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"Meeting the Challenge of Disputes in a Changing World Order"

Keynote Address

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Introduction

On January 16, 2026, the McGill Journal of Dispute Resolution (MJDR) presented its Decennial Symposium, titled "Disputes in a Changing World Order," at the McGill Faculty Club. The symposium addressed contemporary developments shaping the practice of arbitration and dispute resolution in an increasingly complex legal, technological, and global environment.

The program provided a forum for discussions concerning energy arbitration, investor–state disputes, and the growing implications of artificial intelligence in dispute resolution, bringing together practitioners, academics, alumni, and students for a full day of substantive exchange. Through three panels featuring experts from leading national firms in Canada, as well as from New York and Paris, the symposium offered both practical and theoretical perspectives on current and emerging issues in dispute resolution. Panel discussions highlighted the evolving nature of arbitration across industries and jurisdictions, while underscoring the need for legal frameworks capable of responding to technological innovation, including advances in artificial intelligence, and global change.

The symposium's keynote address was delivered by the Honourable Russell Brown, former Puisne Justice of the Supreme Court of Canada. Drawing on his extensive experience on Canada's federal judiciary and his current practice as an arbitrator and mediator, Justice Brown offered a thoughtful and authoritative reflection on the themes explored throughout the symposium and on the broader evolution of arbitration and dispute resolution.

In keeping with the objectives of the Decennial Symposium and the purpose of this tenth volume of the McGill Journal of Dispute Resolution, the text of Justice Brown's keynote address is reproduced below as a contribution to the ongoing scholarly and professional dialogue on the future of dispute resolution.*

*For publication purposes, the keynote address reproduced below has undergone minor editorial revisions to enhance readability in written form. The substance of the remarks remains unchanged.

"Meeting the Challenge of Disputes in a Changing World Order"

Keynote Address of the Honourable Russell Brown

Montreal, Quebec, January 16, 2025

Good morning, everyone,

I am delighted to be in Montreal, even in the month of January. I am all the more pleased and honored to have been invited to join you at McGill's Faculty of Law to celebrate the tenth anniversary of the McGill Journal of Dispute Resolution.

I wish to express my gratitude to the Journal's editors, the organizers of this symposium, and Professor Fabien Gélinas for this honour.

Ten years is an important milestone. In the life of *a law review*, it is the difference between a promising experiment and an institution. In the life of *dispute resolution*, the last decade has felt like a compressed century. Even the last 2 or 2½ years have felt like a compressed two or three decades. It is not only a fitting moment, because of this anniversary, but I think *critical* because of the pace and nature of the change we are seeing, to pause, to take stock, and to ask what I hope to persuade you today is the most constructive question that lawyers (or anyone) can ask in such an environment: not "What should we fear?" but "How should we adapt?"

The theme—Disputes in a Changing World Order—invites us to look outward at the forces that shape conflicts at the level *of* the world order: geopolitics, economic dislocation, technological acceleration, and environmental constraints. But while *pushing* us outward in that sense, thinking about disputes in a changing world order also *pulls* us inward, to make a clear-eyed assessment of the readiness of our profession: our *skills*, our *ethical core*, and *our institutions of legal education*, all of which

I will reflect on in these remarks. The law cannot immunize us from change – indeed, it is often the means of achieving it; but it can equip us to navigate change. Today, with your indulgence, I would like to share my reflections on how it might do so.

And, along the way, I will also connect this discussion to the three panels convened by the Journal at this symposium: the role of artificial intelligence in dispute resolution; the evolving place of arbitration in the energy transition; and investor–state disputes in an era of protectionism and (let's face it) revived, unvarnished, unashamed, blatant *Realpolitik* in which "might is right" – literally, *la force prime sur le droit*.

