

A Survey of Knowledge Management in Law Firms in Botswana

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Abstract

This article provides an empirical assessment of knowledge management in law firms in Botswana. It employs survey research methodology and triangulation of qualitative and quantitative methods of data collection. Data were collected mainly through a questionnaire administered to the 217 lawyers in all the law firms registered with the Botswana Law Society. The response rate was 64.5% (i.e. 140 returned copies of the questionnaire). Fifteen other lawyers were interviewed. The findings reveal that lawyers in Botswana are still grappling with the concept, requirements and implications of knowledge management. It was

concluded that law firms in Botswana need to become proactive about knowledge management in law practice. The study recommended that lawyers in Botswana should consider talking to others in the legal community about knowledge management issues, attend meetings and workshops on knowledge management, invest time and money in creating bulletins boards, form alliances with international professional associations, and get connected to electronic forums that foster collaborative thinking.

Keywords

Knowledge management, law firms, lawyers, Botswana

Introduction

Knowledge intensive organisations such as law firms have always intuitively appreciated the value of knowledge management because their competitive advantage lies in the expertise and knowledge of the lawyers and their firms. Buckler (2004) notes that some of what is now called knowledge management have been with lawyers since the time of the manual typewriter. Lambe (2003) posits that from the Code of Hammurabi, almost four thousand years ago, to modern law reports and Lexis Nexis, the practice of law has been one requiring the effective and objective acquisition, creation and use of knowledge. In recent years, as law firms have learned that acquiring and leveraging knowledge effectively within the client organisations can propel the firm to become more adaptive and innovative, knowledge management is becoming an imperative as these firms continue to expand and tackle the challenges in the changing legal environment.

Botswana has most of what it needs to be fully integrated in the knowledge economy – the financial means, political stability and a very liberal economic environment. During the 1990s, it had one of the fastest growing economies in the world. With the rise in the knowledge economy in the last decade of the twentieth century and the recognition of the importance of knowledge as a critical resource for sustainable competitive advantage, the Botswana government has continuously tried to mobilise the business sector and organisations in the country into the knowledge economy. In this respect, country's Vision 2016 spells out its desire to be involved in the knowledge economy and to have a globally competitive knowledge-based information society (Presidential Task Group for Long Term Vision for Botswana, 1997). In spite of the moves by the government to promote a knowledge economy, there are indications that law firms in the country are yet to institutionalise knowledge management in their practices. Those indications motivated a doctoral thesis that investigated how knowledge was being managed in law firms in Botswana (Fombad, 2008). The discussions in this paper summarise aspects of the findings of the thesis.

Lawyers, Law Firms and the Knowledge Environment

Lawyers are knowledge workers who have gained knowledge from internalising valuable information gathered during legal studies and research (explicit knowledge) and through expertise and experience from learning on the job (tacit knowledge). Even after qualification from the law school, lawyers continue to develop their intellectual capacity and professional skills by acquiring specialised knowledge in particular areas of law and legal procedure and by solving legal problems. Law firms are learning organisations because lawyers are always in need of accurate up-to-date information and “snapshots” of law at particular points in time. If a lawyer ceases to learn, he/she would not be able to provide precise, unbiased and expert advice to the client or present the client's case convincingly and confidently. This may explain why lawyers tend to address each other as “learned friend”, “learned colleague” or “learned lawyer”.

Knowledge in the law firm resides in many different places, such as databases, filing cabinets,

print material and the intrinsic skills and experiences of the lawyers and their staff. Legal researchers have classified the knowledge in the law firms into different categories. For example, Rusanow (2003) defines the broad category of knowledge used in the law firm as knowledge of the law, knowledge of the firm, client information, commercial markets and specific industries, staff skills and expertise, past projects, and knowledge about third parties (judges, opposing counsel, or external consultant). According to Kay (2002), knowledge in a law firm includes knowledge of the law, knowledge about clients and their industries, marketing information and financial information. Edwards & Mahling (1997) used a slightly different subdivision by categorising the different types of knowledge involved in the practice of law as administrative data, declarative knowledge, procedural knowledge and analytical knowledge, a classification that was adopted by Gottschalk (1999, 2002). For our purposes in this article, knowledge in the law firm can be put into three broad categories as tacit knowledge, explicit knowledge and knowledge of the business of law. This is because elements of tacit and explicit knowledge run through the different categorisations of knowledge suggested by the various legal researchers while the other knowledge crucial for the practice of law may be conveniently referred to as knowledge of the business of law.

