

# INTEGRATING EMERGING TECHNOLOGIES IN HEALTH CARE: THE IMPORTANCE OF CONFLICT PREVENTION MECHANISMS

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## **ABSTRACT**

In this paper, the author analyzes the important role that conflict prevention mechanisms play in the adoption of large-scale projects aimed at incorporating new technologies into the health care system. Significant gains will result from our ability to anticipate and minimize the conflicts that will inexorably emerge during such projects that may trigger disruptive effects. In other words, there is a need to develop a new mindset toward “prevention” instead of “resolution”. The author will use the example of the computerization of the health care network in Québec (*Dossier santé Québec*, known in English as the Québec Health Record, or QHR) to illustrate the interrelation between conflict, achieving the goals of the contractual agreement, and failure to discuss the collaboration process. She will submit that one of the best options to shift toward prevention is to further implement partnering schemes in health care projects, especially in the context of complex projects or when risks fluctuate or are uncertain. Partnering is a dispute prevention mechanism that aims at building and maintaining a collaboration process among stakeholders and employees during the course of a project. It involves putting solid communication strategies into place, defining flexible and fair risk-sharing options, and monitoring the evolution of the relationships. While this prevention mechanism is well established in certain sectors, such as construction and engineering, it remains underutilized in health care. The author will explain what partnering is and what potential and challenges such a dispute resolution mechanism holds, as well as its legal value.



## I. INTRODUCTION

Significant gains will result from our ability to anticipate and minimize, as much as possible, the conflicts that will inexorably surface during the adoption of large-scale projects aimed at incorporating new or emerging technologies into the health care system. Such technologies have various defining features, including a capacity to promote the rapid development of new capabilities, to disrupt or create whole industries, or to have considerable systemic impacts.<sup>1</sup> Concern for conflict resolution, and even more so for conflict prevention, calls for concrete and proactive partnership-building and project-implementation initiatives that put the stakeholders into a preventive mindset. Developing such a mindset could reduce time and cost overruns, poor productivity, as well as cause a decline in project quality.<sup>2</sup> Moreover, when a government partner takes part in such a project, the absence of an effective prevention and resolution strategy, and its potential resulting impacts, can lead to a loss of public confidence in the project. The challenges are not insignificant considering the already fragile confidence in the public health system and the machinery of government in general.<sup>3</sup> Yet, public confidence remains a key asset to support government initiatives for health innovations.<sup>4</sup>

1. Health Canada, "Emerging Technology" (December 15, 2015), Science and Research, online: <[www.hc-sc.gc.ca/sr-sr/tech/index-eng.php](http://www.hc-sc.gc.ca/sr-sr/tech/index-eng.php)> (To define what constitutes an emerging technology, Health Canada refers to the definition provided by the World Economic Forum.); World Economic Forum, "Emerging Technologies" in *Network of Global Agenda Councils 2011-2012 Report*, Geneva, World Economic Forum, 2012.
2. See, for example, Erik Eriksson, Brian Atkin and TorBjörn Nilsson, "Overcoming Barriers To Partnering Through Cooperative Procurement Procedures" (2009) 16:6 *Engineering, Construction & Architectural Management* 598; Gail H. Forsythe, "Partnering: Effectively Working Together to Minimize and Resolve On-Site Disputes" (1995) 18:2 *Construction L. Reports* 142 [Forsythe].
3. Pascale Laborier *et al.*, *Les réformes en santé et en justice: Le droit et la gouvernance*, Québec, Presses de l'Université Laval, 2008; Julia Abelson, Fiona A. Miller and Mita Giacomini, "What Does It Mean to Trust a Health System?: A Qualitative Study of Canadian Health Care Values" (2009) 91 *Health Policy* 63.
4. Ian Kerr, Jennifer Chandler, and Timothy Caulfield, "Emerging Health Technologies" in Jocelyne Downie, Timothy Caulfield, and Colleen M. Flood, eds., *Canadian Health Law and Policy*, 4th ed., Markham, LexisNexis Canada, 2011 at p. 501. (More broadly, the

In light of the above, this paper argues that there is a need to develop conflict prevention mechanisms when adopting large-scale projects aimed at incorporating new technologies in health care. The proposal is divided into two sections. First, we discuss the importance of conflict prevention in the adoption of new health technologies by referring to the example of the Québec Health Record (hereafter referred to as the QHR). This project, initiated by the Québec government in 2006, and still to be fully completed, aims to provide a technological environment for collecting, preserving, and consulting certain health information throughout the province.<sup>5</sup> At the time the project was approved, the QHR was considered a “new” way to envisage data management.<sup>6</sup> This is an eloquent example illustrating the many challenges and conflicts that may arise in the implementation of projects involving new technologies. As a second step, we explore partnering, a process that seems to be a way forward in conflict prevention in this sector, as well as in health care more generally. In summary, this method of dispute prevention and settlement aims to conceptualize and implement concrete procedures for collaboration between different parties in order to facilitate the project implementation and guarantee its success. Despite its potential, the method remains disregarded in health law and more broadly in the legal field. Ultimately, this text will illustrate the correlation between conflict, fulfilling project objectives and failure to discuss the collaborative process.

## **II. THE IMPORTANCE OF CONFLICT PREVENTION/ RESOLUTION IN THE ADOPTION OF NEW TECHNOLOGIES: THE CASE OF THE QUÉBEC HEALTH RECORD**

New technologies in health care (including instruments, devices, medication, procedures for health service delivery and techniques related to health care production infrastructure and information technology and the organization of health systems<sup>7</sup>) are regularly at the heart of many legal, ethical, scientific and economic questions and debates.

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authors very interestingly note the following: “[p]ublic trust is an essential element of the research infrastructure and, if lost, is tremendously difficult to regain” at p. 536.)

5. Santé et Services sociaux Québec (health and social services Québec), “What is the Québec Health Record?” (2013) *Québec Health Record*, online: <<http://www.dossierde sante.gouv.qc.ca/en/fichier/Simplified-fact-sheet.pdf>> [Santé et Services sociaux].
6. Cynthia Chassigneux, Pierre Trudel, and Bartha Maria Knoppers, “L’encadrement juridique du traitement informatisé des données relatives à la santé: Perspective europeo-canadienne” (2006) 4:1 *GenEdit* 1 at p. 1.
7. Québec, Commission d’enquête sur les services de santé et les services sociaux, *Rapport de la Commission d’enquête sur les services de santé et les services sociaux*, Québec, Publications du Québec, 1988 at p. 626. See Québec, Health and Welfare

Each related phase of research, development, approval, implementation and evaluation incorporates a number of concerns and hopes. The challenges relate to the aspect of “newness” as well as to the “technological” component, while the two elements combined generate specific questions, linked, in particular, to risk and benefit sharing, change management and the evaluation process. While different researchers and stakeholders in the health care system are interested in these issues, the question of the role and impact of conflicts that may arise during and after the adoption of new technologies remains relatively unexplored. The next section focuses specifically on this question, drawing upon the example of the QHR, which, because of its capacity to disrupt practices in the health care system and to have considerable systemic impacts, attests to the hopes and stumbling blocks that sometimes mark the implementation of new technologies.

