



**RONAN ENRIGHT**  
SOLICITORS

**WINTER**  
**2018**

**ECONOMIC OUTLOOK**  
Dr. Constantin Gurdgiev

**THE WAY WE BUY  
AND SELL HOUSES IS  
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**Welcome to the Winter 2018 edition  
of our newsletter.**

This issue, as always contains articles on a wide variety of topics which I hope will be of interest to you and your business.

If you have any queries, please do not hesitate to get in touch and one of our highly experienced team at Ronan Enright Solicitors will be happy to assist you.

**Ronan.**



## NEW & DEVELOPING TRENDS IN THE GLOBAL ECONOMY

2018 has been defined by three important markers of the new and developing trends in the global economy. The rise of systemic geopolitical uncertainty, the waning of the monetary policy dominance over the economy, and the emergence of the ‘beggar-thy-neighbour’ economic policies mark the pivot toward slower growth momentum into 2019. Whereas prior to 2018, these trends were manifested at the regional levels, spurring local financial, economic and geopolitical volatility, since the beginning of 2018, we are witnessing contagion of these factors from traditional flashing points of the Latin America, Middle East, and Eastern Pacific, to the relatively more stable centres of economic activity, namely Europe, North America, and Asia Pacific.

Around the globe, the ‘goldilocks economy’ of endless money printing and deficit financing of the last two decades is being replaced by the synchronised uncertainty of the ‘Humpty-Dumpty economy’. This development risks unwinding the status quo structures of the global financial order, spilling into political destabilisation, and risking triggering a major economic crisis at a global level.

## ■ GEOPOLITICAL RISKS ARE RISING

The G20 summit in Buenos Aires last month was expected to produce at least three key outcomes relevant to the continuously escalating geopolitical uncertainties: the Trump-Xi dinner presented a hope for de-escalation of trade and military tensions between the world's two largest economies; the series of Russian-European meetings were offering a prospect of a thaw in the severely strained relations between Europe's superpowers; and the Trump-Putin meeting that held a promise of setting the stage for diffusing the historically unprecedented degree of tensions between the U.S. and Russia. Beyond these high-visibility events, the hoped-for agenda for G20 summit included other issues of structural importance, including the issues of tax policies coordination (moving beyond the OECD-led BEPS framework of tax reforms); the discussion on re-opening new trade negotiations round in the WTO (which has seen no substantive progress since 2002); and the need for continued deepening of the reforms in international institutions, such as the World Bank and the IMF, where reforms have largely stalled due to the U.S. and European intransigence on key issues. Adding to these, there is an important issue of coordinating national-level monetary, fiscal and economic policies in response to the rising risks in the global asset markets, credit flows and the threat of mercantilist trade wars, all of which are reducing global economic growth and threaten an onset of another global financial crisis.

In the end, the G20 summit delivered nothing new in the way of advancing the global policies and trade coordination.

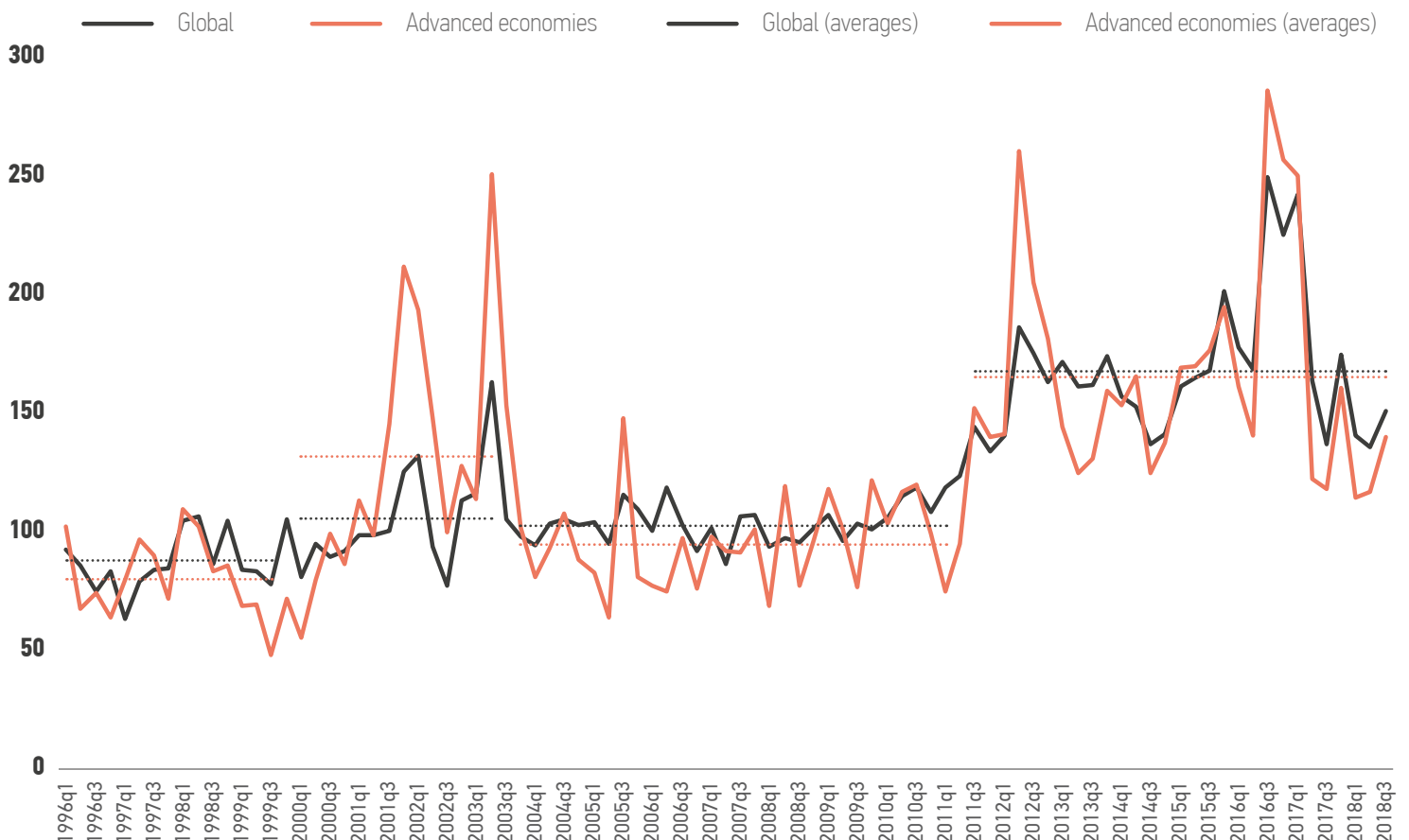
This reality stands contrasted by the role played by G20 in the wake of the 2008 Global Financial Crisis, when the organisation acted as crisis response coordination venue, supporting national and regional monetary, fiscal and development authorities in ensuring continued flow of trade and investment.

