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.[1] 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.[2] 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.[3] Yet, public confidence remains a key asset to support government initiatives for health innovations.[4]

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1. Health Canada, "Emerging Technology" (December 15, 2015), Science and Research, online: <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.[5] At the time the project was approved, the QHR was considered a "new" way to envisage data management.[6] 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[7]) 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.dossierdesante.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.[8] 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.[9] This IT project was described as a "centerpiece" for the computerization of the health and social services network.[10] 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].