#### A. QHR: background and objectives

The main objective that justified the creation of the QHR is commendable and promising.<sup>8</sup> It is intended to provide authorized health care professionals with a technological environment that facilitates timely storage and access to health care information available online and throughout the province, thus promoting rapid, effective, and quality interventions.<sup>9</sup> This IT project was described as a “centerpiece” for the computerization of the health and social services network.<sup>10</sup> Although the nature of the information contained in the QHR has changed over the

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Commissioner, *Rapport d'appréciation de la performance du système de santé et de services sociaux 2009: Construire sur les bases d'une première ligne de soins renouvelée: Recommandations, enjeux et implications*, Québec, Health and Welfare Commissioner, 2009 at p. 36 [the Commissioner] (The Health and Welfare Commissioner defines “new information technologies” as information technology tools to preserve, process and analyze clinical data related to care. They include a variety of tools, such as electronic medical records, electronic health records (registries), and remote pharmacist prescribers.) See also the definition found in Institut national d'excellence en santé et en services sociaux (INESSS), *L'évaluation des technologies et des modes d'intervention en services sociaux*, Québec, Gouvernement du Québec, 2012 at p. 4.

8. Commissioner, *supra* note 8 at pp. 36-37 (see the comments of the Health and Welfare Commissioner in this regard).
9. Santé et Services sociaux, *supra* note 6. The *Act respecting the sharing of certain health information*, RLRQ, c. P-9.0001, defines the QHR as “an information asset that makes its possible to release to authorized providers and bodies, in a timely fashion, health information concerning a person receiving health services or social services that is held in the health information banks in the clinical domains”, s. 3, para. 4).
10. The Auditor General of Québec, Report of the Auditor General of Québec to the National Assembly for 2010-2011, vol. 2, Québec, Auditor General of Québec, 2011, ch. 3 at p. 3-3 [Auditor vol. II].

years, it currently includes prescriptions, prescribed medication, and the results of patients' laboratory tests and medical imaging (X-rays, computed tomography (CT scans), MRIs, etc.) carried out in a Québec public institution.<sup>11</sup> The QHR is different from the Electronic Patient Record (hereafter referred to as the EPR) or the Electronic Medical Record (hereafter referred to as the EMR), the latter two pertaining to service providers (private clinics, family medicine groups, institutions, etc.). In addition to the information required by the QHR, the EPR/EMR include the conclusions of patient interactions, such as diagnoses and professionals' notes; they are, in fact, an electronic version of the patient's paper records. While the QHR's data management tool now seems essential – even elementary – to a health care system, the project initially required significant adaptations to the system's prevailing structures, process, techniques, and working cultures, and this remains the case today. For the Québec government, and more specifically its *Ministère de la Santé et des Services sociaux* (Ministry of Health and Social Services, or MSSS), the principal manager and ultimately the main actor responsible for the project, this initiative has required constant and complex coordination. The extent of financial investment, the large number of actors involved at different levels and stages of the project, and the multiple deadlines are all factors that have complicated the coordination procedure.

In order to better grasp the scope of the project and, incidentally, the stakes involved, it is useful to etch a somewhat simplified<sup>12</sup> portrait of the various actors and/or organizations involved at one point or another in implementing the QHR and likely to have or to have had an impact on the success of the project. The exercise is difficult, not only for external observers, but also for project stakeholders, as highlighted in the report of the Auditor General of Québec.<sup>13</sup> Firstly, the project is funded by two main players, namely the Québec government and Canada Health

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11. For further clarifications concerning the current and future content of the QHR, see *Santé et Services sociaux*, *supra* note 6.
  12. The goal of the exercise is not to provide an exhaustive portrait of all the actors, but rather to offer a general description so as to better convey the scope, hierarchical and financial structure, and complexity of the project.
  13. The Auditor General of Québec, Report of the Auditor General of Québec to the National Assembly for 2010-2011, vol. 1, Québec, The Auditor General of Québec, 2010, ch. 5 [Auditor vol. I]; Auditor vol. II, *supra* note 10. Moreover, it has become very difficult to find detailed information concerning the QHR after the last Auditor General's reports on the subject dating back to 2011. No complete, independent, and public analysis matching the scope of the Auditor General's report has been carried out since. Documents available on the *Ministère de la Santé et des Services sociaux* and QHR websites are more general summaries, providing less analysis than the Auditor General's reports.



Infoway (hereafter referred to as CHI).<sup>14</sup> CHI funding is conditional on compliance with the requirement to develop a functional IT product within the stipulated timeframe, a product in use and corresponding to what was originally intended.<sup>15</sup> Secondly, as mentioned above, the project mainly falls under the auspices of the MSSS and the Direction générale des technologies de l'information (information technologies branch) – a role played by the office of the QHR until 2009.<sup>16</sup> In theory, the MSSS is accountable to Cabinet through semi-annual reports.<sup>17</sup> Finally, a number of actors have been connected to or remain within the sphere of the project, including (1) the former health and social services agencies that acted as a primary contractor for the QHR and asset ownership trustees; (2) the Régie de l'assurance maladie du Québec (Québec medical insurance board or RAMQ), which eventually took over certain operational elements of the project (for example, the medication component); (3) the MSSS legal department, tasked in particular with proposing the legislative changes enabling QHR implementation; (4) external consultants who participated in the management teams; (5) regional and local teams assigned different responsibilities with respect to facilitating and coordinating QHR implementation in various settings; and (6) many private providers tasked with delivering the expected products and services over the life span of the project.<sup>18</sup> Moreover, other actors or organizations have been solicited for advisory or administrative purposes, including health institutions, the Institut national de santé publique du Québec (national institute of public health of Québec), health professionals, professional associations and federations, specialized medical centres, community pharmacies, and members of the general public. This portrait is certainly incomplete, and other advisory committees, user committees, project managers, liaison officers, and technical teams, among others, also participated in the project.<sup>19</sup>

14. Canada Health Infoway, online: <[www.infoway-inforoute.ca/en/](http://www.infoway-inforoute.ca/en/)> (Canada Health Infoway is an independent non-profit organization, funded by the federal government, which invests in digital health care projects in Canada, in conjunction with Canadian provinces and territories.)

15. This aspect is clearly mentioned in the reports of the Auditor General. See especially Auditor vol. I, *supra* note 13 at p. 5-3.

16. The information technologies branch is under the more specific aegis of the Bureau de programme pour l'informatisation du réseau de la santé et des services sociaux (office of the computerization program for the health and social services network).