On geopolitical front, the world is a mess. U.S. military hegemony, undisputed in simple numerical terms, is being effectively checked by the asymmetric policies in the zones of hot conflicts, such as Afghanistan, Syria, Libya, and Yemen. American soft power has pivoted to hard bargains, alienating traditional allies in Pakistan, Asia-Pacific, and Latin America. The Indian Ocean is now an arena of direct competition for military dominance between China and India, just as economic cooperation between the two states is expanding. The Eastern Pacific - America's backyard until recently - is contested by the more confrontational China, Indonesia and Japan, conflicted (between trade and political pressures) Vietnam, quasi-authoritarian Philippines, and by the gradually strengthening North Korea. Taiwan is actively building up its military deterrence arsenals, while South Korea is playing a four-players chess game with the U.S., North Korea, Russia and China. Central Asia's recent economic drift toward China is now fuelling a fear of severe indebtedness to Beijing.

As the G20 slides into the ritualistic pageantry, the leadership-free global economy remains characterised by the elevated degree of economic policy uncertainty (CHART).

**CHART 1: Global and Advanced Economies Policy Uncertainty Indices, 1995=100**

Source: Data from [www.policyuncertainty.com](http://www.policyuncertainty.com) and author own calculations



## MONETARY TIGHTENING

In line with the geopolitical leadership vacuum, we are witnessing the decoupling of the global economy from the decade-long paradigm of monetary expansion-driven financialization of growth.

The U.S. Federal Reserve total assets peaked at just over 24 percent of GDP in 2014, falling to 20.3 percent by the end of 3Q 2018. In nominal terms, the U.S. Fed balancesheet rose to just over USD4.6 trillion by 1Q 2015, before declining to USD4.1 trillion by the end of November 2018. Roughly 90 percent of the peak-to-current drop came in the 11 months of 2018. While the markets are expecting some moderation in the pace of interest rates hikes in early 2019, the trend remains for more bloodletting on money supply side.

Mid-December 2018, the European Central Bank announced that it will be terminating its own quantitative easing program from January 2019, having slowed down the rate of assets purchases throughout 2018. As of the end of November, the ECB held EUR4.66 trillion worth of assets, amounting to 40 percent of the Euro area GDP. Despite doubling up on the U.S. levels of quantitative easing over the last decade, the ECB has managed to achieve very little in terms of structurally supporting the Euro area recovery. Per latest ECB projections, Frankfurt is lowering its growth outlook for the eurozone, and scaling back its already impressively anaemic inflation forecasts. ECB's still aims to maintain current levels of assets held on its balancesheet well 'beyond the interest rates increases', currently set for H2 2019.



Globally, the above means that the current degree of leverage risk is extremely high and rising. Year after year, since 2010, the rising share of new value added in the emerging and developed economies can be attributed to increased debt levels carried by governments, companies and households. Even the recent equity boom cycle can be linked to debt financing: debt that went to fund historically unprecedented levels of shares buybacks, dividends pay-outs, and opportunistic M&As.

Not surprisingly, as of the second week of December, cash has become the King in investment markets, with the U.S. stock funds experiencing the largest outflow of funds on record (dating back to 1992), while money markets funds experiencing an even larger inflows. Currently, cash is the best performing liquid asset for the last 12 months. As I warned in these pages months ago, pivoting investors' portfolios toward defensive cash and liquid short term bonds is a strategy that pays off at the times of extreme uncertainty.

## BEGGAR-THY-NEIGHBOUR ECONOMICS

Perhaps the only non-monetary and unlevered source of growth in recent years has been the recovery in the global trade flows since 2016. This game is now up.

