Report

Social Data Trusts

A Governance Model

Report presented by
Territoires innovants en économie sociale et solidaire (TIESS)
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About TIESS

TIESS is a liaison and transfer organization in social innovation (OLTIS) recognized by Quebec's Ministry of Economy and Innovation. TIESS brings together many organizations from the social economy and the territorial development sector, as well as research centres, universities and CEGEPs. TIESS contributes to territorial development through knowledge transfer. We provide tools to social and solidarity economy organizations to help them transform their practices and respond to societal challenges in innovative ways. tiess.ca

Contributions

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Context

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Data Trusts Initiative

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PROJECT OBJECTIVES

Recent technological developments, from artificial intelligence to the Internet of Things, have focused attention on the value of data. Once structured and interpreted, data increases knowledge in a given sector and supports resource allocation optimization, personalization of services and improvement of customer service.[1]

Data occupies a growing place in the global economy.[2] Economic development now relies heavily on digital innovation; data is a prime resource in an increasingly connected world. In just a few years, we have generated and collected more data than in all previous periods of history.[3] This asset, however, is concentrated in the hands of only a few actors. The exclusionary aspect of data accumulation raises many issues. The concentration of data under the control of the few threatens personal privacy and fundamental human rights and erodes the protection of personal information. It also poses economic challenges. Access to information represents a significant advantage for those who enjoy it, contributing to the concentration of the digital economy[4] and widening the digital divide between individuals, communities and territories.[5] Nevertheless, data can also have significant value for community economic development.[6] Good-quality data is essential when facing contemporary challenges; it is a vital decision-support tool that serves many purposes besides purely pecuniary ends.

Numerous actors are seeking solutions to these challenges. Examples include the recent modernization of Canadian and Quebec privacy laws and the adoption of Montréal's Data Charter.[7] However, these solutions are often focused on protecting individuals rather than fostering collective action and responsibility for data use, access and protection. Moreover, these policies fail to address political concerns over market inequity.

[1] Stalla-Bourdillon, S., Thuermer, G., Walker, J., Carmichael, L., & Simperl, E. (2020). Data Protection by Design: Building the Foundations of Trustworthy Data Sharing. *Data & Policy, 2*(4), 1-10; HM Treasury (2018). *The economic value of data: A discussion paper*, p. 4.

[2] Duboc S., & Noël, D.J. (2021). *Économie et gouvernance de la donnée*. Conseil économique, social et environnemental, p. 12; Klein, J. L., & Huang, P. (2013). La lutte contre l'exclusion numérique et la revitalisation des collectivités locales. *Nouvelles pratiques sociales, 26*(1), 84-101.

[3] Nora, D., Pénicaud, N., & Soula, C. (2014, April 17). Révolution big data, gros business. *Nouvel Observateur*, 66-70.

[4] Delacroix, S., & Montgomery, J. (2020). *From Research Data Ethics Principles to Practice: Data Trusts as a Governance Tool*, p. 4; Blankertz, A. (2020). *Designing Data Trusts: Why We Need to Test Consumer Data Trusts Now*. Berlin, Germany: Stiftung Neue Verantwortung, p. 10.

[5] Klein, J.L., & Huang, P. (2013). La lutte contre l'exclusion numérique et la revitalisation des collectivités locales. *Nouvelles pratiques sociales, 26*(1), 84-101, p. 87.

[6] Yoon, A., Copeland, A., & McNally, P. (2018). Empowering Communities with Data: Role of Data Intermediaries for Communities' Data Utilization. Proceedings of Association for Information Science and Technology (ASIS&T) Annual Meeting, 583-592, p. 583.

[7] Laboratoire d'innovation urbaine de Montréal (2020). *Montréal's Digital Data Charter*. City of Montréal.

In an environment where the rules of data valuation are largely dictated by large corporations, the social economy can be the source of solutions that question this established order. One such solution is using “social trusts” (or non-charitable-purpose trusts) to govern data ethically and collectively, and to promote data-sharing initiatives within the social economy. Data-sharing is defined as a process in which

> two or more data providers […] agree to pool or otherwise link together specified data in order to make such data available to each other and/or third parties (i.e. data users).[8]

Elsewhere, we have discussed “social trusts” as a potentially promising data governance mode[9] and described “social data trusts,” which

> apply the legal tool of the trust to the world of data for a general or common-interest purpose while ensuring responsible and ethical governance of that data.

This paper, to be read in tandem with the Constituting Act, will outline a prototypical use of a social trust, as defined in Quebec law, for sharing and mutualizing personally identifying and non-personally identifying data in the non-profit sector. The aim is not to create a replicable model but rather a prototype that presents the core concepts of a non-charitable-purpose trust and the related issues, and can serve to inspire and guide data-sharing collaboration through data trusts in Quebec and beyond.

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[8] Stalla-Bourdillon, S., Carmichael L., & Wintour, A. (2021). Fostering Trustworthy Data Sharing: Establishing Data Foundations in Practice. *Data & Policy, 3,* E4.

[9] Leblanc, J. (2021). *La fiducie d’utilité sociale de données*. Territoires innovants en économie sociale et solidaire.

PART I: REPORT

The Core Concepts of Social Trusts

In Canada, legislative powers are distributed across federal and provincial jurisdictions. The provinces exercise powers over education, social services, administration and taxation, except for matters of national concern or emergencies. The province of Quebec has a uniquely pluralistic legal system as a result of successive colonization by the French and British empires. Civil and private matters, including property matters, are governed by the French civil law tradition, while public and criminal matters are subject to Canadian common law. This affords Quebec trust law rich sources on which to draw.

