

# Towards a Methodology for Assessing the Legal Risks Associated with Cyberjustice

Doing Justice: Dispute Resolution in the Courts and Beyond  
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## Opening statement

*As technologies are being built and put to use, significant alterations in patterns of human activity and human institutions are already taking place.*

Langdon WINNER, *The Whale and the Reactor – A Search for Limits in an Age of High Technology*, University of Chicago Press, Chicago, 1986, p. 11.

## Presentation outline

1. A New Medium for the Justice System
2. Cyberjustice
3. Risk
4. Taming Risks: An Assessment Methodology
5. Possible Future Endeavours

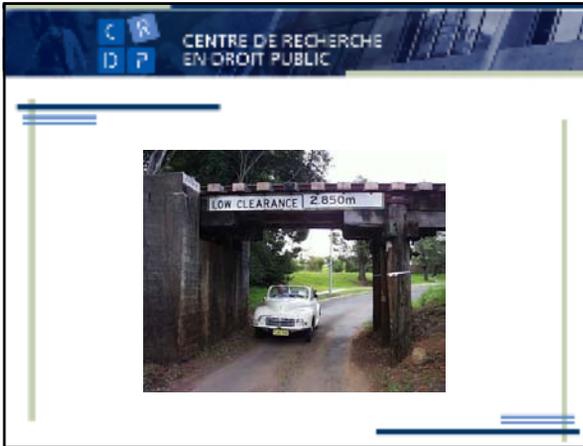
## 1- A New Medium for the Justice System...

☞ A system based primarily on the use of paper and the physical presence of all parties.

- ☞ Court cases are getting longer, more expensive, and more complex
- ☞ The current system impedes the circulation of criminal justice information among various stakeholders

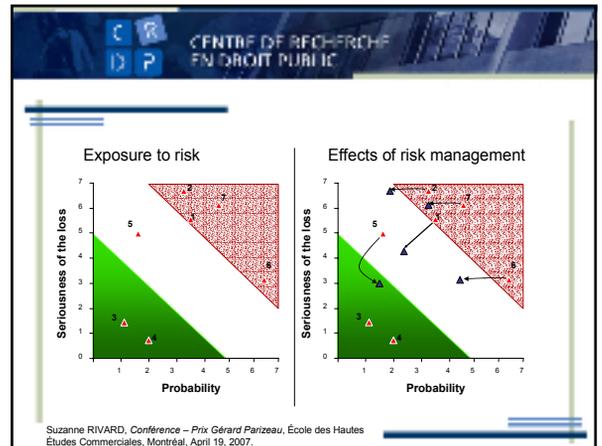
☞ Access to justice and public security can and should profit from the opportunities of information and communication technologies (ICT).





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⚖️ Unlike *danger*, “*risk*” is transactional: it can be managed in order to become acceptable.



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### 4- Taming Risks: An Assessment Methodology

⚖️ It is possible to tame the risks associated with cyberjustice systems.

⚖️ Identification of the underpinnings of legal risk

- ▶ Our system’s rationalities: the values and principles on which it relies
- ▶ Legal and constitutional constraints
- ▶ Legal impediments that are currently invisible

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⚖️ Privacy, presumption of innocence, equality of arms, right to a fair and public hearing, judicial independence...

⚖️ Rationalities whose components are generally well documented in case law or doctrine.

### Identifying zones of friction:

- ▶ Pairing the technical characteristics of cyberjustice systems...
- ▶ ...with identified rationalities and their components.

- Friction between a rationality and a technical feature will indicate a risk...
- ... and we should study whether present institutions are equipped to handle it.

- It could then be necessary to reconsider that rationality in an electronic environment...
- ... or to adopt measures aimed at protecting said rationality.
- Such analysis is not only juridical, but multidisciplinary.

### 5- Possible Future Endeavours

- Multidisciplinary research
  - ▶ The idea of justice is plural and extends far beyond law.
  - ▶ Hence the necessity of a reflection on the cultural, political, sociological, psychological and historical aspects of justice...
  - ▶ ...and on related impediments to the implementation of cyberjustice systems.

### Re-engineering of proceedings

- ▶ Go past the modelling and the simple reproduction of actual procedure.
- ▶ Rethink procedure – a neglected area of research – while taking into account the features offered by the new medium...
- ▶ ... in order to fully use the ICT' potential.

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Thank you!