While the U.S.-China trade war is one of the causes, there is an even more worrying development on foot: China's ongoing pivot toward systemic imports-substitution policy, central to its economic reforms. Known as Made in China 2025 (MC2025), the program envisions pushing Chinese economy toward self-sustainability in technological innovation, financial services and strategically-important manufacturing sectors. The program fixes target levels for domestic producers across a range of industries. But it also aims to scale these producers to the positions of attaining international comparative advantage over their Western rivals. Based, originally, on German Industrie 4.0 program, MC2025 is vastly larger than all of its European counter-examples combined. In 2017, the state-sponsored Import-Export Bank alone had allocated USD102 billion to the MC2025-related lending. Combined funding for the initiative deployed by China in 2017-2018 has already exceeded the planned total of all European Union member states innovation and technology investment supports through 2020.

The trend toward increased China-dependency in Asia-Pacific regional growth is fuelling not only the geopolitical tensions between Washington and Beijing, but also the ongoing shift in the Asia-Pacific trade growth momentum. Economic growth is following this trend. Per Focus Economics latest estimates, ASEAN economies expansion has cooled off significantly from real GDP growth of 5.3 percent (annualised) in 1H 2018, to 4Q 2018 estimated growth of 4.7 percent.

Not surprisingly, mid-December survey of economists by the Wall Street Journal revealed that 93 percent of analysts view trade wars as the number one driver of risks into 2019. Although I disagree with this prioritisation of trade conflicts over other risks, such as the prospect of a large-scale investment markets crisis and geopolitical risks acceleration, global trade flows slowdown can contribute to the VUCA (volatility, uncertainty, complexity, and ambiguity) environment in global growth.



## ■ THE 'HUMPTY-DUMPTY ECONOMY'

The financial markets are signalling as much, having shifted from the 'Goldilocks economy' of the QE-driven policies, to a new regime of a synchronised uncertainty and coupled vulnerabilities, the 'Humpty-Dumpty economy'.

A combination of trade conflicts, intensifying stand-offs in the South China Sea and the East China Sea, growing co-dependencies between China and the economies of South-East Asia, Central Asia and Africa are fuelling a new Sino-U.S. Cold War. Similar trends are taking hold in Europe (vis-à-vis the U.S., the EU and Russia), and in Latin America (vis-à-vis the U.S., Brazil, Argentina, Colombia, Venezuela, and Honduras). All of these developments are maturing just at the time when the global economy is becoming more vulnerable to exogenous shocks, such as the debt crises, and is coming under pressure from the un-winding monetary stimuli. The lack of global leadership and the declining effectiveness of international policy institutions, such as the WTO, the G20, the World Bank and the IMF, are likely to make 2019 the 'code red' year for the next global financial and economic crisis.



Prof. Constantin Gurdgiev is the Associate Professor of Finance with Middlebury Institute of International Studies (California, USA) and an Adjunct Professor of Finance with Trinity College Dublin (Ireland). His research is concentrated in the fields of investment, geopolitical and macroeconomic risk and uncertainty analysis. Prof. Gurdgiev serves as an adviser with a number of fintech start ups, and a co-Founder and Chairman of the Board of the Irish Mortgage Holders Organisation, and a co-Founder of iCare Housing Solutions, two non-profit organizations working with the issues of financial empowerment.

In the past, Prof. Gurdgiev served as the Head of Macroeconomics with the Institute for Business Value, IBM, the Director of Research with NCB Stockbrokers, Ltd, and the Editor and Director of the Business & Finance magazine.



# THE RISE AND RISE OF HOUSE PRICES IS SLOWING AT LAST

According to property experts, house prices will continue to slow as we enter 2019. Lower demand points to peaking or stabilizing trends going forward.

Increase in prices will likely be down from 8% nationally this year, to 6.2% countrywide, with Dublin slowing to 4.2%, according to a housing expert. Fast forward to 2020 and property prices will cool further with predictions of 4.2% and 3.2% annually.

Director of research at Savills, John McCartney, with affirmation by Pat Davitt, CEO of IPAV made these predictions. The latter agreed, "The days of 10% , 12% and 15% are gone for now. I'd say we're looking at price increases under 5% in Dublin for 2019."

Commenting on price increase slowdowns, housing policy analyst Mel Reynolds cautioned, "We're still between 5% and 6%, which is pretty high by a lot of standards, in comparison to Europe and the UK." Good news to wannabe house-buyers, as it offers the prospect of some relief.

According to McCartney, demand for houses may have peaked or plateaued, a clear indication a more balanced market is emerging. That said, demand continues to outstrip supply, a trend that will continue for years to come. He anticipates house price inflation will continue on a downward trend, as the market morphs towards equilibrium in late 2022, early 2023.

The continued slowdown reflects stringent mortgage controls by the Central Bank. Moreover, the increasing supply of new homes, and the reality those would-be buyers have hit spending ceilings, have slowed price increases.

McCartney pointed out that rising costs would likely affect the supply of new builds. He also referred to the burgeoning construction wage bill in quarter two of 2018. He says, "However, construction has remained the fastest-growing sector of employment with 17,000 additional jobs in the year to September. So far, therefore, there is no evidence of an absolute manpower shortage, and the rise in construction wages may just be a once-off impact of last October's sectoral employment order."

Recently introduced exemptions allow new borrowers to exceed the Central Bank's mortgage controls. For example, up to 20% of lending to first-timers can exceed the 3.5 times loan-to income rule. By comparison, only 10% of subsequent and second buyers are similarly exemption favoured.