As trust law is rooted in the common law tradition, civil law jurisdictions have debated how to conceptualize fiduciary relationships within that framework.[10] Quebec trust law is based on the idea of an autonomous and distinct "patrimony."[11] A patrimony may be defined as a collection of present and future rights and obligations, understood as a whole, wherein rights are coupled with obligations. The *Civil Code of Québec* provides that every person (natural or legal) is the holder of a patrimony.[12] This patrimony may be divided and/or "appropriated" (i.e. assigned)[13] to a purpose, such as a social trust, but only to the extent provided by law.

Under the *Civil Code of Québec,* a trust is an autonomous patrimony appropriated to a purpose. It is therefore a purpose trust, which is generally invalid in common law.[14] This kind of trust allows for the implementation of data trusts for general-interest or social purposes without the restraint of identifying beneficiaries or setting up a charitable trust. As defined in the law, a social trust is a trust constituted for a purpose of general interest, such as a cultural, educational, philanthropic, religious or scientific purpose. Its essential aim cannot be the making of profit or the operation of an enterprise.[15]

Under the *Civil Code of Québec*, a trust results from an act whereby a person, called the settlor, transfers property from their patrimony to another patrimony constituted by them, which they

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[10] Smith, L. (2008). Trust and Patrimony. *Revue générale de droit*, *38*(2), 379-403.

[11] Smith, L. (2008). Trust and Patrimony. *Revue générale de droit*, *38*(2), 379-403; Popovici, A. (2012). *Le patrimoine d'affectation. Nature, culture, rupture*. [Masters thesis, Université Laval].

[12] *Civil Code of Québec*, CQLR c CCQ-1991, article 2 [*CCQ*].

[13] Appropriation is a "particular end to which a patrimonial right or a universality of patrimonial rights is designated." See Paul-André Crépeau Center for Private and Comparative Law, *Private law dictionary and bilingual lexicons – property*. Cowansville, Quebec: Yvon Blais, 2012.

[14] Lau Jia Jun, J., Penner, J., & and Wong, B. (2020). The Basics of Private and Public Data Trusts. *Singapore Journal of Legal Studies*, 90, 90-114.

[15] *CCQ,* article 1270.

appropriate to a particular purpose. Upon acceptance of this charge, trustees undertake to hold and administer properties of this purpose trust.[16]

Table 1: Comparison of Common Law Trust and Quebec's Civil Law Trust

Common Law Trust	**Quebec's Civil Law Trust**
The trustee is the owner of the property for the benefit of another person; the trustee has obligations towards the beneficiary.	The trustee administers the property according to the predetermined purpose. The trustee's duty is to administer the property of others.
The **beneficiary** is an essential element of the trust; all trusts must have at least one beneficiary (with the exception of a charitable trust).	The **purpose** is at the heart of the trust. Beneficiaries are not an essential element of the trust (with the exception of a personal trust).
Trustees have duties of prudence, loyalty and diligence.	
The assets in trust cannot be seized by the trustee's creditors.	

The settlor is the person who creates the trust by a transfer of property. In transferring the property to the patrimony, settlors give up any real rights[17] to this property since they are no longer the owners. Settlors can monitor the management of the trust, but not directly: they must address themselves to the trustees.[18]

Trustees are appointed, usually by the settlor, to hold and administer the trust in order to carry out the purpose of the trust. Trustees do not own the property in trust but merely administer it according to the rules of administration of the property of others.[19] Trustees are therefore central to the existence of the trust: without them, the trust cannot fulfil its role since no one has any rights over the trust property. More than one trustee may be appointed; when this is the case, trustees will administer the trust patrimony together.

[16] *CCQ,* article 1260.

[17] A real right is a right that can be exercised directly on the property (right of use, usufruct, servitude), as opposed to a personal right, which is exercised against a person (i.e. claiming the payment of a debt).

[18] *CCQ*, article 1287.

[19] *CCQ*, article 1278.

Trustees are charged with the full administration of the trust, meaning that they must preserve the property, make it productive, and increase the patrimony where the pursuit of the purpose of the trust requires it.[20] Generally, trustees must act with prudence and diligence. They must also act honestly and faithfully in the best interest of the object pursued.[21] No trustee may use the property they administer or information they obtain by reason of their administration for their own benefit.[22]

In a social trust, trustees hold various powers over the property held in trust. They exercise control and exclusive administration of the trust patrimony. The titles to the property that composes the trust patrimony are drawn up in the trustee's name. Also, trustees can exercise all rights pertaining to the patrimony and may take any proper measure to secure its purpose.[23] The Constituting Act will limit or extend these powers, according to the purpose of the trust.

A social trust must be established by a Constituting Act––equivalent to the trust's instrument in common law––signed by the settlor and the initial trustees. Even though the trust is constituted, it is not a legal person.[24]

The Constituting Act will determine the purpose of the trust and the powers assigned to trustees in order to pursue or realize this purpose. More specifically, in the case of a data trust, the Constituting Act will define the roles played by the various stakeholders: data users, data providers, data collectors and data protectors. The Constituting Act also defines the roles of the trustees and the qualifications and professional skills required for this charge.