17. Auditor vol. II, *supra* note 10, paras. 3.44-3.45.

18. See Auditor vol. I, *supra* note 13, para. 5.88 (Already by 2009, some 237 contracts for the acquisition of goods and services had been concluded with private suppliers, for a total of \$418.4M).

19. Readers interested in a detailed portrait of the actors and agencies involved at one point or another in the QHR project are invited to consult, in addition to the reports of the Auditor General mentioned in previous footnotes, the following documents: Santé

While the QHR was initially envisaged as a single project, consisting of a portfolio of sub-projects dedicated to the development of a single IT platform, it was subsequently redesigned to include a computerization of various EPRs linked by means of a so-called QHR standard, which make up the provincial QHR data banks.<sup>20</sup>

## B. Relevance of conflict prevention/resolution

Now that these brief QHR contextual elements have been presented, what observations or hypotheses can be extrapolated given the issues that have arisen, and sometimes still persist, in the management of this large-scale project? This type of question needs to be asked in an attempt to assess the possible contribution of a conflict prevention and resolution tool such as partnering during such initiatives.

To begin with, the results are mixed, with the project's flaws having been exposed by both the Auditor General of Québec and the media.<sup>21</sup> These negative and publicized findings may have overshadowed some progress or improvements made along the way, including steps forward (or avoided failures) resulting from the project management strategies that the government put in place.<sup>22</sup> The Auditor General stated that the

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et Services sociaux Québec, *Le Dossier de santé du Québec: Plan d'affaires 2007-2010*, Québec, Publications du Québec, 2007 [Santé et Services sociaux Québec]; Santé et services sociaux Québec, *Le Dossier de santé du Québec: Des réalisations qui s'affichent 2007-2008*, Québec, Publications du Québec, 2008.

20. Auditor vol. II, *supra* note 10, paras. 3.10-3.11.

21. The Auditor General monitored the QHR at various points from 2007-2008 until 2011. The media do not provide information of the same quality as the Auditor, but do transmit certain elements of widespread public dissatisfaction having, rightly or wrongly, fed the perception of the project as a relative failure.

22. As we will see later in the text, the Auditor General mentions certain project management tools, notably including communication strategies. Below is an email from the information technologies branch of the MSSS (February 2016) in reply to our request for an indication of the specific project management strategy used by the MSSS in implementing the QHR: "After the pilot project was carried out in several regions of Québec, the National Assembly approved legislative procedures for its province-wide implementation in June 2012. This was an important victory with respect to QHR implementation, signifying a fundamental change in the health-care information-sharing plan. The QHR's constituent components were developed by a number of partners in conjunction with users from their spheres of activity, after which operational management of its recurrence was consolidated under a single administrator. Lastly, dedicated teams worked hand in hand with local and regional actors to ensure implementation of the QHR components and to manage the significant changes brought about by this project". We were unable to obtain a more precise reply than that. The QHR's current track record along with the Auditor's work suggest, however, that these tools, though potentially useful, have proven to be insufficient. We will come back to this point.

project was initially a failure<sup>23</sup> and the MSSS reported in 2014 that the general project to computerize the health network, which includes the QHR, “should be abandoned and restructured”.<sup>24</sup> Let us look briefly at some facts that allow us to propose possible explanations as to the source of the occasionally difficult progress of the QHR since its implementation in 2006.

In the first place, frequent and significant delays in the implementation of the QHR were highlighted by the Auditor General and the Québec government itself.<sup>25</sup> While the QHR implementation period was originally intended to span a four-year period from 2006 to 2010, the project has still not been completed, although significant progress has been made.<sup>26</sup> Delays in project implementation are a major issue, especially because CHI funding is in part dependent on the progress of the work.<sup>27</sup> The Auditor General pointed out the lack of realistic time and cost estimates for the project on the part of the MSSS and also invited the MSSS to develop reliable tools to periodically measure work progress and obtain an accurate picture of the timeline<sup>28</sup> and cost.<sup>29</sup> Second of all, project targets have been modified along the way, with some having become more modest. This was the case regarding the number of potential QHR users,

23. Auditor vol. II, *supra* note 10, para. 3.11. Incidentally, the Auditor General’s acknowledgment of failure received extensive media coverage. See for example, Louise-Maude Rioux Soucy, “Dossier médical électronique: Le Québec, cancre de la classe”, *Le Devoir* (8 October 2010), online: <[www.ledevoir.com/societe/sante/297719/dossier-medical-electronique-le-quebec-cancre-de-la-classe](http://www.ledevoir.com/societe/sante/297719/dossier-medical-electronique-le-quebec-cancre-de-la-classe)>; Jean-Nicolas Blanchet, “Le ministre de la Santé « découragé » par l’informatique”, *Le Journal de Montréal* (21 November 2014), online: <[www.journalde-montreal.com/2014/11/21/le-ministre-de-la-sante-decourage-par-linformatique](http://www.journalde-montreal.com/2014/11/21/le-ministre-de-la-sante-decourage-par-linformatique)> [Blanchet].

24. Blanchet, *ibid.* (quoting Charlie Fidelman).

25. See for example Auditor vol. I, *supra* note 13; Auditor vol. II, *supra* note 10.

26. See Auditor vol. II, *supra* note 10 at p. 3-3 and para. 3.28 (Québec has also lagged behind the rest of Canada, finding itself in 2010-2011 at the back of the pack, in the company of Nunavut and the Yukon); Commissioner, *supra* note 7 at p. 39. (The Health and Welfare Commissioner also points out that Québec is in last place among Canadian provinces with respect to the use of the computerized medical file, a reflection of how Québec is generally trailing with respect to the computerization of the health care system as a whole.)

27. Auditor vol. I, *supra* note 13, para. 5.49; Auditor vol. II, *supra* note 10, para. 3.27 and following.

28. Auditor vol. I, *supra* note 13, para. 5.68 and following.

29. As the Auditor General’s QHR monitoring came to an end in 2011, the latter noted a significant cost overrun in the project. Voir *supra* note 22. (When we contacted the information technologies branch of the MSSS in February 2016 to find out the anticipated total cost of the project, we were told that no cost overrun was expected and that the project would be completed within the initial \$ 563M budget, in spite of the missed deadlines. It would be worthwhile for the Auditor to examine this information at some later date.)