Drilling down, up to 5% of first-time buyers can breach their loan-to-value caps of 90% of the purchase. Conversely, 20% of new lending to second – or subsequent borrowers – can exceed the 80% LTV ceiling. It follows that the mortgage exemption system is open to criticism. An industry expert had this to say, "It's unfair to borrowers, it's unfair to banks, and it's impossible to manage."

"Where borrowers apply for a mortgage, there is evidence they are approved for exceptions with more than one bank. There is no way of controlling this and it is unfair to other borrowers looking for exceptions who are refused because a bank has reached the relevant quota."

Managing the exceptions to the Central Bank rules is very difficult for banks and is very frustrating for prospective borrowers.

# THE WAY WE BUY AND SELL HOUSES IS ABOUT TO CHANGE

Did you know from next year all property title queries need to be resolved in advance of contract signing?



From January 2019 control over the buying and selling of residential property falls under the aegis of the new pre-contract investigation of title system, acronym: PCIT. Through their solicitor, all sellers will have to supply so-called title packs pre-contract. Buyers too, will have to rely on their solicitors to check the pre-contract document for their clients.

The upside is that dealing with, and resolving all property queries will happen before contract signing. However, buyers still need to exercise care not to put pen to paper before seeking independent legal advice. This applies to private treaty sales, or auctions, online or otherwise.

Essentially, the new system will prove more efficient, as well as cost effective due to non duplication going forward. Subject to finance, timeframes between contract completion and finalisation of a property sale should shorten. Moreover, borrowers have the opportunity to engage with lenders earlier, thus ensuring clarity that titles offered are of good quality in terms of collateral. All this occurs prior to contract signing.



# THE SO-CALLED STATUTE OF FRAUDS

Throughout the centuries, land reforms in various guises have evolved. In 1667, the Statute of Frauds decreed that contracts involving land had to be in writing. Thus, deeds formed proof of a landowner's ownership, thanks to deed documenting and effecting land transfers. A formal system of registering deeds came about in the 18th century. In the 1960s, this evolved into a registry of land ownership throughout Ireland.

The majority of land transfers - otherwise known as conveyances - took effect on the basis of investigation by the buyer's solicitors of the seller's deeds. Until quite recently, a seller's deed 20 years old or older marked the point from which a buyer should start the review. In 2010, the law changed, reducing this period to 15 years. This sees a reduction in the number of supporting documents required by the seller to prove title, and the extent of the buyer's due diligence.

Compulsory registration of ownership of all unregistered land in the Land Registry came into law in 2011. However, this will take many years to complete.

The Law Society of Ireland published the first edition of its "standard" land contract for sale in 1976. Over time, the standard contract has evolved and is now used for the majority of conveyancing transactions. Though certain title warranties are covered, the principle of caveat emptor - let the buyer beware - underpins the standard contract. This means that the buyer has to investigate the title during the conveyancing process. Ultimately, should something prove wrong with the title, buyers have limited recourse to sellers.

## TWO-STEPPED PROCESS

As in many countries, Ireland's conveyancing system is a two-stepped process. Stage one leads to contract signing, while stage two follows signing formalities and leads to completion. "Completion" is the point at which the title formally transfers across. The two-stepped process provides sufficient time for the seller to evidence the copy title documents, and for the buyer time to review them.

Let's not forget what was involved in presenting and providing paper based information, prior to the arrival of the digital age. In the days before photocopiers, handwritten deeds were copy typed. These days, it is as simple as scanning copies and emailing or posting them to online data sites. The practice remains that the seller only evidences the title after contract signing.

This process only works if the standard contract permits - as it currently does - the buyer to withdraw from the contract if the title, on investigation post-contract signing, is defective. Another problem with this approach, is that disputes regarding good or defective title are quite common. A dispute when parties are "in contract" can prove costly.

Document production and data sharing have progressed considerably, making it inevitable that a different approach would begin to take a hold in practice, as indeed it has.



Noting the changes, the Law Society surveyed the solicitors' profession on the potential for a move to a PCIT-based system in 2016. Remember, PCIT stands for "Pre-contract Investigation of Title". The majority of those who responded expressed positively for change. However, many practitioners said they were unhappy to leave title due diligence to the post-contract period, and pointed to the inefficiencies in the current system of addressing pre-contract inquiries, only for duplication of the same queries in the post-contract title investigation.


The PCIT approach has long been a feature of the new homes market and in higher-value transactions. Similar structuring has applied to receiver sales in recent years; so the solicitors' profession is familiar with this approach. When used, the buyer market has engaged well with the concept. Moreover, buyers have shown a clear willingness to undertake title investigation in advance, without the security of a contract for sale. Generally it seems sellers are also more willing to produce title documentation pre-contract.

With due regard to these factors, the Law Society's conveyancing committee decided to adopt the change fully. The forthcoming 2019 contract for sale addresses this by entirely changing the conveyancing system to a PCIT system.



### Title Issues.

The new system also advances any disagreements on title issues. If the buyer and seller are not going to see eye-to-eye on title issues, it is better that this issue surfaces before they have become bound by a contract. This approach should lead to overall cost and time savings on post-contract wrangling and potential litigation.