Data Governance Principles

Ensuring legal compliance is only one of many requirements for responsible and ethical data governance when sharing or mutualizing data. Broadly framed, data governance determines

> who makes decisions, how the decisions are made, and how the decision makers are held accountable for the collection, use, sharing, or control of an organization's or group's data[25].

[20] *CCQ*, article 1306.

[21] *CCQ*, article 1309.

[22] *CCQ*, article 1314.

[23] *CCQ*, article 1278.

[24] Smith, L. (2008). Trust and Patrimony. *Revue générale de droit*, *38*(2), 379-403.

[25] Gagnon-Turcotte, S., Sculthorp, M., & Coutts, S. (2021). *Digital Data Partnerships: Building the Foundations for Collaborative Data Governance in the Public Interest*. Open North, p. 31.

The Constituting Act model we are proposing is thus based on a governance framework (see Table 2) developed by Open North, a Montreal-based non-profit organization that promotes the responsible and effective use of data and technology through research and development, capacity-building and networking. Their framework relies on three central data governance principles, each of which is applied in different forms through a series of mechanisms. Open North's approach is based on the assumption that there is no one-size-fits-all model for data governance.

Table 2: Three Data Governance Principles and Their Mechanisms:[26]

PRINCIPLES	MECHANISMS
Responsible: realize value from data in a responsible and ethical manner	Declaration of principles
	Informed consent
	Recourse options
	Anonymization
	Privacy by design
	Risk assessment
Effective: mechanisms that promote effective and consistent data management	The data lifecycle
	Data quality
	Standards and interoperability
	Managing data access and privileges
Accountable: assess compliance and the impacts of decisions throughout the data lifecycle	Clear assignment of responsibilities
	Compliance monitoring
	Auditability of decisions

[26] Gagnon-Turcotte, S., Sculthorp, M., & Coutts, S. (2021). *Digital Data Partnerships: Building the Foundations for Collaborative Data Governance in the Public Interest*. Open North.

Notably, these mechanisms do not mention the concept of data stewardship, which can have several definitions.[27] Nevertheless, we consider the notion of data stewardship to be implicit in the idea of entrusting data, or rights to data, to the trustees of a social trust. Data stewardship is defined as "a way to balance individual data rights and the use of data for societal use"[28] or "the responsible use, collection and management of data in a participatory and rights-preserving way."[29]

Data Governance Mechanisms Within a Social Trust

Legal Architecture of a Social Data Trust

To fully understand the role of a Constituting Act, it must be placed within the legal framework of trusts and personal data protection, and viewed in relation to other mechanisms that may be adopted to ensure responsible, efficient and accountable data governance.

We have decided to create a data trust prototype based on the assumption that the data being shared contains personally identifying information simply because this is the most complicated data governance framework to operationalize. Under Quebec law, privacy rights are enshrined in the *Charter of Human Rights and Freedoms*[30] and the *Civil Code of Québec*.[31] Property rights to personal data do not exist; the protection of personal information and control over one's personal information are aspects of the right to privacy. The right to privacy is a personality right; that is to say, a right that involves a moral interest and cannot be measured monetarily. No one can transfer or cede their right to privacy, or renounce it by contract. These rights to privacy are stipulated in the *Act respecting the protection of personal information in the private sector*.[32]

[27] Ada Lovelace Institute & UK AI Council (2021). *Exploring Legal Mechanisms for Data Stewardship, Working Group, Final Report*.

[28] Manohar, S., Ramesh, A., & Kapoor, A. (2020). *Data Taxonomy*, Aapti Institute, p. 4.

[29] Ada Lovelace Institute & UK AI Council (2021). *Exploring Legal Mechanisms for Data Stewardship, Working Group, Final Report*, p. 23.

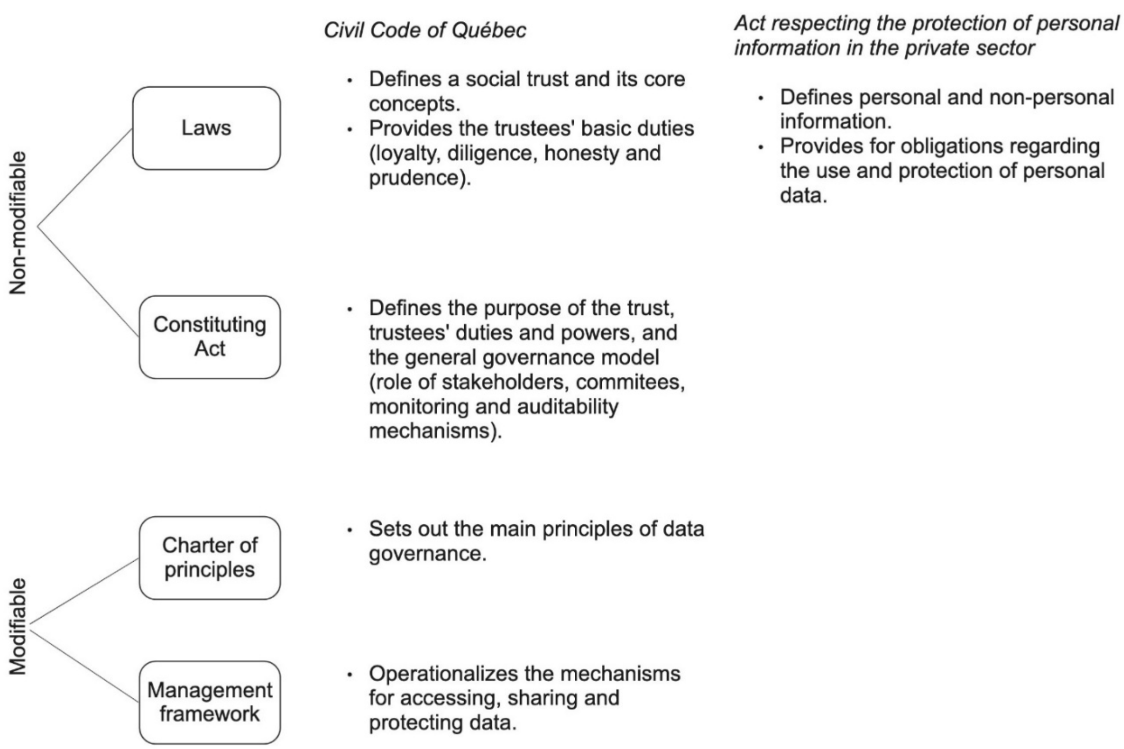
[30] According to section 5 of the *Charter of Human Rights and Freedoms*, CQLR c. C-12, "Every person has a right to respect for his private life."