Explicit knowledge is expressed in words found in documents and embedded in the firms' routines, processes, practice and norms and can be easily codified. This includes knowledge acquired through formal education in the law school and can be easily communicated and shared. Explicit knowledge may be created either externally or internally. Legal knowledge and declarative knowledge (substantive principles of law) are examples of externally created explicit knowledge. Legal knowledge exists in the form of legal texts, legislation, case law, legal principles contained in statutes, printed resources, databases, commentary and interpretation, the firms' repository of template documents, court opinions, research sources, CD ROM sources and other sources of primary legal authority (Kofoed, 2002; Rusanow, 2004). Examples of internally created explicit knowledge (also referred to as explicit procedural knowledge) are standard forms and best practice (model documents). Standard forms, also referred

to as precedents, are generic documents that the firm has typically invested in producing for use in many matters. When dealing with conveyancing for example, a lawyer does not necessarily have to draft a new agreement but may use one of the existing precedents and apply limited amendments to the new circumstances.

Tacit knowledge is dynamic knowledge that is not easily expressed, not easily codified or shared in the law firm. It is expertise and experience developed from learning on the job and from training and interaction with the environment. It enables one to do things unconsciously without being able to articulate it. It is highly personal, hard to formalise and difficult to communicate to others. Tacit knowledge in the firm can be exchanged during transient events, by e-mails or discussions, at meetings that may not be formally documented, or may just pass between people in question and answer dialogue at in-house seminars or training sessions. Although amorphous, this kind of knowledge is generally higher in value and differentiates the firm in a competitive legal market. Analytical knowledge and implicit procedural knowledge form part of the tacit knowledge base of the firm. Implicit procedural knowledge is knowledge required in enforcing the substantive principles of law. It is practical and concerned with skills and expertise described in terms of the results they lead to, but cannot be fully explicit. This is knowledge on the mechanics of complying with a legal requirement in a particular situation, or ethical obligations to maintain the confidentiality of information furnished by the clients (Edwards & Mahling, 1997).

Knowledge of the business of the law firm is non-legal knowledge, administrative data (administrative data includes all the information about the firm's operations such as hourly billing rates for lawyers, clients' names and matters, staff payroll data and client invoice data) and knowledge of the firm's market position and business strategy that makes it possible for any one to find and access the firm's procedures and policies (Kay, 2002; Rodriguez et al., 2002; Rusanow, 2003). It includes knowledge of clients and their industry, marketing information, knowledge about third parties, knowledge about the firms' relative market strengths and weakness, its competitors, industry trend, market opportunities,

financial position, financial news, expert information, knowledge about judges, opposing counsel, consultant business, scientific and scholarly information on subjects such as medicine, science, statistics, and demographic information. A major challenge for law firms is not only to capture and leverage the explicit knowledge but also to make the knowledge that rests with the individual members of the firm available to the entire firm.

Knowledge management can be described as systematic and disciplined actions that a law firm takes to identify, capture, create, share and leverage the knowledge of the individual lawyers and other members of the firm so that the knowledge becomes an organisational resource, benefiting clients, other lawyers and the law firm. Knowledge management systems in the law firm may enable the lawyer to benefit from the explicit and tacit knowledge that is accumulated in the firm and its members. The following have been identified as some of the benefits that may accrue from successful implementation of knowledge management strategy in the law firms (Chester, 2002; Kay, 2002; Kofoed, 2002; Maister, 1993; Staudt, 2003; Terret, 1998; Wesemann, 2006):

- Saves firms time and saves clients money;
- Provides better quality product to the clients;
- Provides professional satisfaction to the lawyer;
- Increases profitability in the law firm and an enhancement of teamwork;
- Supports team effort and the culture of knowledge sharing;
- Assists young lawyers to become self-sufficient;
- Ensures that lawyers do not repeat the firm's past errors but rather learn from the firm's past;
- Assists with the integration of new lawyers into the firm while focusing on improving the skills of junior and senior lawyers;
- Enhances economic profitability;
- Improves retention rate;
- Supports and encourages a learning culture; and
- Meets the information and knowledge needs of the lawyer.