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# A FOUR-DAY WORK WEEK COULD LEAD TO GREATER PRODUCTIVITY AND WEALTH

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It is almost nine decades since John Maynard Keynes, world-famous economist, forecast that people would one day work for only fifteen hours a week. This, he said, would be brought about by productivity improvements made possible by advances in technology.

He reasoned that improved productivity would result in economic gains that people could use to enjoy more free time while working fewer hours.

Bear in mind, working hours ninety years ago were a lot longer than they are today. The weekend break as we know it did not exist for most workers of the time.

Productivity improvements have, as Keynes predicted, continued to gain traction, but even he would have been surprised at the speed of the more recent gains. There has, however, been no concurrent reduction in working hours.

If anything, people have less leisure time than ever. They take their work home courtesy of the Smartphone, email, instant messaging and other digital technologies that make it hard for us to draw a line between work and home.

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## ARTIFICIAL INTELLIGENCE

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Along with the Fourth Industrial Revolution, the Future of Work has recently been the subject of much public discussion. This is because of the advent of artificial intelligence and its ability to quickly do the mundane work previously carried out by humans.

It also centres around worker's health and the need for healthy work life balance. In a time where people are living considerably longer, many working people, particularly women, are also having to balance the care needs of their children and ageing parents.

There is also a growing belief that the financial gains of improved productivity have not been equitably shared, but are accumulating to a few individuals. This while the employment of many of the world's workers is threatened.

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## 4 DAY WEEK

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The Forsa organised International Conference held in Dublin examined the recent trade union demand that the working week change to four days. The Trade Union Congress in the UK recently made a similar call in response to productivity improvements driven by technological advances.

Productivity improvements have in the past resulted in benefits for workers, who have, over the years, seen working hours drop from the sixty hours they worked a hundred years ago to the current average of thirty.

Granted the lower number is partly due to part-time work, but there is no doubt that the average working hours have drastically reduced.

The weekend as we know it is a recent development. The two-day weekend only came into reality about seventy years ago. Now we are seriously contemplating a four-day week.



*The Intention is  
Not to Slow  
the Pace  
of Technology*

It is not the intention of the trade unions to put the brakes on the pace of progress. The leaders recognise the advantages of technological progress and the benefit of machines performing work which is unsafe for humans to do. Mundane, repetitive jobs are also best done by machines. New technologies also have the capacity to create new jobs in the economy.

The unions are simply resolute in their stance that the benefits of technological advancements and productivity must be shared by all. As the numbers of jobs decrease the working hours must be shared by all who need the work.

The trade unions also do not intend to impede the rights of employers to expect compliance with non-standard working hours. In the new world where business continues around the clock seven days a week, the need for these hours is understood. All they seek is an equitable share of the proceeds of improved productivity.

**IN SOME COUNTRIES,  
THERE ARE ALREADY  
MOVES TO SHORTEN  
THE WORKING WEEK**

In some of Europe's larger economies, there are already moves to reduce the number of hours worked. In Germany, the IG Metall Union, representing half a million workers has settled on a deal which will allow the workers from 280 companies to reduce their working hours if they wish.

The Forsa conference commenced the dialogue in Ireland, discussing the benefits of reduced working hours. Research has proven that working shorter hours improves productivity and the wealth of the workers.

Forsa believes that individuals, the economy and the environment will benefit from these changes. It also firmly believes that it will lead to greater gender and age equality.

# COLLABORATION DRAWS ON DIFFERENCES TO REACH A BETTER OUTCOME THAN WORKING SOLO

People working as teams sometimes adopt ideas that fail, simply because they do not think them through properly.



Working together by collaborating and sharing is intense, and can be a challenge. Disagreements at work generally boil down to interpersonal communication problems.

We should perhaps use our emotional and social skills to communicate, coordinate and solve problems through negotiation. Handling conflicts is the key to effective group decision making.

The best teams achieve success through active listening and absorbing information. While this seems natural to them, it is actually a complex task.

Fortunately, we can work on these skills until we achieve that level of success. Below is what a recent organizational behavioural research believes will make you a great collaborator.



## UNDERSTAND YOUR COLLABORATIVE STYLE

Some people's ambition is to visit every country in the world and meet as many people as possible. They are spontaneous extroverts. Everything they say and do is genuine. Extroverts energise themselves by being in contact with others. They mix well at all levels and enable people to unite around shared ideas and values. In a word, they are 'other orientated' in the sense they thrive on the 'us' and not 'me' in groups.

If that doesn't sound like you, half the people in the world are somewhere on the other side of the collaboration spectrum. These 'introverted' people gain strength from being in the company of one other person, or simply being alone. They perform best in groups by sending thoughtful follow-up notes, and taking part in silent idea-generation pauses. These can slow the group decision-making process down so it makes mature, better decisions.

That's why it is important to know where you are on the introvert-extrovert scale. Then you will know which roles suit you best and can explain to fellow team members why. Your contributions will become more valuable when you 'play to your strengths'. All have contributions to make.



## HOLD ON TO WHAT MAKES YOU UNIQUE

We have a natural affinity to 'like attracts like' but how much do we actually learn from maintaining the status quo. It's true, we may learn more by sharing with different people. We realise difference can be beneficial if one has an eye for detail while the other is strong on passion. If we are strong on finding resources we can help the team stay on track. The key is detecting the spaces between us and managing the gap.