[31] Article 3 of the *Civil code of Québec* provides that "Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy. These rights are inalienable." Article 35 provides that "[E]very person has a right to the respect of his reputation and privacy. The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law."

[32] *Act respecting the protection of personal information in the private sector*, CQLR c. P-39.1.

The relevant provisions of the *Charter of Human Rights and Freedoms*, the *Civil Code of Québec* and the *Act respecting the protection of personal information in the private sector* constitute the basic legal requirements for a social data trust. The goal, however, is to go beyond the basic requirements of the law and create legal duties for the trustees that are more restrictive, are based on the highest standards and norms, and will survive even if the laws are amended or become obsolete.

Figure 1: Legal Architecture of a Social Data Trust



To achieve this, a social data trust will be governed by three separate documents, each with a different role, to create a comprehensive but dynamic rulebook[33].

The Constituting Act defines the core elements of the operations of the trust, primarily its purpose, the duties and powers of the trustees, the main roles of the various stakeholders and the principal data governance mechanisms (those relating to monitoring, public disclosure and auditability). This Constituting Act is not subject to change except by court order. It must therefore be precise enough to guide trustees yet flexible enough to be sustainable over the long term. It should not contain technical specifications or standards that may change over

[33] Stalla-Bourdillon, S., Wintour, A., & Carmichael, L. (2019). *Building Trust Through Data Foundations: A Call for a Data Governance Model to Support Trustworthy Data Sharing*, WSI White Paper #2, Web Science Institute, p. 13.

time. The Constituting Act should provide a framework for the actions of trustees, while allowing them the flexibility to develop more precise standards.

These dynamic norms and precise standards will be set out in two documents, called the Charter of Principles and the Management Framework. A data governance charter of principles (or declaration of principles) is "an effective way to articulate and demonstrate adherence to a set of values or positions on data governance."[34] The adoption of such declarations by trustees makes it possible to translate charters of principles that have no legal force, such as the Montréal Digital Data Charter[35] or the International Open Data Charter,[36] into standards to be respected by trustees. Although we have not included this in the Constituting Act, it could provide that any amendments to the Charter must be submitted to a committee of stakeholders or citizens.

Finally, the Management Framework will operationalize all the governance mechanisms set out in the Constituting Act and the Charter of Principles. It describes the nature of the data and the rights to the data held by the trust, the terms and conditions for access to and use of the data, all matters relating to the collection of data (technical norms and standards, consent form, etc.), the procedure for withdrawing consent, recourse against the trustees, measures taken to ensure confidentiality (anonymization), the security measures to be put in place and the auditability procedures.

To ensure responsibility and accountability, these documents will be publicly available.

Fiduciary Duties and Independent Stewardship enshrined in collective action and shared responsability

As in common law,[37] civil law trustees are bound by a "fiduciary obligation of undivided loyalty." However, this loyalty is to the purpose of the trust and not to the beneficiaries, who are not an essential element of a social trust created under the *Civil Code of Québec*. Thus, it is crucial to frame a general purpose that will reflect individuals' aspirations for privacy and control over their data, beyond the basic requirements of the law. It is also possible to simply make protection of privacy a specific purpose of the trust. As can be seen in Section 3 of the Constituting Act, more than one purpose may be specified for a social trust, an approach that reflects the inherent complexity of the need to protect personal data while creating value from it. The trustees would then be bound by a duty to control and monitor the use of and access to

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[34] Gagnon-Turcotte, S., Sculthorp, M., & Coutts, S. (2021). *Digital Data Partnerships: Building the Foundations for Collaborative Data Governance in the Public Interest*. Open North, p. 56.

[35] Laboratoire d'innovation urbaine de Montréal. (2020). *Montréal's Digital Data Charter*. City of Montréal.

[36] International Open Data Charter (2015). *Principles*.

[37] Delacroix, S., & Montgomery, J. (2020). *From Research Data Ethics Principles to Practice: Data Trusts as a Governance Tool*.

the data by third parties, notably by establishing contracts that reflect the data trust's provisions and principles.

Trust law in Quebec is a private instrument, which means that no public bodies monitor or register existing social trusts. Nor are there directories of trustees similar to the enterprise registrar, a public officer who publicly posts information on the creation of and changes to legal entities and their boards of directors. It is therefore essential for the governance of a social data trust that it creates its own monitoring and auditability mechanisms. The goal is to create self-monitoring mechanisms by setting up a board of trustees that acts collegially,[38] publicly disclosing its members and appointing trust protectors.