Literature Review

Research studies abound that highlight the enormous potential for knowledge management in law firms and the importance of knowledge tools and techniques for knowledge representation and knowledge transfer (Rusanow, 2003, 2004; Terret, 1998; Staudt, 2003; Platt, 2003; Nathason and Levison, 2002; Leibowitz, 2002; Campbell, 2002). Most studies on knowledge management in law firms (Campbell, 2002; Gottschalk, 1999, 2000, 2002; Hunter et al., 2002; Khandelwal and Gottschalk, 2003; Rusanow 2007; Staudt, 2003) tend to adopt a technological approach overlooking other perspectives. The adoption of a one-dimensional technological approach to knowledge management confirms the view that most lawyers still consider knowledge management as a concept that begins and ends with building of information systems, whereas the mere existence of technology or the use of technology will not turn a knowledge hoarding organisation to a knowledge sharing one. Hence, considerable emphasis has been placed on the use of knowledge-based systems in creating, sharing and utilising collective knowledge, tools and techniques for knowledge representation, the capturing and storing of explicit knowledge in the work product repository, knowledge repository, and on intranet and extranet projects. In a study of knowledge management in Scottish law firms, it was concluded that all the five firms sampled limited their knowledge management initiatives to technology (Hunter et al., 2002). One of Australia's largest and leading international firms, Blake Dawson Waldron, has invested significantly in knowledge management technologies and developed software products that facilitate knowledge management such as virtual deal room, electronic discovery of files and emails (Rusanow, 2007). Most of Gottschalk's empirical studies on knowledge management in the law firm adopt the technological dimension (Gottschalk, 1999; Gottschalk, 2000; Gottschalk, 2002). For example, the 1999 study on the use of knowledge management in Norwegian law firms revealed that the extent to which law firms in Norway use information technology to support knowledge management is significantly influenced by the extent to which firms generally use information technology. The 2000 study on the use of information technology to support inter-

organisational knowledge management on Norwegian law firms indicates a significant positive relationship between the extent of information communication technology use and the extent of co-operation and knowledge co-operation among law firms.

There are however few studies where knowledge management in law firms has not focused only on the technological approach. For example, a leading Australian firm has, unlike most of its rivals, focused its management initiatives on managing knowledge relating to the business of law and the existing and prospective client information and business position (Rusanow, 2007). Also, in a survey of knowledge management in Australian law firms, Khandelwal & Gottschalk (2003) adopted the information technology stage model to identify the different stages in which information communication technology may support knowledge management activities in the law firm, as well as the knowledge-based view of the firm to develop a framework for comparing the knowledge management approach in individual law firms. Similarly, Carine (2003) developed a framework for comparing the knowledge management approach in individual law firms and law firm alliances, while Kofoed (2002) carried out a case study of two law firms in the UK to identify the factors critical to the success of knowledge management.

Most knowledge management initiatives in law firms have been undertaken by large firms. A study of knowledge management in Virginia law firms found that most of the firms were waiting to see how the large firms fared before adopting knowledge management (Gonzalez, 2002). A 2003 global law firm knowledge management survey report revealed that leading law firms in the United States, United Kingdom and Australia recognised knowledge management as a key business driver, even though many of the firms had embryonic knowledge management organisations (Curve Consultant Survey Report, 2003). Rusanow (2007) observed that one of the current leading law firms in knowledge management is one of Australia's largest firms known as Allens Arthur Robinson (www.aar.com.au), with 800 lawyers (including 190 partners) and approximately 700 non-legal staff. Though large firms may be logical users of sophisticated knowledge management systems, small firms like law firms in

Botswana possess the flexibility to take advantage of many of the technologies that exist today.