which declined from 95,000 at the outset to 5,500, deemed a minimum target in order to ensure investment sustainability according to the MSSS.<sup>30</sup> Thirdly, frequent changes in the project's senior management structure caused certain inconsistencies in leadership. As an illustration, between 2006 and 2010, a series of six senior managers worked on the project.<sup>31</sup> The Auditor General emphasized that team stability is a decisive factor for success.<sup>32</sup> Fourthly, various coordination and connection problems between actors and project components were identified, among the most important being a lack of linkage and of interoperability between the QHR and the EPR, identified as a major issue impacting user and service-provider commitment to the project.<sup>33</sup> Fifthly, inadequate tools or strategies to deal with potential and emerging problems seem to have curbed the project.<sup>34</sup> The example of the pharmacists involved in the pilot project in 2009 illustrates this situation. Their pharmacy's computer system, then connected to the QHR, was inoperative for hours due to changes made by the supplier to meet QHR integration needs, a situation which led to the withdrawal of pharmacist participants in the pilot project and the discontinuation of the latter in 2009.<sup>35</sup> Another illustration is the absence of a comprehensive data security plan, which compromises – or at least puts into question – the potential security of the QHR.<sup>36</sup> Sixthly, the project's risks, in particular as regards obsolescence and technological evolution, as well as cost and spending overruns, appear to have been mainly borne by the public sector.<sup>37</sup> In the seventh place, accountability problems were identified during the project, one of

30. Auditor vol. II, *supra* note 10, para. 3.5.

31. *Ibid.*, paras. 3.36-3.38.

32. *Ibid.*, para. 3.38.

33. Auditor vol. I, *supra* note 13, para. 5.32 and following; Auditor vol. II, *supra* note 10, para. 3.10 and following, 3.29. (The acceptance of any technology or product by health care professionals has moreover been identified as a key factor leading to the generalized adoption of this technology or product. The Auditor General mentions that users must have confidence in the benefits of the product. On the lack of linkage between the various elements of the project, the Minister also indicated that the project "isn't everything it should be", that decisions were not coordinated, and that the different types of software were not designed to work together.) Also see Blanchet, *supra* note 23.

34. See Auditor vol. II, *supra* note 10, paras. 3.42-3.43. (The Auditor notes, by way of illustration, that problematic situations and projects were difficult to identify.) Also see Santé et Services sociaux Québec, *supra* note 19 at p. 22. (The QHR team has made certain support tools available for regional project teams. The utility and reach of these tools is however difficult to assess, and these elements were not specifically addressed by the Auditor General.)

35. Auditor vol. I, *supra* note 13, para. 5.77.

36. *Ibid.*, para. 5.92 and following.

37. An observation that we can make based the Auditor General's reports cited in this article.

them being an absence of semi-annual reports tabled with Cabinet.<sup>38</sup> Eighth and last of all, computer complications slowed down the project, sometimes significantly. The difficulty of obtaining a unique identifier for every Québécois was among these hitches.<sup>39</sup>

As such, the problems and conflicts identified above, which are directly or indirectly related to issues of governance and project management (time, money and human resources management, vision, coordination, communication, evaluation, etc.), seem to have held back the QHR to varying degrees. It is normal that problematic situations arise during the course of a project; the reason for the malfunction lies elsewhere (we will come back to this point later on). Improvements and various tools were proposed on a number of occasions by the government and the QHR teams to overcome the difficulties identified, including support tools (evaluation grids, templates, technical specifications, etc.) and business-relationship or partnership strategies with suppliers.<sup>40</sup> In the end, however, the results have been disappointing, either because the changes came along too late in the game or because of their shortcomings. The consequences of this defeat are significant, particularly at the political level. It can be argued that these governance issues have, to varying degrees, produced stumbling blocks and conflicts leading to a still-incomplete project, as well as to a possible decline in confidence – both on the part of the public in the government's capacity to carry out such a project and of the government in the private sector (at least as regards this sphere of activity).<sup>41</sup> It thus becomes difficult for the government to convey a message of optimism about QHR progress. The Health and Welfare Commissioner [hereafter referred to as HWC] noted furthermore the conditional trust of citizens in computerization, especially when public funds are involved.<sup>42</sup> And yet the commitment of health care actors and of the general public, who can opt out of the QHR project, is essential.

If the malfunction does not stem from the problems or conflicts that inevitably arise in the course of any project – in this instance beyond the specific context of the QHR – where does it lie? In our opinion, it can *in part* be found in the failure to plan and put in place effective tools to initially prevent and then to deal with problems (communication, logistical,

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38. Auditor vol. I, *supra* note 13, para. 5.102 and following. (Improvements have been made in this regard over the years.)

39. *Ibid.*, para. 5.55.

40. Santé et services sociaux Québec, *supra* note 19 at p. 23.

41. See for example Auditor vol. I, *supra* note 13, para. 5.60.

42. Commissaire, *supra* note 7 at p. 43.

and circumstantial) and conflicts that are sure to arise during the implementation of complex projects. The partial nature of this reply has been italicized, for it would be too simplistic to summarize the source of the problems experienced by complex projects – which are undoubtedly multifactorial – in one easy explanation. The many interactions and interdependencies linking actors from various organizations or cultures also ensure that these conflicts take place as predicted.<sup>43</sup> The multi-stakeholder nature of a given project, recurring deadlines, the uncertain or fluctuating nature of certain risks, and the need to mobilize various teams are all factors making it particularly useful to establish mechanisms to promote and protect the inter-stakeholder collaborative process,<sup>44</sup> including the rapid and effective prevention and resolution of conflicts.

Developing a “spirit of prevention” in project management requires the adoption of various positions and precepts. Here are a few: (1) admitting, at the outset, that problems and conflicts are very likely to arise, especially in the context of a complex project; (2) recognizing that in certain circumstances even the best-drafted contracts will be ineffective in dealing with these inevitable difficulties and cannot guarantee the success of the project; and (3) being open to creating tools – and not just punitive ones – that develop and enhance collaboration between the parties so as to increase the chances of project success.

After having explored the various elements that lead to a better understanding of the challenges that may arise when adopting new technology – in this case through the possibly extreme example of the QHR – we have proposed that among the governance arrangements required to support such projects, it may be useful to include a specific, effective mechanism for fostering conflict prevention and collaboration between the parties. More specifically, in the next section, we suggest considering partnering, a means of preventing and resolving disputes that could meet this need. Although this mechanism remains little known in the legal community, at least in comparison with other mechanisms such as mediation and arbitration, it seems to have interesting potential as regards the adoption of new technologies and the health sector in general. The mechanism is one more option to consider among the various project governance strategies available.

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43. Catherine Régis, “Le partenariat préventif (Le partnering)” in Pierre-Claude Lafond, ed., *Régler autrement les différends*, Markham, LexisNexis Canada, 2015, paras. 5-18 [Régis]; Leonard J. Marcus, Barry C. Dorn et Eric J. McNulty, *Renegotiating Health Care: Resolving Conflict to Build Collaboration*, 2nd ed., San Francisco, Jossey-Bass, 2011.