## UNDERSTAND WHAT YOU DO WELL

Collaboration is using our differences to achieve more than we could do on our own. The key is synergy, as opposed to being independent equals. We hope our team members will bring their experience to bear with their energy, creativity, and scope for the task. The watchword is 'interdependence', not 'independence'. Working in teams is about community and mutuality. We need each other if we are to achieve more. It may be our calling to pull this together.



## RELATIONSHIPS ARE WORTH INVESTING TIME

Regardless of where we are on the introvert-extrovert scale, we do need to know our fellow team members better so we can trust each other. Doing something real together beats corporate 'ice breakers' hands down, and team-building exercises hardly feature.

So why not sit down together with your colleagues and share interpersonal space. Invite them over to your place for dinner. The more you invest in doing things differently, the more you will bond. The secret is relating to each other, not doing something substantive.



## HUNT DOWN ASSUMPTIONS

Many organisations put time into systems for collaboration, from Belbin team roles to project management or Agile. This can helpfully create a team "language" and build shared understanding. Keep in mind the obstacle is not difference but assumptions.

Often new forming teams dive into work, partly to avoid the anxiety of uncertainty and the painfulness of thinking, and partly for the reward of getting things done. However, teams that act before thinking often run away with ideas that don't stand the test of time.



## HOWEVER, THERE IS ALSO SPACE FOR TOOLS

There are many digital tools we can use to improve the efficiency of group interaction. Here we think of Skype, Zoom, Slack, and so on. Sure these help us share information faster. However they do not add value to what we share.

Simple may be better, and email and messaging groups may do the job. We should not be blind to technology per se. It must add efficient value to our group task. Indeed, it can get us into difficulties if silence replaces active conversations. Pick up a phone and call a team member if you sense technology is leading to communication breakdown.



## DON'T EVER STOP BELIEVING

Your ability to read people and situations is infinite. Collaboration may be a new skill set, but working on it can stretch and build your business skills. So bring curiosity to the party whether you are extrovert or introvert. There is no limit to what you can learn, and no better way to do this than working with others.

# HOW TO DEAL WITH SEXUAL HARASSMENT AT WORK



Google recently made world news when its employees took a stand against its poor handling of sexual harassment charges and walked out of the workplace.

This was after Google gave a senior executive who had been accused of sexual harassment a golden handshake of over \$90 million.

This type of publicity is, of course, bad for the reputation of the company. Google's employees have demanded changes in the way that sexual harassment has been handled in the company in the past. There is no doubt that management will be keen to avoid a repeat of the bad publicity. So, they are likely looking at measures to ensure that there is no embarrassing recurrence.



## *What is Sexual Harassment*

The #MeToo campaign has drawn a lot of attention to incidences of sexual harassment. Employees are increasingly aware of their rights when it comes to dignity and safety in the workplace. When it comes to sexual harassment, not all business owners and managers are as aware of the rights of their employees as they should be.

Sexual harassment has a legal definition. It is in the interests of all employers to understand the definition and its implications. It is defined as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive

environment for the person.”

Sexual harassment according to the law is any kind of sexual overture that is embarrassing or upsetting to the victim. This is, of course, a subjective view, and is dependent on the opinion of the victim. What the perpetrator thinks is of no consequence. A single incident of sexual harassment is enough to get the perpetrator into trouble.

Preceding cases give us some idea of how the courts view acts of sexual harassment. Cases that have been before the Workplace Relations Committee WRC make it clear that suggestive comments, such as an employee dressing to attract an employers’ attention, all constitute sexual harassment.



## *What Are the Risks to the Employer*

As demonstrated by the Google case, ignoring allegations of sexual harassment can cause major reputational damage to the company and the brand, particularly in today’s business environment where attracting and retaining talent is difficult enough. Companies who tolerate sexual misconduct will find it next to impossible to find and retain the skilled staff they require.

Under the Employment Equality Acts of 1998-2015, a victim of sexual harassment can make a claim in the WRC. Successful claims can result in reinstatement or re-engagement of the employee. Alternatively, they could receive up to two years remuneration with full benefits.

The highest awards are paid to victims that can prove that their complaint resulted in victimisation. The employer can also be held responsible for any serious psychological consequences arising from the said harassment.

The traditional view of the court, that employers could not be held vicariously liable for the actions of their employees, has in recent year been overturned. Employers who fail to take action to deal with, and prevent, sexual harassment in the workplace could be held liable for the actions of their employees.



## *What Should You Do to Prevent It*

As with all important areas of the business and, in particular, where it relates to Human Resources you should have a clear and principled policy in place. Go through your “Dignity at Work” policy and ensure that it is appropriate.

You can find some really useful online resources relating to both sexual harassment and bullying.

Training for business owners and managers is always helpful. It ensures that everyone knows how to deal with situations

as they arise. It also ensures that they deal with them in a uniformed manner. In larger organisations, it may be appropriate to appoint a designated person who can assist complainants.

Your workplace practices should support dignity for all. All employees should feel safe and supported when at work. This is not just about legal compliance but about a happy and healthy work environment.

# WORKPLACE DISCIPLINARY PROCESSES AND THE LAW



**The Court of Appeal has recently brought clarity as to when an employee in a disciplinary procedure should be allowed to bring a lawyer.**

A common query received by employment lawyers from employers conducting disciplinary processes is whether employees are entitled to be accompanied by a lawyer. The standard answer, often unhelpfully, has tended to be 'it depends'.