That last step, by the way – that is, considering the readiness of our institutions of legal education – I take with some trepidation. When I was at the Faculty of Law at the University of Alberta, I used to describe our curriculum committee as the place where good ideas go to die. And I think I almost certainly offended a few of my colleagues with the joke, "How many curriculum committee members does it take to change a lightbulb?" Answer: "*change!?!?!*" But as I hope to persuade some people in this room, while academic *stasis* may mean that changing how we train lawyers may meet resistance, it doesn't mean that it shouldn't happen.

I. The Changing Topography of Disputes

To understand the skills we need, we must first understand the disputes we face. Everything is changing. Our maps are changing. Borders are not *what* they used to be, let alone *where* they used to be.

The first shift is the reassertion of the nation state. For thirty years after the end of the Cold War, the tacit assumption among international lawmakers was that markets would integrate, legal frameworks would converge, and disputes would be settled in increasingly technocratic fora. Today, there can be no confidence in the sustainability of that assumption.

States are more willing to intervene in supply chains, to scrutinize foreign investment, to assert industrial policy, to regulate information and technology flows, and to recalibrate their treaty obligations in light of domestic political priorities.

But without more – that is, without an erosion of the rule of law that we see in some but certainly not all or even most of those states – this does *not* mean that law *recedes*. But it *does* mean that law becomes more *pluralist* and more *political*. Jurisdictional conflicts, parallel proceedings and the intersection of domestic public law (or even private law – think of *Nevsun Resources*), *and* international commitments, become front and center.

The second shift is technological. Artificial intelligence is not just *a new tool*. To see it as such is to seriously understate its present and potential impact. It is kind of like somebody saying 30 years ago that the internet was just a new tool, as if it were no more groundbreaking than a fancy new calculator or cordless telephone.

AI is actually a new *actor* in the fact patterns that come before us. Algorithms make decisions that affect employment, credit, health, and liberty. And with it comes a proliferation of data and an increasing facility in its transfer, which are both assets and vulnerabilities. Cyber incidents generate disputes with cross-border dimensions and novel evidentiary questions. And in dispute resolution itself, technology mediates how we gather facts, how we model risk, how we assist human judgment, and even how we furnish and scale access to justice.

All this raises profound questions of reliability, transparency, bias, and accountability.

The third shift is energy and climate. Just thinking of (what I still consider) my home province of Alberta, in that single province you can readily see

that the energy transition is *not* a *single* project; it is a *mosaic* of projects: critical minerals extraction, transmission corridors, cross-border pipelines, hydrogen hubs, wind and solar arrays, CCUS facilities, and the digital infrastructure to match flexible supply to variable demand. These projects are capital-intensive, logistically complex and politically charged. They intersect with Indigenous rights, environmental assessment, expropriation powers, and the pace and shape of nation-building investments. These are fertile ground for disputes—and for dispute resolution systems that prize speed, expertise, and legitimacy.

The fourth shift is a reconfiguration of globalization from linear to networked. Supply chains are being reoriented around resilience, not just efficiency. Companies and states hedge and diversify. Contracts are drafted with force majeure, material adverse change, and sanctions clauses that are *no longer boilerplate*. If you are a regular reader of the Global Arbitration Review, you will recognize that we are starting to see disputes that are more about *systemic disruption* than *bilateral breach*.

In short, the world order is not disappearing; it is thickening. More rules, more fora, more stakeholders, more data, new issues.

II. The Essential Skills for Jurists in an Age of Flux

Given this landscape, what does it mean to be an excellent lawyer? What does it mean to be an excellent arbitrator? What does navigating this with skill actually look like?

I recognize that skills talk can devolve into platitudes. So let me be concrete. I see *eight essential capacities* that lawyers and dispute resolvers need to navigate this scale and quality of change. They are not new, but the premium on them is higher, and the way we develop them *must* be *more deliberate.*

First, systems literacy. Disputes no longer sit neatly within a single legal silo. A case about a failed infrastructure project might implicate municipal permitting, Indigenous consultation, provincial environmental assessment statutes, federal environmental statutes, federal impact assessment statutes (*of*, I might add, of *dubious constitutionality*), private financing covenants, international procurement rules, and a bilateral investment treaty. Systems literacy is the ability to map the legal and non-legal systems that structure a dispute, to see relationships among those systems – connections, feedback loops – that allow you to anticipate ricochet effects – the downstream consequences of procedural choices. Whereas litigating a claim used to be just about litigating a claim, systems literacy allows us to see that litigating a claim will, in some cases, be more about *orchestrating a resolution*.