44. Régis, *supra* note 43, paras. 5-13.

### III. A FUTURE PATHWAY FOR ENSURING BETTER CONFLICT PREVENTION/RESOLUTION WHEN ADOPTING NEW TECHNOLOGIES: THE CASE FOR PARTNERING

Partnering<sup>45</sup> is one of the few dispute resolution methods that is preventive in nature; this is in fact where its greatest value lies. What we have here is a regulatory strategy that focuses on the “active life” of projects or contracts. Within the logic of partnering, it is not assumed that the contract itself is a sufficient tool to deal with all the issues and conflicts that may arise during the course of a project, especially in cases where there is a certain degree of associated complexity. The upcoming pages provide details, first of all about the nature and objectives of partnering and, secondly, about the potential contribution of this approach.

#### A. Partnering: Background and objectives

No definition of partnering can be found in any legislative text in Québec or in the rest of Canada; nor is there a solid doctrinal consensus as to its various components and the process involved.<sup>46</sup> Despite this lack of clear consensus, the core values underpinning the approach seem to converge toward the following three principles: (1) trust, (2) mutual understanding, and (3) a predetermined conflict resolution procedure.<sup>47</sup>

Clive Seddon, a UK lawyer specializing in this sector, proposes the following definition:

Partnering is a structural management approach to facilitate team-working across contractual boundaries. Its fundamental components are (1) formalised mutual objectives, (2) agreed problem resolution methods and (3) an active search for continuous measurable improvements.<sup>48</sup>

More specifically, Hong Yan and Shaokai Lu suggest that partnering constitutes a structured sequence of procedures initiated at the beginning of a project, based on the achievement of mutual objectives,

45. For a general study on partnering, see Régis, *supra* note 43.

46. See especially Per Erik Eriksson, “Partnering: What Is It, When Should It Be Used, and How Should It Be Implemented?” (2010) 28 *Construction Management & Economics* 905 [Eriksson].

47. See especially Johan Nyström, *Partnering: Definition, Theory and the Procurement Phase*, dissertation for master’s level degree in infrastructure, Kungliga Tekniska Högskolan, 2005 [unpublished] p. 10 [Nyström]; *ibid.*

48. Clive Seddon, “Partnering: The UK Experience” in *International Law FORUM du droit international*, La Haye, Kluwer Law International, 1999 at p. 73.

involving specific tools and techniques such as workshops, a charter, conflict resolution mechanisms and techniques for continuous improvement.<sup>49</sup>

Drawing upon the available literature and the objectives of the approach, we can summarize partnering as a conflict prevention method designed to develop and maintain collaboration between the parties in order to facilitate project implementation and ensure its success.<sup>50</sup>

Although the parties have flexibility in developing and implementing a partnering strategy that can be adapted to their needs and project-specific considerations,<sup>51</sup> it is generally considered that this approach includes four distinct stages<sup>52</sup>: (1) holding a pre-workshop meeting; (2) holding a workshop; (3) drafting a “partnering charter”; and (4) updating the charter and monitoring the collaborative process. Throughout these stages, the facilitator will direct the partnering process, sometimes playing the role of pedagogue, sometimes of monitor.<sup>53</sup> The facilitator is usually a third party, someone external to the project with partnering expertise chosen to guide the parties in the right direction. Let us now briefly illustrate how these different stages unfold.<sup>54</sup>

During the first stage, the senior managers involved in the project must agree on the relevance of a partnering strategy. On the basis of this

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49. Eriksson, *supra* note 46 at p. 907.

50. Régis, *supra* note 43, paras. 5-11.

51. Such as the workplace culture, relationships between the various parties, nature of the risks involved, characteristics of the parties involved (government, companies, para-governmental organizations, etc.); the process can be developed to a greater or lesser degree, depending on the size and complexity of the project in question. In general, see Régis, *ibid*.

52. Inspired by the recommendations of Frank Carr, a writer and experienced practitioner in the field: Frank Carr in collaboration with Kim Hurtado *et al.*, *Partnering in Construction: A Practical Guide to Project Success*, Chicago, American Bar Association, 1999 [Carr]. See also Tri-Service Committee, *Partnering Guide: For Environmental Missions of the Air Force, Army, Navy*, Washington, Tri-Service Committee, 1996 at p. 20 (other similar models of partnering procedures in the US); Jean-François Roberge, *La justice participative: Changer le milieu juridique par une culture intégrative de règlement des différends*, Montréal, Éditions Yvon Blais, 2011 [Roberge]; Forsythe, *supra* note 4.

53. Nabil N. Antaki, *Le règlement à l'amiable des litiges*, Montréal, Éditions Yvon Blais, 1998 at p. 76 [Antaki].

54. The description of these stages is taken from Carr's book, *supra* note 52. Readers interested in other models or further details regarding more specific organizational possibilities for the partnering process can consult various sources, notably Thomas R. Warne, *Partnering for Success*, New York, American Society of Civil Engineers, 1994 [Warne]; Carr, *supra* note 52 (which describes organization possibilities on a day-by-day and hour-by-hour basis).



agreement, the parties will choose a facilitator to initiate the process. The pre-workshop meeting, or more generally the preliminary stages leading up to the first workshop, aims to ensure that all stakeholder groups involved in the project are informed about partnering and their responsibilities in this regard.<sup>55</sup> Ideally, senior project managers should publicly reiterate their commitment to the process at this meeting, as well as the workshop that will follow,<sup>56</sup> and mandate those in authority to act as representatives.<sup>57</sup> In the case of the QHR, the Minister of Health and Social Services, senior deputy ministers involved, senior CHI managers, and main private providers, among others, should have made this commitment.

The second stage involves the holding of an initial facilitator-directed workshop, enabling the project teams to meet and prepare for the work ahead.<sup>58</sup> A list of potential invitees comprising organizations and individuals that could affect the success of the project needs to be drawn up and examined.<sup>59</sup> For example, those in charge of daily project monitoring are likely candidates for invitation. In the case of the QHR, several actors involved in the project could have participated, including representatives of the MSSS, CHI, and RAMQ, private providers, EPR users, managers, pilot project participants, and other stakeholders. The goal of the workshop is to bring the parties together to discuss their objectives and expected challenges, build a new chain of communication, foster team spirit and develop conflict resolution approaches to be used should problem situations or deadlocks arise.<sup>60</sup> It should be noted that partnering is therefore likely to involve various techniques and dispute prevention and resolution methods, such as developing a conflict resolution grid which provides tips and tricks enabling actors to solve their problems on their own or by way of a mediation service. During this workshop, which sometimes takes place over the course of more than

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55. Carr, *supra* note 52 at p. 82. See also Roberge, *supra* note 52 at p. 62. (Professor Roberge, in fact, refers to this stage as one of "commitment", thus placing emphasis on the importance of this element for a successful partnering start-up.)

56. See for example Antaki, *supra* note 53 at p. 76; Warne, *supra* note 54; Régis, *supra* note 43, paras. 5-28 and following.