Methodology

Law firms typically consist of one to several hundred lawyers who practise together as a formal entity. However, law firms in Botswana are mostly solo firms, which traditionally have individual clients and provide personal legal services. The Botswana Law Society, created in 1996 under the Legal Practitioners Act, regulates the activities of law firms in the country. Generally, in order to practise law, one must have at least a first degree in law after which he/she would be initially admitted to the profession as a student-lawyer (pupil) depending on the regulations governing the lawyers' jurisdiction of practice. In Botswana, the training of lawyers is a joint responsibility of the Law Society and the Department of Law at the University of Botswana. Competition for admission to study law is more intense than other areas of study in the social sciences at the university. To practise law in the courts of Botswana, a person must have completed a five-year law degree programme, be admitted to the roll of practitioners and must have obtained a practising certificate unless he/she is exempted from obtaining the same. Sections 18-28 of the *Legal Practitioners Act* envisage a twelve months professional training period after the law degree. Commonwealth citizens are also allowed to practise law in Botswana provided they fulfil the requirements stipulated in Section 5 of the *Legal Practitioners Act*.

This study employed the survey research methodology and a triangulation of qualitative and quantitative methods of data collection (descriptive and exploratory surveys, and qualitative interviews) and data analysis (descriptive statistics and content analysis). The sampling frame for the study was constructed from the lists of law firms and lawyers as at 15 October 2007 obtained from the Botswana Law Society. There were 115 registered law firms and 217 lawyers. A questionnaire was designed and administered on all the 217 lawyers, out of which 140 completed copies were returned, giving a return rate of 64.5% (Fombad, 2008). The purpose of the questionnaire was to seek valuable insights into the knowledge management patterns in law firms in Botswana.

In order to obtain in-depth information about the experiences of lawyers in knowledge management activities, semi-structured interviews were conducted with 15 lawyers from different firms in Gaborone. Gaborone was chosen because most of the law firms in Botswana (84 firms out of 115) are located in Gaborone. The data from the interviews and open-ended questions in the questionnaire were analysed qualitatively.

Results and Discussion

Characteristics of the Lawyers

The majority (83%) of the participants had only a bachelor's degree, and the remainder had master's degrees. The preponderance of bachelor's degree holders may be because lawyers in Botswana are too busy and have no time to pursue further studies, or they do not see any need for an additional degree because a bachelor's degree in law is the basic qualification required to practise. From the knowledge management perspective, although the bachelor of law degree is the basic requirement for legal practice, an additional qualification particularly in the lawyer's area of practice or specialisation will surely provide an added advantage to the lawyer. This is because law is a learned profession where lawyers are obliged to develop their intellectual capabilities, reasoning and textual analysis in order to be able to analyse and solve legal problems, as well as apply specialised knowledge to clients' unique problems (Best, 2003; Leckie, et al., 1996). Besides, law is not static; the continuous development and changes in the law should be a very good reason for lawyers to continue to crave for and acquire new knowledge.

Characteristics of the Law Firms

Data on the organisational characteristics of the law firms was collected to determine the total number of lawyers in each law firm, establish the most strategic resource in the firm, assess whether participants have knowledge management systems in place, identify the persons responsible for knowledge management functions, and establish whether the firms have policies and budgets for knowledge management. The lawyers mostly agreed that knowledge was the most strategic resource of the firm. This was not surprising

because law is a knowledge intensive profession where the lawyers spend a lot of time in deploying knowledge at the service of clients. But some lawyers considered the quality of clients and time as the most strategic resource. Nevertheless, if a lawyer has all the time without knowledge, he/she would not be able to provide precise, unbiased and expert advice to the client or present the client's case convincingly and confidently. Consequently, the lawyer would lose clients or be unable to attract new ones.

The survey found that law firms in Botswana are mainly small firms with more than two-thirds of them having either only one or two lawyers. This is an important finding because knowledge management may likely not be a priority in small firms. Information from the interviews suggests that law firms in Botswana will likely continue to remain small because, as noted by one interviewee, "there is constant splitting up of firms by lawyers to start off as sole proprietors or to form partnerships because lawyers want to get a share of the profit rather than just a salary." The study also found that most of the firms (72.9%) did not have a formal knowledge management programme and very few (27.1%) were planning to introduce one; most (76.4%) did not have a knowledge management officer; a majority (78.6%) did not have a knowledge management policy, and very few firms (17.9%) had a knowledge management budget.