Second essential capacity: data and technology fluency. Fluency is not the same as expertise. You don't have to be an AI engineer to ask rigorous questions about, for example, the provenance and integrity of digital evidence. But you *do* need to understand enough to challenge assumptions, to design discovery plans that reveal algorithmic decision-making, to evaluate technology-assisted review, and to advise clients on the legal implications of deploying automation in regulated contexts.

Third, transsystemic judgment. Many of our disputes straddle legal cultures. Transsystemic judgment is the ability to reason across different sources of authority—statute, contract, custom, common law, civil codes, soft law, and institutional practice—to identify the persuasive path. This doesn't, by the way, just implicate substantive legal analysis: it is often an issue in deciding *procedure*: what will be seen as fair not only by the parties, but by regulators, communities, and future tribunals? Nor does it implicate purely international projects: think, for example, about developing a mine within the traditional territory of a non-treaty First Nation in British Columbia that wants to conduct *its* own environmental

review process. This requires disciplined reflection on the implicit values, risks and possibilities embedded in procedural choices.

Fourth, evidence discipline in an information-saturated world. The volume of potential evidence has exploded. The risk is that we mistake quantity for probative value. The discipline is to design fact development strategies that are hypothesis-driven; to integrate forensic, financial, and technical expertise early; to apply technology without outsourcing judgment; and to present evidence in a way that is accurate and verifiable. In an era of deepfakes and synthetic media, evidentiary rigour is going to be a cornerstone of legitimacy.

Fifth, ethical anchoring. When systems are fluid, ethics must be firm. The introduction of AI into legal practice and adjudication, the use of third-party funding, the negotiation of consent in online dispute resolution, and the management of potential conflicts in multi-role intermediaries all test our professional commitments. Ethical anchoring is not a checklist; it is a cultivated disposition to scrutinize means as carefully as ends, to be transparent about the role of technology, to protect confidentiality and privilege in new contexts, and to resist the subtle and pernicious normalization of expediency.

Sixth, stakeholder engagement and legitimacy design. Dispute resolution is not simply about who wins; it is about whether the outcome is accepted. In energy and infrastructure disputes, in investor–state arbitration, in regulatory settlements, legitimacy – the perception of integrity and of fairness – matters. That requires meaningful engagement with affected communities, clarity about process, and attention to remedy design. Again, think of that mine in First Nations traditional territory in British Columbia. Lawyers must be able to convene, to translate, to build processes that are fair not only in form but in their practical application.

Seventh, resilience and adaptive leadership. Change is not a project with an end date; it is a condition. Lawyers must be adaptive: they must be ready to learn, unlearn and relearn. Adaptive lawyering is the capacity to experiment safely, to build diverse teams, and to steward institutional memory while innovating practice. It is a skill at the *personal* level—how we manage our own attention and wellbeing—and at the *organizational* level—how we build firms, departments, and tribunals that can be nimble without losing their core sense of mission.

Eighth, narrative and public reason. Many disputes now unfold in public. The narrative arc of a case can influence settlement dynamics, regulatory responses, and reputational risk. But narrative, done right, is not spin; it is disciplined public reason—a coherent account of facts and norms that can withstand scrutiny. The best advocates can communicate complex legal issues clearly to multiple audiences without compromising their client's case.

These capacities are not easily achieved. The *good* news is that they *are* learnable. But they are learned through *experience, reflection, and feedback*—through *doing*, not only through reading, which brings me to how we deliver legal education.