57. Roberge, *supra* note 52.

58. Warne, *supra* note 54 at p. 13.

59. *Ibid.* (The author proposes asking the following three questions to determine which participants are to be included in the workshop: (1) Can the organization being considered impact project completion? (2) Who from this organization has decision-making authority for the contract? (3) Who from the organizations represented will determine the day-to-day progress of the project?)

60. Carr, *supra* note 52 at p. 86. (For example, a conflict resolution grid can be developed to reduce the risk of escalating conflicts and to encourage the actors themselves to solve problems as soon as possible.)

one session, the facilitator will thus have the important responsibility of moderating and managing exchanges within the group, taking note of commitments and creating a climate conducive to the emergence of a collaborative dynamic.<sup>61</sup> A summary of the work accomplished during the workshop should then be sent to the participants without undue delay.<sup>62</sup>

The third stage involves developing a “partnering charter”, a mechanism specific to this approach that entails creating a document detailing workshop results, i.e. the process (responsibilities and communication, evaluation, and conflict prevention and resolution procedures) as agreed upon by the parties. The charter is thus established by stakeholder consensus, not imposed by any given interested party. For example, the QHR partnering charter could have included an explicit communication chain linking the various stakeholder groups; clear monitoring and accountability mechanisms to periodically measure the project’s progress; and a provision for assisted negotiation, mediation or arbitration, to be determined according to the nature of the conflicts identified. Comprising a single document, the charter could replace or supplement other communication plans and intervention strategies required should conflicts arise in the course of a given project. It also represents the mutual commitment of the parties to work together in bringing the project to fruition. Above and beyond procedure, a good charter should therefore include framework values that guide the parties in their approach and in their pursuit of shared objectives.<sup>63</sup> For example, the parties’ performance objectives, a commitment to carry out the project without dispute, and a promise to do everything required to complete the project by its deadline could all be specified in the charter.<sup>64</sup> This written document has thus very important functional and symbolic value for the partnering approach and should be adapted to each project rather than simply duplicated as a generic model.<sup>65</sup> The charter will then be signed by the various participating stakeholder groups and widely disseminated to all partners affected by the commitment.<sup>66</sup> In the case of the QHR, this charter could have been disseminated, for example, on the MSSS website and the sites of the private providers involved.

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61. Antaki, *supra* note 53 at p. 76.

62. Nicole Guay, “Vers l’avenir. Une nouvelle forme de résolution des conflits: la prévention par le « partnering »” in Jean-Louis Baudouin, ed., *Médiation et modes alternatifs de règlement des conflits: aspects nationaux et internationaux*, Montréal, Éditions Yvon Blais, 1997 at pp. 361, 366 [Guay].

63. Carr, *supra* note 52 at p. 139.

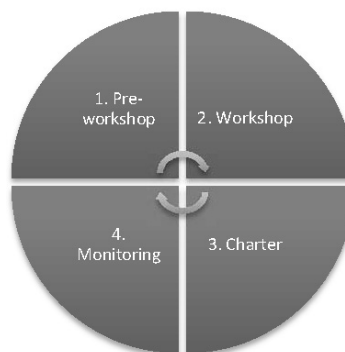
64. Antaki, *supra* note 53 at p. 76.

65. Warne, *supra* note 54 at p. 24.

66. *Ibid.* (Signing plays an important role in committing the parties to the process.)

Lastly, as a final stage, this approach should provide for the possibility of making necessary adjustments to the charter and evaluating the collaboration dynamic. The aim here is thus to ensure that the partnering in question is in line with the ground-level reality of the different actors. Various means can be used to achieve this goal, for instance holding workshops or follow-up meetings; conducting surveys; intervening with those involved in the partnering process to validate the effectiveness of the communication networks; and/or organizing gatherings for socializing or for involving those who join the project along the way.<sup>67</sup> In addition, the individuals in charge of follow-up procedures should be clearly identified, whether they be employees or resources external to the organizations in question, depending on the expertise and degree of proximity required. These may include, for example, a dispute-prevention and -resolution specialist, a polling company, and/or employees of the company's human resources department.

**Table 1**  
**Partnering**



## **B. Relevance of partnering**

In the matter at hand, the opportunity presented by partnering is twofold: the broader relevance of such schemes in health care and other sectors on the one hand, and the pertinence of partnering in the specific context of the QHR on the other hand. In the following pages, we will, given space constraints, succinctly address this question and interweave these two dimensions.

67. Carr, *supra* note 52 at p. 160; Antaki, *supra* note 53 at p. 75. See also Warne, *supra* note 54, ch. 13-15. (There is undoubtedly some flexibility in the choice of means to accommodate the specific needs of the project and the actors involved.)

We would like to begin by giving a recent illustration of an interesting partnering in the health care sector in Québec. The Collège des médecins (college of physicians) and the Ordre des pharmaciens (college of pharmacists) have set up an inter-professional watchdog/monitoring body. This mechanism was introduced in the context of developing new pharmacist activities with a potential to create tension between the two professional groups.<sup>68</sup> More specifically, the aims of this monitoring were defined as follows: (1) support new professional practices and interfaces between them, and foster optimal collaboration between physicians, pharmacists, and other health care professionals; (2) enable rapid intervention with a view to meeting emerging challenges and preclude misinterpretations; and (3) assess effectiveness and efficiency of the processes that are already in place and seek new solutions.<sup>69</sup> The watchdog/monitoring committee, composed of members of the main interested parties (physicians, patients, and pharmacists), has elaborated operating rules of its own in order to meet these objectives. Although the professional colleges did not designate this project by the term “partnering”, in our view, it is characterized by the main merits and components of partnering. This example is testimony to the array of possibilities, both existing and to be explored, in utilizing, in whole or in part, this type of method.

In addition, partnering reflects the rationale of an informal governance model<sup>70</sup> between partners that places emphasis on collaboration and on a horizontal conception of power, recognizing thereby actor interdependence in a certain number of aspects of a project or a relationship. Although predominantly informal, this type of governance is permeable to integrating formal methods of governance, inasmuch as it is focused on the relationship with a view to maintaining and improving trust (a premise for collaboration) rather than developing contractual methods of control.<sup>71</sup> In regards to QHR, we have seen the level of trust dwindle between stakeholders and end users for a number of reasons related to the project. Yet, the latter’s commitment is essential to the QHR’s suc-

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68. Jean-Bernard Trudeau, “Maintenir la vigie au-delà du conflit” (sustained monitoring outside of conflict situations), Conference of the 7th Symposium on interdisciplinarity: *Quand partage d’activités rime avec conflit interprofessionnel peut-on mieux faire?* (can we do better when inter-professional conflict comes on the heels of shared activity?), Estérel (Qc), November 7, 2014 [unpublished].