The implications of these findings are that although law firms in Botswana were unconsciously practising some form of knowledge management, they have not yet adopted formal knowledge management programmes. One of the reasons may be that a majority of the firms are sole proprietors (39.3%) and two-lawyer firms (35.0%) who lack the personnel to man formal knowledge management programmes and therefore consider knowledge management as a concept for large firms only. Another reason may be that law firms are not aware of the concept of knowledge management and therefore do not consider it as one of their strategic objectives that may necessitate a policy. This view was confirmed by the findings from the interviews which indicated that most of the lawyers in Botswana are still grappling with the whole concept of knowledge management. In fact, most do not even

seem to know what knowledge management is all about. Most defined knowledge management as information management, while some lawyers even thought that knowledge management is a client's affair. An interviewee opined that knowledge management is difficult because clients are not sufficiently rich to pay for same.

Categories of Knowledge in the Law Firms

In order to appreciate how knowledge is managed in law firms in Botswana, it was crucial to identify the different types of knowledge that are used in the law firms. Participants were asked to indicate how frequently the different types of knowledge are used in their firms.

Tacit knowledge used frequently or very frequently in the law firms are as follows (Table 1): skill and expertise of lawyers and staff (98.6%), procedural knowledge (95.0%), lessons learned from past projects (82.6%), analytical knowledge (78.9%), tips on drafting (hints on creating legal documents, 77.2%) and conversation in the hall ways (60.7%). The top ranking of skills and expertise of lawyers and staff (98.6%) confirms that most of the knowledge in the law firm is from the skills and experiences of the lawyers and staff in the firm.

Examples of explicit knowledge identified in the law firms in order of significance are: standard documents (95.0%), legislation and case law (90.0%), knowledge of the law (90%), court decisions (87.9%), legal texts (80.0%), knowledge from judges (58.6%), and expert opinion (43.5%). It is clear from this that standard documents, legislation and case law, and knowledge of the law constitute the most important types of explicit knowledge in the production and management of legal work. Standard documents are required in the day to day legal operations to ensure consistency and enhance productivity. On the other hand, every legal issue in the law firm requires the knowledge of the law and the application of case law and legislation. The least important form of explicit knowledge is expert opinion. It may be that law firms do not resort to expert knowledge unless it is unavoidable because engaging the services of an expert is usually expensive.

Knowledge pertaining to the business of law identified in table 1 above are: client information (66.4%), financial information (38.8%), and marketing

information (22.9%). It is interesting to note that knowledge of the business of law was the least used type of knowledge in the law firms even though the practice of law is a business where lawyers seek to maximise profits. This may be because a law firm depends almost entirely on the legal knowledge, the skills and experience of the lawyer and staff in providing services to the clients rather than knowledge of the business of law. Ethical concerns may explain

in the firm’s day-to-day business and are often handled by support staff in the firm. Nevertheless, the relatively high rating of the use of client information (66.4%) may imply that some lawyers do monitor client information in order to make informed decisions about necessary action that would lead to client satisfaction.

Table 1: Categories of knowledge in the law firms (N=140)

| | Very Frequently | Frequently | Not at all | Not Frequently | Non-Response |
|------------------------------------------|-----------------|------------|------------|----------------|--------------|
| Skill and expertise of lawyers and staff | 80.7 | 17.9 | 0.0 | 1.4 | 0.0 |
| Lessons learned from past projects | 69.3 | 17.9 | 0.0 | 11.4 | 1.4 |
| Analytical knowledge | 51.4 | 23.6 | 2.9 | 17.1 | 5.0 |
| Tips on drafting | 38.6 | 38.6 | 3.6 | 14.2 | 5.0 |
| Procedural knowledge | 47.9 | 47.1 | 0.7 | 4.3 | 0.0 |
| Conversation by the hallways | 31.4 | 29.3 | 7.9 | 26.4 | 5.0 |
| Knowledge of the law | 59.3 | 30.7 | 5.0 | 5.0 | 0.0 |
| Expert opinion | 16.4 | 27.1 | 7.9 | 46.3 | 4.3 |
| Legal text | 40.7 | 39.3 | 5.0 | 10.0 | 5.0 |
| Legislation and case law | 57.1 | 32.9 | 5.0 | 5.0 | 0.0 |
| Standard documents | 50.7 | 44.3 | 0.0 | 5.0 | 0.0 |
| Knowledge from judges | 13.6 | 45.0 | 15.7 | 25.7 | 0.0 |
| Court decisions | 68.6 | 19.3 | 0.0 | 12.1 | 0.0 |
| Financial information | 7.9 | 30.7 | 17.1 | 44.3 | 0.0 |
| Marketing information | 9.3 | 13.6 | 33.6 | 38.6 | 5.0 |
| Client information | 27.1 | 39.3 | 12.1 | 21.4 | 0.0 |