III. Legal Education for a Changing Order

If we want jurists who are systems-literate, technologically fluent, ethically anchored, and adaptively led, we must design for it. In my respectful view, and while I know there are important initiatives occurring here and there, law schools and continuing legal education have yet to come to grips with the scale of the design or the pace at which it needs to be developed.

I don't want to be unfair – law schools are operating on stringent budgets, and I can't think of a more thankless job in 2026 Canada than being a law

dean. So let me not cast this as critical, but aspirational. Not as "law schools should do less of this, and more of that", but as "wouldn't it be amazing if a law school could *be* and *do* the following to help future jurists lead the way?"

Six years ago, I spoke at Stanford Law School and spent an extra day following my remarks just getting to know the place a little. And I was introduced to a group of students – a law student, an engineering student and (I think but can't remember for sure) a business student – who were part of a course that required them to work together to solve various problems that were thrown at them. I think their present assignment when I spoke to them involved providing a reliable source of potable water to a village.

That brings me to the first thing law schools might aspire to – something that would be amazing if our law schools could achieve – which is integrating cross-disciplinary problem labs around real, complex disputes. Imagine a required third-year inter-disciplinary module where students work through a simulated energy corridor project from inception to dispute: Indigenous consultation plans; financing term sheets; environmental assessment; procurement; construction. Then, throw a spanner into the works: a cost overrun; a political change; a claim under a bilateral investment treaty; parallel judicial review; a mediated settlement. And law students would work alongside students from engineering, public policy, and business. Assessment would focus on process design, evidence strategy, and stakeholder engagement, not just doctrinal recall.

The point is not to make everyone an expert; it is *to normalize cross-disciplinary reasoning and collaborative practice*.

Second, and this strikes me as something much more easily achievable – teach AI and data as professional judgment, not as a black box. A modern

legal curriculum should include modules on data governance, algorithmic transparency, risk management, and the law of digital evidence. Students should see and critique AI tools used in e-discovery, research, and contract analytics. They should draft an AI-use policy consistent with professional responsibility rules: when to disclose tool use, how to verify outputs, how to protect privilege, how to manage bias, and how to document decisions. Continuing legal education could do the same for practitioners, moving beyond the vendor demos I see at every arbitration conference I attend to case-based workshops where participants practice cross-examining to identify algorithmic decision-making or evidence generation.

Third, law schools might look for opportunities to cultivate transsystemic judgment in their students through immersion and comparative practice. Clinics and externships can place students in arbitral institutions, regulatory agencies, and courts that sometimes handle cross-border matters. And I realize I'm probably preaching to the converted at McGill of all places, but courses can use problems that require interpreting contracts under different governing laws and navigating conflicts of law with sensitivity to institutional context. Writing assignments can demand that students justify choices of forum and law not only for outcome advantage but for legitimacy and enforceability.

Fourth, and this one doesn't strike me as aspirational, but really necessary. This is a must-do: law schools should embed ethical decision-making into class assignments. Rather than silo "professional responsibility" as a survey of rules in a particular course, we should force ethical choices into the heart of our teaching as professors (or for that matter into our guidance as senior counsel): whether to use a generative tool for a draft; how to handle a client's insistence on secrecy when public disclosure would mitigate harm; how to manage a conflict when wearing multiple hats; how to respond to a tribunal that invites *ex parte* technical briefings. Students

should practice articulating their reasoning aloud and documenting it, because that is what they will do under pressure in practice.

Fifth, let's train lawyers as process designers. We are *good* at teaching rights and remedies; we are *uneven* at teaching process architecture. So again, *less* about *litigating a case* and *more* about *orchestrating a resolution*. Class assignments could ask students to design bespoke dispute processes for contexts like online consumer claims, public–private partnerships, or mass claims following a cyber incident. They can learn to value process quality: speed, cost, user satisfaction, compliance, and fairness metrics. Practitioners in continuing legal education could learn to audit their own organizations' dispute portfolios and to propose system redesigns that reduce recurrence and enhance legitimacy.