The trustees, collectively, will be in charge of the administration of the trust. They can be assigned to specific roles, but it seems especially important that the trustees meet the following two requirements: (1) they collectively possess the knowledge and skills to deal with the various issues—legal, technical, ethical, etc.—involved in sharing and pooling data between several stakeholders; (2) they act collegially, complementing and counterbalancing each other.

As there is no mechanism for public disclosure in their case, the trustees will have to set up ways to report their appointment or replacement, vacancies on the board, annual accounts, and any decisions to amend, repeal or replace the Management Framework or the Charter of Principles.

Finally, the Constituting Act provides for the creation of the role of trust protector, which is not a statutory function under the *Civil Code of Québec*. The trust protectors' mandate, described in Section 7.3 of the Constituting Act, is similar to that of a governance committee. It supervises the trustees' actions:

> The mandate of the Trust protectors is to receive and assess the Trustees' annual accounts; refuse or adopt the annual accounts; review the ethical and data governance principles and norms applied by the Trustees to make sure they meet the highest standards; make recommendations regarding these principles and norms; and review the authorizations to access and use data granted to third party users to ensure they are in compliance with the purpose of the Trust.

The goal of these mechanisms is to create relations of interdependence between the trustees, and between the trustees and the trust protectors, that will enhance responsibility and accountability.

[38] The need to find and train a large number of trustees certainly poses a challenge to the implementation of large ecosystem of social data trusts. See Delacroix, S., & Montgomery, J. (2020). *From Research Data Ethics Principles to Practice: Data Trusts as a Governance Tool*.

A Bottom-up Structure with Multi-stakeholder Representation

It has been argued that a data trust "can bridge the desire to share data for social and economic benefit, with concerns about the vulnerabilities that such data sharing can create" and bring "citizen voices into decisions about data use."[39] It is our ambition to translate this participatory vision of data trusts into the Constituting Act. This ambition requires us to create roles not provided for by the law and to embed them in a governance structure. To this end, we have created four roles, defined as follows in Section 1 of the Constituting Act:

Data Collectors: Any person who collects personal or non-personal data.

Data Contributors: Any person who transfers data to the trust patrimony.

Data Providers: Any physical person who provides, directly or indirectly, their personal data to the trust patrimony.

Data Users: Any person authorized to use data under the control of the trustees, in accordance with section 6.3. Data users may be the trustees or any persons to whom authority to use the data is delegated.

Any stakeholder can combine different roles. In fact, all data providers will automatically be data contributors. The differences between some categories may seem artificial, but it is important to be aware of the different types of actors involved in the operation of the trust to ensure that they are adequately represented.

It is also important to stress that these categories do not constitute a universal model that need only be replicated; when creating a new data trust, the stakeholders' underlying interests and needs must be mapped, which could lead to the definition of entirely different categories.

[39] Montgomery, J., & Lawrence, N., (2021). Data Governance for the 21st Century: Citizen Dialogue and the Development of Data Trusts. In K. Cohen & R. Doubleday (Eds.), *Future Directions for Citizens Science and Public Policy* (pp. 94-107). Cambridge, England: Centre for Science and Policy.

Figure 2: Data Governance Model

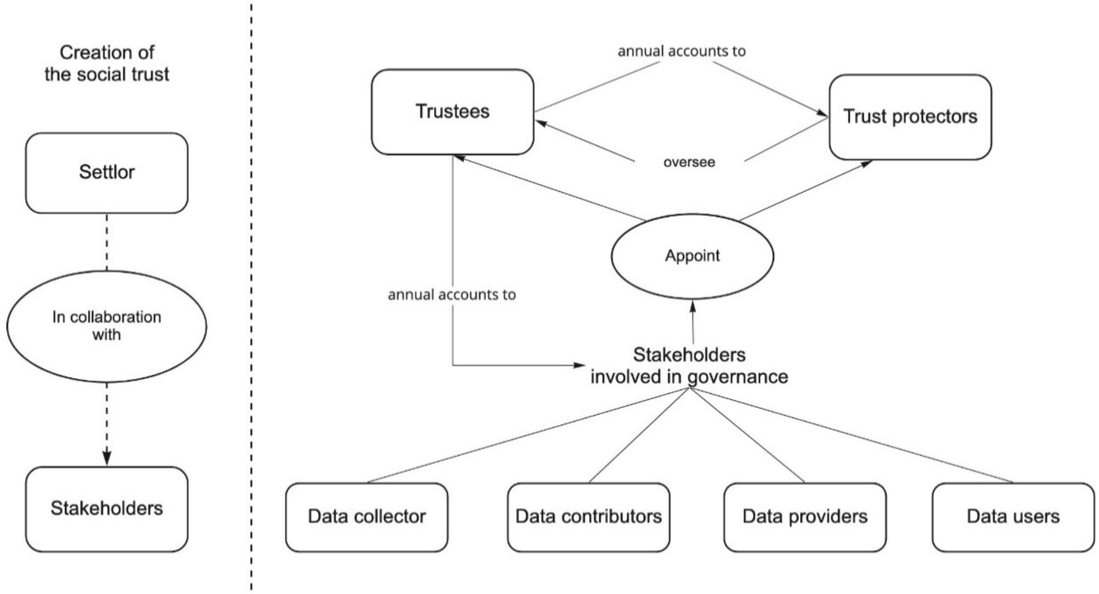

Figure 2 underlines the relationships between these categories, and especially the role of citizens (as data providers). In many social trusts, we find a governance structure that provides for the appointment of trustees by stakeholders. This makes it possible to ensure the probity, integrity and accountability of the trustees. The same mechanism could also be applied to the trust protectors.