However, until recently there was good reason for this fence-sitting. The case law on whether the right to fair procedures extended to allowing employees to be accompanied by a lawyer in an internal disciplinary process was somewhat unsettled.

The Court of Appeal has recently brought much-needed clarity to this question, and lawyers can now advise with confidence that employees are only entitled to be accompanied by lawyers in disciplinary processes in "exceptional circumstances".



## CODE OF PRACTICE



As a starting point, the statutory code of practice on grievance and disciplinary procedures states that employees can be accompanied at disciplinary hearings by a fellow colleague or trade union representative – but not any other person or body.

As most disciplinary policies have been drafted to reflect the requirements of the code, the traditional approach for employers has been to (almost always) refuse an employee's request to be accompanied by a lawyer in an internal disciplinary process. However, case law developments in recent years appeared to open the door to lawyers accompanying employees in internal processes.

One of those developments concerns situations where the outcome of those processes could result in dismissal or a negative impact on an employee's reputation or future employment prospects.



## Reputational Harm

In the recent case of *Iarnród Éireann/Irish Rail v McKelvey* [2018] IECA 346, the Court of Appeal found that an Irish Rail inspector had not been deprived of fair procedures in circumstances where he was refused permission to be accompanied by a lawyer during a disciplinary hearing.

The inspector had argued he required legal representation as he was facing potential dismissal and the outcome of the process could impact his reputation and future employment prospects.

Significantly, the court stated that legal representation at disciplinary hearings need only be permitted in "exceptional circumstances". The Court of Appeal did not describe the type of fact patterns that would meet the high threshold of constituting exceptional circumstances.

However, it is clear from the decision that the potential for an employee to be dismissed or suffer reputational harm as a result of the disciplinary hearing will not necessarily trigger an entitlement to legal representation.

When considering a request for legal representation, the court directed employers to take account of various factors. These include the seriousness of the charge, the potential penalty, whether points of law were likely to arise during the hearing, and whether the employee had the capacity to represent themselves during the process.

The answers to these questions will inform the assessment as to whether legal representation is necessary to order to ensure the employee receives a fair hearing. What does this mean in practice? It goes without saying that employers need to stick closely to their own disciplinary policy when conducting disciplinary processes.

In line with the code, an employer should ensure its disciplinary policy expressly provides that employees may only be accompanied by a fellow colleague or trade union official (if applicable) during a disciplinary hearing.

## BAR SET

The Court of Appeal has set a high bar for employees who wish to be represented by a lawyer during a disciplinary process. It is no longer sufficient for the employee to simply advance good reasons as to why they should be legally represented; they must be able to point to "exceptional" circumstances.

Though this recent judgment unquestionably strengthens the position of employers who do not wish to permit their employees to be legally represented during disciplinary hearings, employers should still tread carefully when dealing with such requests from employees.

While the rule of thumb – allowing lawyers only in "exceptional circumstances" – has helpfully been confirmed, the key issue going forward will be stress-testing the specific facts of each case. This will be a vital step in determining whether there is a need to make an exception to the general rule and permit an employee to be legally represented at a disciplinary hearing.



# HOW DO YOU HANDLE FRIENDLY RIVALS AT WORK?

The Brownlee brothers impressed Theresa May but we could all learn something from them.

The other day I met two young men from Yorkshire who have come to embody the spirit of sportsmanship and comradely teamwork. Yet the British triathlon stars, Alistair and Jonny Brownlee, turned out to be more riveting on a different matter: how to deal with a close work colleague who becomes a worrisome rival.

The brothers inadvertently shot to global fame in the gripping final moments of a big international triathlon on the Mexican island of Cozumel in 2016. In the last stretch of the race, Alistair slowed down when he saw his younger brother was staggering with exhaustion and close to collapse. He pulled Jonny's arm over his shoulder, hauled him the last few hundred metres and pushed him over the finishing line, where Jonny did promptly collapse.



## FAME

That one brief instant brought the pair more fame than the four Olympic medals they had won between them after years of hard work. Theresa May, Britain's prime minister, later said they had in that moment "revealed an essential truth, that we succeed or fail together".

It also revealed fresh morsels for the conference circuit. I recently saw the brothers at an event for chief financial officers in London, where they said it had been a huge advantage to have been able to train together from childhood. It wasn't just that they were able to push each other to levels few other athletes in the world could reach. It was also supremely efficient.

Watching what did and did not work for each other meant they learnt what to do from a trusted ally faster than if they had trained independently.

Yet that trust only goes so far. In the final stage of the Rio Olympics triathlon, Jonny said he could see the pair were assured of medals and told Alistair to take it easy. But Alistair, sensing weakness, "speeds up and takes off!" said Jonny, who ended up with silver to Alistair's gold. This prompted a question from a finance director in the audience named Richard Ellison: how did the brothers go from being trusted collaborators when training, to cut-throat rivals on the racetrack – and back again?

As Mr Ellison told me later, chief financial officers have to think about this a lot. They need the trust of senior executives to keep budgets on track, though it is possible they will end up competing with the same executives for the chief executive's job. More than 30 per cent of group CFOs had an urge to be CEO in 2016, a global survey found.