*Table values are percentages, which may not add up to 100% due to non-responses.

the low rating of marketing information (22.9%). Legal ethics requires lawyers to serve clients rather than seek a morbid quest for pecuniary gain by solicitation of prospective clients. Marketing the firm’s information may be seen as advertising the firm for active search of clients, whereas lawyers in Botswana as in most countries of the world are prohibited from advertising by Section 53(2) of the *Legal Practitioners Act*. Clients’ details and financial information such as financial news, data, clients’ names and matters, staff payroll data, and client invoice data are administrative information generated

Tools and Technologies for Knowledge Management in the Law Firms

Different tools and technologies often used for knowledge management were listed and participants were asked to indicate whether they “strongly agree,” “agree,” “disagree,” “strongly disagree” or were “neutral” that they were being used for knowledge management in their firms. The responses for “strongly agree” and “agree” are considered as “agree” while the results of “strongly disagree” and “disagree” are considered as “disagree”.

Most responses on the ways information communication technologies are used for knowledge management in law firms from the above questions either fell below a 30% range or were neutral. This may be because most of the information

communication technologies for knowledge management identified have not been adopted in the law firms or because law firms are not aware of these technologies. It was evident from the findings of the interviews that participants were excited about

Table 2: Tools and technologies for knowledge management in the law firms

| | <i>Strongly agree</i> | <i>Agree</i> | <i>Neutral</i> | <i>Disagree</i> | <i>Strongly disagree</i> | <i>Non-response</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|--------------|----------------|-----------------|--------------------------|---------------------|
| Lawyers subscribe to online forums, Intranet news groups or email distribution lists | 10.0 | 15.7 | 18.6 | 33.6 | 12.9 | 9.3 |
| My firm uses communicative tools and technologies such as Lotus Notes to support the knowledge transfer process and to encourage the sharing of ideas and projects | 0.0 | 0.0 | 34.3 | 33.6 | 20.7 | 11.4 |
| My firm uses the Internet/Intranet, Extranet and World Wide Web, for gathering knowledge so that it can be used through out the firm | 32.9 | 22.1 | 11.4 | 5.0 | 28.6 | 0.0 |
| My firm uses legal information systems such as Lexis-Nexis, Justastat, Westlaw, and Thomas and Dialog to facilitate legal research | 35.7 | 21.4 | 12.9 | 16.4 | 13.6 | 0.0 |
| My firm uses "Yellow Pages" containing CVs, competency profiles, and research interest of experts | 12.9 | 13.6 | 40.7 | 26.4 | 2.1 | 4.3 |
| My firm has knowledge maps that act as electronic intermediaries connecting knowledge seekers to knowledgeable people. | 1.4 | 0.0 | 31.4 | 40.0 | 17.9 | 9.3 |
| My firm uses document and content management systems in managing the content of knowledge | 4.3 | 24.3 | 33.6 | 17.9 | 15.7 | 4.3 |
| My firm uses indexing tools to organise and cross-reference material by subject and practice area | 13.6 | 7.1 | 37.9 | 20.7 | 14.3 | 6.4 |
| My firm has an expert system that captures the knowledge of experts | 0.0 | 5.0 | 38.6 | 28.6 | 22.1 | 5.7 |
| My firm uses artificial intelligence to support advanced information searching and retrieval | 0.0 | 0.0 | 27.1 | 38.6 | 30.0 | 4.3 |

*Table values are percentages, which may not add up to 100% due to non-responses.