These changes are not theoretical. Many of you are already doing pieces of this work. The ten-year arc of the Journal is testimony to a community of scholars and practitioners who care about advancing dispute resolution not just as an academic field, but as a living practice. The challenge is to make these approaches *mainstream*, to make them *durable*, and *to align incentives* so that the lawyers who are best at *adaptation* are the ones who *succeed*.

IV. Connecting to Today's Panels

Let me now connect these themes to the topics that will be explored in greater depth at this symposium.

On AI in dispute resolution: The temptation is to ask, "What can *AI* do?"

The better question is, "What should *humans* do—and how can technology enhance that?"

In *discovery*, for example, AI can accelerate pattern detection; but lawyers must define relevance, validate its outputs and safeguard privilege. In

adjudication, AI might assist with triage, scheduling, and the synthesis of routine issues; but legitimacy demands that reasons remain human-authored, that parties can query the basis of a decision, and that there be meaningful recourse for error. In *negotiation*, predictive analytics can inform risk assessments; but humans must be attuned to the moral dimensions of settlement, especially in matters with public interest implications. As we integrate AI with our work, our reference point should be *clarity*: clarity about tool capabilities and limits; clarity in communicating with clients and tribunals; and clarity in our records. That clarity is what allows us to harness innovation without losing trust.

Another theme you are striking today: arbitration in a competitive energy landscape: arbitration has long been prized for expertise and neutrality. In the energy transition, those attributes will be *necessary*, but they will not be *sufficient*. Arbitrators and counsel will need to manage multiparty dynamics, technical complexity, and the intersection of private contracts with public law and policy. We should expect to see more hybrid processes in which arbitration is paired with facilitated stakeholder engagement, with expert determination on narrow technical issues, or with court supervision for public law questions. We should also expect more attention to transparency in cases with a broad public impact. Counsel will need to draft dispute clauses that anticipate these needs: clear joinder and consolidation mechanisms, calibrated confidentiality, and provisions for interim relief that align with regulatory timelines. Above all, all participants, including arbitrators, will have to demonstrate that they can deliver not only expertise and speed, but legitimacy in the eyes of affected communities and the public.

And finally, on your third theme – investor–state disputes amid protectionism and Realpolitik: We may see a bifurcation. In some regions, states will recalibrate or exit treaties; in others, they will reaffirm commitments but seek more space for policy-making and implementation.

For counsel, that means thinking expansively about jurisdiction, about parallel domestic remedies, about the strategic use of amicable settlement periods, and the design of remedies that respect sovereign prerogatives while compensating investment. It also means taking seriously the optics and reality of legitimacy: conflicts of interest, arbitrator diversity, transparency where appropriate, and the management of third-party funding. For institutions, it is an opportunity to innovate—on codes of conduct, on expedited procedures where suitable, and on intersection with domestic administrative law. For all of us, it is a reminder that investor–state dispute settlement is not a perpetual motion machine; it is a social system whose durability depends on public trust.

V. A Charter of Adaptation for Jurists

Let me pull things down to earth a little. First, by proposing, modestly, some principles we can carry into our individual practice and our institutions. A Charter of Adaptation, if you will.

First, commit to continuous learning. Make *learning* a matter of calendar and accountability, *not* aspiration. And make it continuous learning *with structure*. Set explicit goals for technological fluency, comparative law exposure, and ethics updates. Pair learning with teaching; as many of you in this room will know, nothing sharpens your understanding about a subject like having to explain it to others.

Second, diversify your teams. Cognitive diversity—different disciplines, backgrounds, and experiences—improves judgment under uncertainty. Build teams where a young associate comfortable with data tools can challenge a senior partner's instincts respectfully, and vice versa. Cultivate an atmosphere that allows for expression of considered dissent.