## PRAGMATISM

The Brownlee brothers' answer was pragmatism. It made sense for them to collaborate when training, said Alistair, and even in the early stages of a race. But each knew they were there to win and the gloves would come off at the end. I am not sure how far this model translates to the business world. Trust between strangers who end up working together can rarely be as strong as the bond between siblings, or couples for that matter.

Many years ago, I found myself in an awkward position when I was a newspaper correspondent in Washington. My boyfriend at the time, another journalist, took the same job at a rival paper. We were direct competitors who lived together. We had separate phones on each side of the bed. If one of us suddenly took off to the airport for a few days "on assignment", the one left behind would joke that we hoped the other was really just having an affair, not heading out to land a tremendous scoop.

Like the Brownlee brothers, we trusted one another enough to co-operate when it made sense. We never bothered to hide news that was about to be all over the television. Yet we understood that all bets were off when it came to important exclusive stories. It worked. We are still together.

Over the years, I have seen office colleagues adopt a similar strategy, openly discussing their real or potential rivalry and then setting rules of engagement that allowed them to co-operate successfully.

More often, though, I have seen unacknowledged rivalries fester. It is risky to reveal something as sensitive as one's ambition to anyone, let alone a competitor.

Perhaps it is a risk we should think about taking more often. Sometimes, there really is more to be gained from co-operation than there is to be lost.

# MEET THE TEAM



**RONAN ENRIGHT**  
SOLICITORS



**RONAN ENRIGHT**  
Principal Solicitor

Ronan Enright qualified as a solicitor in 2007. He received a Bachelor of Commerce degree from University College Cork and later went on to receive a Diploma in Commercial Litigation, and Diploma in Commercial Property and a Diploma in Employment Law from the Law Society of Ireland. He volunteers as a Mentor to start up companies on various accelerator programmes. Ronan is also a Practitioner of the Institute of Banking.

Ronan practices extensively in both plaintiff and defence litigation. He advises clients in relation to personal injury, general litigation and commercial litigation, and acts on behalf of private clients, insurance companies and self insured bodies. He also advises clients in relation to debt collection, employment law issues, social welfare investigations and disputes, tax investigations and disputes, road traffic matters, residential conveyancing, commercial property, wills, probate, and estate planning.

Having worked for over ten years as an associate in a general practice in Cork, Ronan formed Ronan Enright Solicitors in 2017.

#### Contact Ronan

✉ [ronan@ronanenright.com](mailto:ronan@ronanenright.com)



**MICHAEL ENRIGHT**  
Consultant Solicitor

Michael Enright is a full-time Consultant Solicitor in the Firm. Having attended Christian Brothers College, and University College Cork, he qualified as a solicitor in 1973 and practiced for much of his career as a Partner and head of litigation in a large firm. He formed his own firm in 1994 where he was the Senior Partner until 2017.

Michael has extensive experience in litigation. Much of his work is on behalf of insurance companies and he has acted on behalf of a number of local authorities, dealing with public liability claims and employers' liability for many years. He also practices in the areas of plaintiff litigation and commercial litigation and has extensive experience dealing with claims of professional negligence and medical negligence. Michael is an experienced Arbitrator and has helped many clients resolve matters outside of the court system.

Michael is a former Council Member of the Law Society of Ireland and has served on many committees, including the Litigation Committee. He is a former President of the Southern Law Association, and was Chairman of the Litigation Committee of the Southern Law Association for over 20 years.

#### Contact Michael

✉ [michael@ronanenright.com](mailto:michael@ronanenright.com)



# RANGE OF SERVICES

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- Medical Negligence
- Road Traffic Accidents
- Occupiers' Liability
- Public Liability
- Product Liability
- Employers' Liability
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- Contract Disputes
- Defamation
- Environmental Law
- Nuisance
- Health & Safety Legislation
- Professional Negligence
- Conciliation
- Insurance law
- Arbitration
- Insurance defence litigation
- Mediation
- Injuries Board Applications

## WILLS AND ESTATE PLANNING

- Will Drafting
- Periodic Will Review
- Estate Planning
- Tax implications
- Advise beneficiaries and family members

## EMPLOYMENT LAW

- Unfair Dismissal
- Workplace Discrimination
- Drafting of Employee Handbooks
- Drafting of Employee Contracts
- Bullying and Harassment Issues
- Equality Issues
- Redundancy
- Representation at the Workplace Relations Commission

## FAMILY LAW

- Separation and Divorce
- Custody, Access and Guardianship Issues
- Advise relating to barring orders and safety issues
- Maintenance Payments

## PROPERTY

- Buying
- Selling
- Commercial
- Residential
- Planning
- Environmental
- Landlord & tenant

## COMMERCIAL LAW

- Buying and Selling a Business
- Taxation Issues
- Debt Collection
- Enforcement of Judgements
- Shareholders agreements

## LICENSING LAW

- Ad Interim Transfers
- Confirmation of Transfers
- Renewal of Licences
- Dance licences
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- Restaurant Licences
- Music and Singing Licences
- Special and General Exemption Orders
- Applications for New/ replacement Licences
- Declaratory Orders



32 South Bank,  
Crosses Green,  
Cork, Ireland.



021 2355443



[www.ronanenright.com](http://www.ronanenright.com)



[info@ronanenright.com](mailto:info@ronanenright.com)