69. *Ibid.* (Other objectives were also cited.)

70. Geert Dewulf and Anna Kadefors, “Trust Development in Partnering Contracts” in John E. Taylor and Paul Chinowsky, ed., *Working Paper Series: Proceedings of the Engineering Project Organization Conference*, South Lake Tahoe (Cal), Engineering Project Organization Society, 2010 at p. 2 [Dewulf, “Trust”].

71. *Ibid.* (The authors refer in particular to research papers by Bercovitz *et al.* published in 2006.)

cess. Consequently, the preservation or rehabilitation of this relationship is of utmost importance. Trust between the government and private suppliers has also been eroded, making further development of the project necessarily more challenging.<sup>72</sup> The adoption of effective mechanisms to sustain and enhance the climate of trust between stakeholders would have been an important asset in favour of the project's advancement.

That said, the underlying horizontal conception of power in this method is likely to become an issue: it may be more difficult to integrate in certain government organizations that implement uniform methods of project management based on vertical power relationships with business partners. In this case, it is all the more important to analyze the potential added value of partnering as it may apply to individual projects, in particular in comparison to other conflict prevention and resolution methods, prior to undertaking such a process.

In the context of a professional practice that is characterized by defensive and reactive attitudes on the part of the parties (owing to the history of the contractual or relational relationship, or to the workplace culture), it may be necessary to envisage a new type of framework in order to change the parties' habitual responses. Peter Kamminga suggests that the more a collaboration involves parties of different cultures and perceptions, the greater the need is for inter-party mechanisms to clarify the process.<sup>73</sup> Whereas formal processes may force actors to cooperate at the outset, effective behavioural change is brought about by informal methods.<sup>74</sup> The need thereof became blatant in the context of the QHR, due to the involvement of a range of actors from a variety of settings and the change of professional and administrative practices made necessary by the project.

The partnering process entails several stages with an inherent cost in terms of time and money for the involved actors, which is subject to variation depending on the project's degree of complexity. In order to consolidate this method's added value, a minimum effort of balancing between said investment and parties' strategic stakes in the short, medium, and long term is required.<sup>75</sup> This is why partnering is particularly

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72. See Auditor vol. I, *supra* note 13 at p. 22, para. 5.60 (for illustrative purposes).

73. Y. Peter Kamminga, "Inter-Firm Negotiations and Conflict: The Need to Negotiate "Process" to Sustain Cross-Border Commercial Relationships" (2011) 1:2 Journal of Arbitration and Mediation 141 [Kamminga].

74. Dewulf, "Trust", *supra* note 70 ("[t]his commitment was an important starting-point for the relationship development but the trust development was further enforced during the operational phase of the contract..." at p. 6).

75. Eriksson, *supra* note 46 at p. 907.

promising for projects entailing a degree of complexity and requiring collaborative governance, although other concerns may deserve consideration as well, such as developing a partnership in the medium to long term or changing the mindset within a system or a company. There is little doubt that cost adjustment is a requirement for the QHR considering the substantial investment incurred in terms of financial and human resources. Dedicating financial resources to the implementation of a partnering scheme – complementary to the usual project management strategy of the MSSS or otherwise – could have been justified in light of the project's evident complexity, substantial public funding at stake, and anticipated social spin-offs, in particular the quality and efficiency of health care and services.

Furthermore, collaborative governance went hand in hand with the challenges of this project. At the outset, it was necessary to coordinate an impressive number of actors and organizations in order to develop a unique and functional product (endorsed by field actors): an endeavour requiring the interconnected and concomitant participation of actors and organizations at various levels. This collaborative imperative made the assessment stage (stage 4) all the more useful in order to ensure that partnering evolved in line with the actors' reality on the ground, taking into account the duration of the project, as well as the need for a fruitful interrelation between managers, designers, and practitioners.

In addition, partnering can prove to be a useful regulation strategy in the event where flexibility of project or contract elaboration and implementation becomes desirable or even necessary.<sup>76</sup> Therefore, this method can meet the need for a rapid response, owing to the flexible governance tools that provide easy adaptation in highly changeable contexts, which is a challenge for many actors and in many areas (high tech and research and development, for example). In regards to QHR, this flexibility would likely have been beneficial in some respects to the extent that technological obsolescence and development warranted the project's reorganization, at times with additional costs and delays.<sup>77</sup> Some of these developments could not be suitably provided for, while others, as already mentioned, emerged in the context of timeframe extension for

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76. Geert Dewulf and Anna Kadefors, "Collaboration in Public Construction: Contractual Incentives, Partnering Schemes and Trust" (2012) 2:4 *Engineering Project Organizational J.* 240 at p. 248; Kamminga, *supra* note 73.

77. Auditor vol. II, *supra* note 10; Auditor vol. I, *supra* note 13; more generally, see Charlie Fidelman, "Québec's electronic records plan a "disaster", Barette says", *Montreal Gazette* (21 November 2014) online: <[www.montrealgazette.com/news/local-news/quebecs-electronic-records-plan-a-disaster-barrette-says](http://www.montrealgazette.com/news/local-news/quebecs-electronic-records-plan-a-disaster-barrette-says)>.

the implementation of the QHR. Ultimately, flexibility in regards to the evolving context of computerization could have prompted greater fairness in risk sharing between stakeholders. In the same vein, this prevention method can simplify contract drafting.<sup>78</sup> For example, it may be stipulated that topics that are not specifically addressed in the contract, such as the choice of certain products or risks related to the cost of materials and technological evolution, may be determined through partnering.

Some scholars underscore the fact that taking an excessively legalistic approach in directing projects may become an obstacle to smooth functioning; this is one pitfall that partnering tries to avoid. Peter Kamminga, for example, points out that:

Taking a legal approach in handling or interpreting events may encourage escalation of conflict. Although the root cause is not legal, when a problem actually becomes a conflict, it may quickly be “legalized.”<sup>79</sup>

He adds that legal documents drafted by the parties are often of no help when it comes to putting the collaboration process back on track. Conversely, they become a source of dispute with regards to the consequences of unforeseen events and changes.<sup>80</sup>

Finally, parties choosing to utilize partnering must be aware that the general consensus is that the method has no legal value, but is rather intended as an informal governance tool.<sup>81</sup> The idea is not to make of it a contract within the contract, thereby running the risk of obviating its unique advantages. Contractual obligations remain unaffected by partnering. The purview of this method is limited to personal commitment.<sup>82</sup>

In the context of Québec civil law, partnering may however be used to interpret the parties’ good faith compliance with contractual obliga-

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78. Nyström, *supra* note 47 at p. 37.

79. Kamminga, *supra* note 73 at p. 152.

80. *Ibid.* at p. 153.