Third, if it matters, measure it. Measure what you value. If you value legitimacy, measure user satisfaction. If you value speed, track cycle

times. If you value fairness, audit outcomes for patterns that could suggest bias. Bring empirical modesty to your claims—show, don't tell.

Fourth, keep humans in the loop and keep the loop accountable. Whether in technology use or process design, maintain meaningful human review where it matters, and define clearly who is responsible for which decisions. Accountability is the backbone of trust.

Fifth, attend to the craft. Amid change, the fundamentals endure: clarity in drafting, precision in argument, candour to the tribunal, respect for colleagues and adversaries, kindness to students. The law is a craft before it is a business. It is our privilege to practice it well.

VI. The Role of Institutions: Journals, Courts, Firms, and Law Schools

A word about institutions, because adaptation is not only personal. Journals like the McGill Journal of Dispute Resolution play a crucial role in curating the conversation—bridging scholarship and practice, elevating new voices, and sustaining a community committed to dispute resolution as a public good. Courts and arbitral institutions can set norms by how they design procedures, train neutrals, and engage with the public. Law firms and legal departments can invest in the training and tooling that make their lawyers better stewards of technology and process. Law schools can be laboratories where we test new pedagogies and measure their effects.

There is an opportunity, too, for collaboration across these institutions. For example, a consortium could develop a common framework for evaluating AI tools in dispute practice—benchmarks, validation protocols, and disclosure templates—so that we do not each reinvent the wheel. Another collaboration could focus on training arbitrators and mediators for energy transition disputes, combining technical orientation

with cultural competence and public engagement strategies. A third could build a repository of anonymized dispute systems designs and outcomes to inform best practices.

I do not see these as grandiose projects, but as practical measures that align incentives with values. They are also the kind of endeavours that a journal with the credibility and convening power of the McGill Journal of Dispute Resolution can support.

VII. A Note on Canada's Moment

Allow me a brief reflection on the Canadian context. Canada sits at the crossroads of many of the issues we have discussed: a resource-rich country committed to climate goals; a federation with complex jurisdictional layers; a legal culture that (albeit imperfectly) values pluralism; an economy integrated with global markets; and a legal profession with deep expertise in international arbitration and cross-border disputes. The federal government's commitment, coupled with that of certain key provinces to nation-building projects, from transportation to energy to digital infrastructure, will generate both opportunity and friction. If we can align ambition with process—honouring constitutional and treaty commitments, engaging meaningfully with Indigenous communities, building transparent and predictable regulatory pathways, and designing robust dispute mechanisms—we can turn disputes into engines of legitimacy rather than sources of paralysis. That requires lawyers who see beyond single cases to systems, who can bridge public and private law, and who carry ethical anchoring into innovative practice.

VIII. Closing: Confidence Without Complacency

I want to close with a personal note. Lawyers are sometimes caricatured as guardians of the status quo. And there *is* some truth to that; we are trained to look for precedent, to worry about risk, to prefer what is tried

and true. But in moments of rapid change, society looks to lawyers for something more paradoxical: to be both stabilizers and innovators. Stabilizers, because the rule of law depends on predictability, fairness, and reason-giving. Innovators, because the forms of stability that served us yesterday may not serve us tomorrow.

The way to reconcile this paradox is not to choose one role over the other, but to be clear about our purpose. Our purpose is not to preserve particular processes for their own sake, nor to chase the new for its own sake. Our purpose is to *resolve disputes fairly, efficiently*, and *in ways that sustain the legitimacy of our institutions*. *Everything* else—*everything*—exciting new technology, innovative new procedure, and venerable old doctrine—are means to that end. If we keep that purpose at the center, we can adapt with confidence.

In a few minutes, I look forward to a conversation with Professor Gélinas and with you, and to learning from the panels that follow. For now, I leave you with an invitation: to take the spirit of this anniversary—ten years of rigorous inquiry and practical engagement—and carry it into the next ten, with curiosity, courage, and care.

Once again, I am grateful for the kind invitation to offer these few words.

Thank you.