The Constituting Act we have drafted does not provide for additional committees or bodies representing stakeholders, including citizens (as data providers), as our aim was not to create a replicable model. Nevertheless, it is possible, under the Constituting Act, to create statutory committees with various mandates, such as monitoring, advising or making recommendations to the trustees. The trustees could be required to receive, deliberate on and act on such advice and recommendations.

PART II: CONSTITUTING ACT

CONSTITUTING ACT

[NAME OF THE TRUST]

[Date]

Before [name of notary], notary for the province of Québec, having his place of business in the city of [city], district of [judicial district].

APPEAR [**Name of the organisation**], a legal person legally constituted in virtue of [constitutive law], having its headquarters at [location of headquarters], province of Québec, represented by [name of administrator, administrator's title], duly authorised by the terms set by its board of directors dated [date of resolution], copy of which is annexed to the original hereof after having been recognized as verifiable and signed for identification by the representatives in the presence of the undersigned notary.

(Hereafter referred to as "the Settlor".)

AND: [**Name of 1st Trustee, profession**]**,** domiciled and residing at [address of 1st Trustee]**.**

AND: [**Name of 2nd Trustee, profession**]**,** domiciled and residing at [address of 2nd Trustee]**.**

AND: [**Name of X Trustee, profession**]**,** domiciled and residing at [address of X Trustee]**.**

(Hereafter collectively referred to as "the Initial Trustees".)

WHOM, prior to the establishment of the Trust, declare the following:

CONSIDERING the intention of the Settlor to create a transparent mechanism to govern data in which all can trust;

CONSIDERING this Trust must apply the highest standards and norms in terms of personal information protection and the best data governance principles, standards and practices recognized internationally at any time of its existence;

CONSIDERING Trustees must stay on the lookout and seek the best and highest standards of data governance known at any time of the Data Trust existence;

CONSIDERING the administration of the Trust must respect the *Charter of Human Rights and Freedoms* and Quebec's laws relating to the protection of personal information.

This part aims to provide information to future Trustees and any interested person about the broad intent of the Settlor. It serves as a guide to interpretation of the Constituting act and reflects the basic principles that are at stake.

SECTION 1

DEFINITIONS

Constituting act.[40] The present act and all its modifications or revisions. The Constituting act also includes the preamble and the appendices.

Data Collector. Any person that collects personal or non-personal data.

Data Contributor. Any person that transfers data to the Trust patrimony.

Data Provider. Any physical person providing directly or indirectly his personal data to the Trust patrimony.

Data User. Any person authorised to use data under the control of the Trustees, in accordance with section 6.3. Data users may be the Trustees or any persons to whom the power to use the data is delegated.

Initial Period represents the year that follows the signature of this Constituting act.

Initial Trustees are the Trustees appointed by this Constituting act.

Management Framework of the Trust. Set of principles adopted by the Trustees according to section 6.1.2, which aims to frame and orient the actions and decisions of the Trustees.

Patrimony: a patrimony is a collection of present and future rights and obligations understood as a whole wherein the rights (always understood in pecuniary terms) answer to the obligations.

Property or asset of the Trust refer to corporeal or incorporeal property — which includes any rights having a monetary value, such as rights over data.

[40] In common law, the Constituting act refers to the Trust's instrument.

Purpose of the Trust: purpose for which the Trust is created.

Settlor refers to [Name of the organisation].

Trust or Trust Patrimony. The autonomous and distinct Trust patrimony created by the Settlor and administered according to this Constituting act.

Trustees. All Trustees designated as such in conformity with section 5 of this Constituting act.

Trust Protectors mean the persons designated by this Constituting act to monitor the administration of the Trust and receive the annual account of the Trustees.

SECTION 2

CONSTITUTION OF THE SOCIAL TRUST

2.1 Name of the Trust

The Trust will be designated under the name [name of the Trust].

2.2 Constitution of the Trust patrimony

The Settlor constitutes a Trust patrimony for the social purposes stated in this Constituting act by transferring [Initial contribution] from his patrimony to an autonomous and distinct patrimony and by confiding to the Trustees the detention and the administration of the Initial property and of any other property in accordance with the conditions and the procedures mentioned in this Constituting act.

Any property transferred to the Trust patrimony will be used to pursue its purpose.

The Trustees accept to hold and administer the property of the Trust in accordance with the Constituting act, and, if necessary, with the dispositions of the *Civil Code of Quebec* when they are not incompatible with the dispositions of this Constituting act. The Trustees also commit to administer the Trust patrimony in accordance with laws and regulations regarding privacy and the protection of personal information, including the *Charter of Human Rights and Freedoms.*

SECTION 3

PURPOSE OF THE TRUST

The Trust constituted by this Constituting act is a social Trust. It is created, organised and managed for a purpose of general interest and it does not have the making of profit or the operation of an enterprise as its essential object.