81. Roberge, *supra* note 52; Antaki, *supra* note 53 at pp. 76-77; Guay, *supra* note 62 at p. 361.

82. See for example *EBC Inc. v. New Brunswick*, 2007 NBCA 87, [2007] 323 N.B.J. (2d) 332 (New Brunswick’s Court of Appeal discussed the legal value of the partnering charter drafted by the parties in the context of a wharf building project); *Birse Construction Ltd. v. St. David Ltd.*, [2000] ABC.L.R. 08/17 (T.C.C.) (UK) [Birse Construction]. (In this case the document at issue could neither amend the parties’ responsibility as defined in the contract, nor generally alter the legal conditions defined therein.)

tions.<sup>83</sup> This prevention and conflict resolution mechanism may therefore have interpretative value in relation to the general obligation in contractual matters stipulated in article 1375 of the *Civil Code of Québec*.<sup>84</sup> Good faith entails a general attitude, conduct, and even an ethical framework in a contractual relationship.<sup>85</sup> Good faith is guided by a well-meaning and proactive attitude in order to allow each party to draw maximum benefit from the contract.<sup>86</sup> Didier Lluelles and Benoît Moore add that good faith includes a duty of *loyalty*, rooted in indispensable trust between the parties, and *cooperation*, rooted in dialogue and problem solving.<sup>87</sup> These two values are in fact at the heart of partnering. Consequently, sabotaging partnering by one of the parties for no apparent or valid reason may be interpreted, depending on the context and limits of confidentiality,<sup>88</sup> as failing to act in good faith. Non-compliance with good faith contractual performance by a party can incur legal consequences,<sup>89</sup> which may include the award of punitive damages, termination or rescinding of the contract, dismissal, and accountability.<sup>90</sup> In a nutshell, partnering creates no new legal obligations for the parties involved but in certain circumstances, it may serve to interpret compliance with the good faith contract obligation.

83. In the recent decision *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 495, the Supreme Court of Canada recognizes the obligation of good faith contractual performance in common law. Consequently, reflection has become pertinent in common law as well.

84. *Civil Code of Québec*, art. 1375: "The parties shall conduct themselves in good faith both at the time the obligation arises and at the time it is performed or extinguished". See generally Didier Lluelles and Benoit Moore, *Droit des obligations*, 2nd ed., Montreal, Thémis, 2012, para. 1976 and following [Lluelles].

85. Lluelles, *supra* note 84, paras. 1977 and 2024.

86. *Ibid.*, paras. 1977-1978 and 2024.

87. *Ibid.*, paras. 1978, 1997 and 1999.

88. Confidentiality guarantees apply to this conflict prevention and settlement method, as provided for in section 4 of the new *Code of Civil Procedure*, CQLR, c. C-25.01: "Parties who opt for a private dispute prevention and resolution process and the third person assisting them undertake to preserve the confidentiality of anything said, written or done during the process, subject to any agreement between them on the matter or to any special provisions of the law." However, unlike the prevailing rule for other dispute prevention and resolution methods, certain aspects of partnering must be broadly disseminated in order to have the intended impact. If we take the example of the Charter, the nature of this tool is to be disseminated as widely as possible in order to remind all stakeholders of the working principles that guide the project, as well as the collaboration methods that are enacted, such as the communication networks and conflict resolution grid. The parties may thus agree to lift the confidentiality guarantee in regards to this document, which contains useful information, and they may choose to do likewise regarding other aspects of the project. To the extent that some items of partnering cease to be confidential, it becomes possible to use them as evidence in a contentious context.

89. Lluelles, *supra* note 84, para. 2014 and following.

90. *Ibid.* See Lluelles, *supra* note 84 (for a discussion of the nature of these sanctions).



The future of this type of method is closely connected with a better understanding of the “challenge to collaborate”. There are some indications as to the factors that facilitate successful partnering,<sup>91</sup> but we do not have a complete picture of the psychological, economic, and social factors that promote collaboration between individuals, in particular in the context of partnering.<sup>92</sup> It is therefore difficult to make accurate predictions about what terms, conditions, and prerequisites for collaboration are essential to ensuring optimal partnering effectiveness. Further research is needed, as well as an assessment of the impact of partnering in the health care sector during and after projects. It seems important to at least survey the parties’ interest and motivation in regard to collaborative processes so as to preclude the possibility of malicious instrumentalization by either party. Do the parties genuinely intend to collaborate? Ambivalence in this regard would result in a waste of time and money at least for one of the parties. In this case, trust would be broken despite the fact that partnering aims to strengthen it from the outset.

To summarize, partnering focuses on implementing contractual or other relationships in a manner that is satisfactory to the parties, through a recognition of the need to devise a relational strategy for the purpose of managing potential conflicts, unforeseen events, and establishing communication flow between project actors in the field and within management structures. As explored in this section, certain QHR-related conflicts and problems could have been reduced by fruitful partnering, especially given the apparent correlation between their source and the objectives of this approach. In fact, some of the issues brought to light by the Auditor General were of the sort to be on the partnering radar. Partnering is therefore a governance tool to be considered in accordance with projects’ needs and complexity, in order to support the implementation of technological innovations.

#### IV. CONCLUSION

In order to study the role of conflict prevention in the context of adopting new technologies in the health care sector, this paper has focused on the development of the QHR. The stumbling blocks that have marked its implementation demonstrate the importance of developing a preventive mindset, especially in carrying out complex projects that

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91. See Régis, *supra* note 43, paras. 5-28 and following (some of the factors that may affect negatively the proper running of collaboration processes are the lack of flexibility in organizations, the lack of team spirit, cultural barriers, and adversarial attitudes of the parties).

92. *Ibid.*, paras. 5-47. Also see Tom R. Tyler, *Why People Cooperate: The Role of Social Motivations*, Princeton (NJ), Princeton University Press, 2011.

entail conceptualizing and putting in place concrete and effective collaboration between parties. This paper explored the specific contribution of partnering – a dispute prevention and settlement method – as a means to this end.

With a view to enhancing the development of this method, or at least the values that it embodies, it may be envisaged to view “collaborative practice capacity” as one criterion for awarding certain contracts, in particular in the public sector.<sup>93</sup> This is warranted by the spin-offs associated with effective collaboration. Integrating collaborative tools in projects, partnering being one example, as well as the tenderer’s expertise in this regard, may prove to be important and appreciated assets.

However, the growth and credibility of partnering are subject to appropriate use of this method: for the right reasons, at the right time, and in the right way.<sup>94</sup> Partnering is not to be seen as a panacea for solving all potential setbacks that might occur in the process of project implementation. Nevertheless, choosing action over inaction deserves to be solidified and enhanced as the privileged solution.

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93. Eriksson, *supra* note 46 at p. 911.

94. *Ibid.* at p. 599 (“[i]t is important therefore that clients implement partnering in the correct way and for the right reasons in projects that are suitable...”).