a direct competitor, test any clause you signed against the three limits of [article 2089](#) and the way your job ended ([article 2095](#)). Éducaloi notes that a former employee who breaches a valid clause or the duty of loyalty [can be ordered to stop and sued for damages](#).

If you need a neutral place to go through and sign contracts with a first hire, 2727 Coworking has meeting rooms on the Lachine Canal in Griffintown.

Sources

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