It is constituted for these specific purposes:

- To operate a secure platform [or another technological solution] in order to allow data sharing;
- To enable the sharing of data between [specify the kinds of organisations] in order to promote innovation or development in the social economy sector;
- To document and identify the determinants of social activities (consumption of specific goods, urban travel habits, etc.) in order to promote the development of the social economy;
- To use data and artificial intelligence to find innovative solutions to challenges met by social economy organisations;
- To insure the accessibility of data to organisations that share the same purposes and use that data in accordance with the particular assignments;
- To create knowledge from personal data in an ethical and secure way, in the respect of the laws and regulations regarding privacy and the protection of personal information, including the *Canadian Charter of Rights and Freedoms* and the *Charter of Human Rights and Freedoms*;
- To create tools to help social economy organisations make efficient and relevant decisions in their field of activity;
- To create a culture of collaboration and mutual Trust between organisations.

The Trustees or the Settlor are not authorized in any manner to modify the assignment of the Trust created herein.

These purposes are given as examples. They would need to be adapted to the specific purposes of the Trust created. More than one purpose may be specified.

SECTION 4

THE SETTLOR

The Settlor establishes the Trust patrimony by transferring his initial property to the Trust.

The Settlor appoints the Initial Trustees in accordance with the requirements specified in sections 5.3 and 5.4.

The Settlor also supervises the administration of the Trust in accordance with the provisions of the *Civil Code of Quebec* and the Constituting act.

SECTION 5

TRUSTEES

5.1 Initial Trustees

The Settlor appoints [seven (7)] Initial Trustees to the administration of the Trust. These Trustees are appointed for an initial period of one year.

For this initial period, Trustees will be designated as follows:

- [specify the nomination process].

In a multi-stakeholder Trust, it is common practice to identify which organisation can nominate Initial Trustees. Thus, the Constituting act can designate the organisation (social enterprise, citizen organisation, etc.) that will nominate the Initial Trustees.

5.2 Nomination

Before the initial period is exhausted, Trustees must adopt a new nomination process, at least 60 days before the end of the term.

[The Constituting act may also provide for a specific nomination process. As for the Initial Trustees, the Constituting act may provide for a nomination process involving the various stakeholders].

Except for the initial period, Trustees will be nominated for a mandate of two years. A Trustee may only renew his mandate for [specify] period(s)].

5.3 Eligibility to the charge of Trustee

[This part details the conditions of eligibility for all Trustees]

5.4 Quality and professional skills of Trustees

Trustees must ensure that they collectively possess the qualifications and skills necessary to exercise the different charges and responsibilities described in section 5.5.

At least one of the Trustees must be a member of a professional body and exercise his or her profession in the Province of Quebec.

5.5 Different charges of the Trustees

In order to fulfil their duties and exercise their powers, the Trustees may assign different charges among them. These different charges may be, but are not limited to:

- *Administration*: the Trustee appointed to this role is responsible for the general management of the Trust, the coordination of the administration of other Trustees, the annual account and the representation of the Trust to the public.

- *Ethics*: the Trustee appointed to this role is responsible for the compliance of the Trust with the highest standards and norms in terms of personal information protection and the best data governance principles, standards and practices recognized internationally at any time of the existence of the Trust patrimony and for making an annual report on the action taken to ensure this compliance.

- *Legal*: the Trustee appointed to this role is responsible for the compliance of the Trust with the legal requirements established by the Charter of Human Rights and Freedoms and Quebec's laws and regulations relating to individual privacy and the protection of personal information. This Trustee must also supervise any contracts, transactions or transfer of property which concern the Trust.

- *Access to data*: the Trustee appointed to this role is responsible for managing any demand concerning data access or data use.

- *Security and data protection*: the Trustee appointed to this role is responsible for assessing any issues and potential risks concerning the security of data, for actualizing the parameters of security adapted to the sensitivity of data and according to the latest and safest technological innovations and to answer any demand related to the withdrawal of personal information formulated by a data provider.

- *Valuation of data*: the Trustee appointed to this role is responsible for setting standards in terms of analysis of data and for supervising any Trustee, employee or third-party data user using data under the control of the Trust. This Trustee is also responsible for communicating the parameters and results of the analysis and their interpretation.

- *Architecture of data*: the Trustee appointed to this role is responsible for managing the coherence, quality, interoperability and auditability of data and to actualizing the architecture of data according to the latest technological innovations.

5.6 Respect of privacy laws by all Trustees

Notwithstanding the attribution of one or another role mentioned in section 5.5 to the Trustees, each one of them must act in accordance with the highest standards and norms in terms of personal information protection and the best data governance principles, standards and practices recognized internationally at any time of the existence of the Trust patrimony.

5.7 Termination of the charge of Trustee

[Specify in which situations a Trustee could lose his charge and what is the replacement process].

5.8 Remuneration of Trustees

Trustees may be remunerated for their charges. The amount of remuneration must be approved by the Trust protectors.

SECTION 6

DUTIES AND POWERS OF THE TRUSTEES

6.1 Duties of the Trustees

All Trustees must act with prudence and diligence. They shall also act honestly and faithfully in the best interest of the object pursued.

Trustees cannot exercise their powers in their own interest or in the interest of a third party. Trustees cannot exercise any powers that might compromise the realisation of the purpose.

6.1.1 Ends for which the powers of the Trustees are exercised

The powers vested in Trustees must always be exercised in accordance with and in a way that favours the accomplishment of the Trust's purpose.

Trustees cannot exercise any power likely to undermine the realisation of the purpose of the Trust.

6.1.2 Data governance Charter

Within the initial term, Trustees must adopt a Data governance Charter that specifies the principles that govern every aspect of the Trust. Trustees may adopt an external Charter, such as the Montreal Digital Data Charter, or create an internal charter of principles.

This Data governance Charter, and any subsequent version, must be approved by the Trust Protectors.

This Data governance Charter must be made publicly available.

6.1.3 Management Framework of the Trust

Within the initial term, Trustees must adopt a Management Framework of the Trust they deem appropriate and, if necessary, modify, replace or abrogate these rules. This Management Framework must specify all modalities of sharing, accessing or using data or data rights under the administration of the Trustees. It must also provide the procedures to modify these modalities. The administration of the Trust must respect the Management Framework.

This Management Framework must comply with the highest standards and norms in terms of personal information protection and the best data governance principles, standards and practices recognized internationally at any time of its existence.

The Management Framework must specify recourse options for Data providers.

This Management Framework must be made publicly available.

6.1.4 Annual account

Trustees must report on their administration annually to the Trust protectors or when required by any interested person. Annual reports must be made accessible to the public.

Annual reports must include an ethical evaluation of all decisions related to data usage or sharing. This evaluation may be done by an external auditor.

6.1.5 Publicity of charges

At all times, Trustees must keep a public record of all Trustees and Trust Protectors.

6.2 Powers of the Trustees

Subject to other sections of the Constituting act, the Trustees are charged with the full administration of the Trust patrimony. They exercise all rights related to the Trust patrimony and they can take all decisions they deem appropriate to fulfil the purpose of the Trust.

This section will greatly change according to the type of data Trust that is set up.

Trustees exercise their power by taking collective decisions in accordance with the Constituting Act and any policies adopted in virtue of this Constituting Act.

Unless specified otherwise in the Constituting act, Trustees can conclude any contracts or take on any charges and engage in any activities or operations they deem appropriate, necessary, incidental or accessory to the administration of the Trust patrimony.

6.3 Delegation of powers

A Trustee may delegate the general conduct of the administration or the exercise of a discretionary power, but remains responsible.

A Trustee may authorise a third party to access or use data in compliance with this Constituting act and the Management Framework. Any demand by Data users to access or use data must specify its purpose and explain how data will be handled and used. No authorization to access or use data may be granted for any purpose incompatible with the purpose of the Trust.

Any authorisation to access or use data must be granted through a contractual form and for a limited time. After such a period, the authorised Data user may either ask for an extension or, in the alternative, automatically relinquishes any right over the accessed or used date.

6.4 Meetings of Trustees

[This part details the modalities and procedures of the Trustees meetings, such as the frequency, the summons, the place, the decisions-making rules and the quorum of these meetings].

SECTION 7

TRUST PROTECTORS — COMMITTEE OF ETHICS AND GOVERNANCE

7.1 Role

The general administration of the Trust is supervised by a committee of Trust protectors.

7.2 Nomination

Before the end of the initial period, Trustees must create an *ad hoc* advisory committee composed of two (2) Data users, two (2) Data collectors and three (3) Data contributors, of which at least one (1) of them must be a Data provider. This *ad hoc* committee will nominate three (3) Trust protectors.

Trust protectors will be nominated for a period of two (2) years. At least three (3) months before the end of the mandate of Trust protectors, Trustees must convene a new *ad hoc* advisory committee to appoint three (3) new Trust protectors.

7.3 Mandate

The mandate of the Trust protectors is to receive and assess the Trustees' annual accounts; refuse or adopt the annual accounts; review the ethical and data governance principles and norms applied by the Trustees to make sure they meet the highest standards; make recommendations regarding these principles and norms; and review the authorizations to access and use data granted to third party users to ensure they are in compliance with the purpose of the Trust.

7.4 Trust protectors meeting

Trust protectors may adopt their own governing principles. Nevertheless, Trust protectors must meet at least twice a year, of which one meeting must deal with the annual account and its assessment.

7.5 Interdiction to cumulate functions

No Trustees may be nominated as a Trust Protector.

SECTION 8

COMMITTEES

The Settlor declares that this Trust has been created to serve, globally or individually, as of right now or in the future, the persons, the organisations, and more generally, the communities that participate in the mission of the Trust.

To this purpose, Trustees may set up any committee of Data providers, Data users, Data collectors or Data contributors they deem useful or necessary. The procedures and modalities to create such committees need to be provided for in the Management Framework of the Trust.

[A statutory advisory committee can be created by the Constituting act, which can provide for the role, the constitution and the nomination process of such committee.]

SECTION 9

MODIFICATION OF THE PURPOSE OF THE TRUST

No person, including the Settlor, Trustees, or any interested person may modify the purpose of the Trust.

SECTION 10

EXTINCTION OF THE TRUST

10.1 Duration of the Trust patrimony

This Trust patrimony will be [perpetual or specified duration].

Notwithstanding the duration of the Trust, any consent given by Data Providers to Trustees to exercise rights relating to personal information, such as the right to share or the right to use the data, will be given for a specified time period and for a specific purpose. This consent can be withdrawn by following the procedure specified in the Management Framework.

10.2 Transmission of the Trust patrimony

Upon the termination of the Trust by the impossibility of its fulfilment, the court will designate the transfer of the Trust property to another Trust, legal person or any group of persons devoted to a purpose as nearly like that of the Trust as possible.

10.3 Nullity of consent forms

Notwithstanding the previous statement, all consent forms signed by Data providers will become null and void by effect of the Trust termination.

APPENDICES

Act Respecting the Protection of Personal Information in the Private Sector

Data Governance Charter

Management Framework