the potentials of the technologies for knowledge management in law firms, although they were not quite sure as to how information technologies would be used for knowledge management. There were only two main ways in which information technologies are used for knowledge management. The first is the use of legal information systems for legal research and the second is the use of intranets, internet, extranet, and World Wide Web by the firm to gather knowledge so that it can be used in the firm. Whilst 26.5% agreed that they use Yellow Pages containing curricula vitae, competency profiles, and research interest of experts, only two (1.4%) acknowledged that their firms use knowledge maps that act as electronic intermediaries connecting knowledge seekers to knowledgeable people. Yet, Yellow Pages are examples of knowledge maps. This is some indication that the lawyers are inadequately familiar with knowledge management technologies and concepts.

Techniques for Knowledge Management in Law Firms in Botswana

Like the tools for knowledge management, participants were requested to indicate by ticking a “Yes” or “No” as to the different techniques of knowledge management applicable in their firms.

Table 3 shows that several techniques of knowledge management were used in the firms, although there were no formal structures for knowledge management in the law firms and lawyers might not have been aware that they are performing knowledge management tasks. There is no doubt that precedents (100%), legal research (80.0%) and hiring and training of young lawyers (61.4%) were the most frequently used techniques in law firms. Like in any legal practice, precedents in the form of reasoned judgments or standard forms are indispensable for any legal practice and in the day to day operations of any law firm. The interviews confirmed the importance of precedents and legal research as the major techniques for knowledge management in the law firms. Interviewees indicated that they carry out research at the University of Botswana Law Library where registered users have access to electronic resources, Law reports and judgements on CD-ROM, such as South African law reports, Canadian Supreme Court judgements and the Australian Court judgements.

Table 3: Techniques for knowledge management

| Technique | Yes |
|----------------------------------------------------------------------|------|
| 1. Precedents | 100 |
| 2. Legal research | 80.0 |
| 3. Weekly learning report | 70.1 |
| 4. Record management | 69.3 |
| 5 Hiring and training young lawyers | 61.4 |
| 6. Office directory and office newsletters | 47.1 |
| 7. Yellow pages | 46.4 |
| 8. Meeting of lawyers with a common interest | 46.4 |
| 9. Regular in-house seminars | 41.4 |
| 10. Best practices | 39.3 |
| 11. Litigation strategy | 35.0 |
| 12. Client relation management | 28.6 |
| 13. An excellent staffed knowledge centre | 27.9 |
| 14. Professional development programmes | 26.4 |
| 15. Know-how systems and info-banks | 22.1 |
| 16. Discussion of major projects with other lawyers after conclusion | 21.4 |
| 17. Work product repositories | 19.3 |
| 18. Presentations | 15.7 |
| 19. Conflict checking | 12.9 |
| 20 Brief banks | 12.1 |
| 21. Know-how index | 11.4 |
| 22. Client information and matter | 11.4 |
| 23. Skills and expertise locator | 7.1 |
| 24 Internal publications | 5.0 |
| 25. Knowledge concierge. | 1.4 |

* Table values are percentages, which may not add up to 100% due to non-responses.

Factors Critical to the Success of Knowledge Management in the Law Firms

In order to further understand the state of the art of knowledge management, it was necessary to also establish whether the conditions in law firms in Botswana were favourable for knowledge management. Table 4 presents information on the extent of agreement by the lawyers on some critical factors for successful knowledge management in their firms.

Most participants did not agree that promotion in their law firm was based on the ability to share knowledge (only 5.7% agreed, 52.9% were neutral, and 41.4% disagreed). A good reason may be that lawyers are used to the traditional methods in the law firm wherein a lawyer is recognised for his/her effective delivery of legal services rather than in

sharing knowledge. It could also be that most law firms are one lawyer firms that did not need to share knowledge in the first place. Also, very few lawyers acknowledged that there is special recognition of staff for the time spent in knowledge creation, sharing and distribution (30.7% agreed, 40.0% are neutral and 29.3% disagreed). This means that, contrary to the recommendations of such studies as Kofoed (2002), Leibowitz (2002) and Platt (1998), most of the law firms have not been using rewards such as

obstacles to knowledge management. Law firms in Botswana are small, and may therefore lack the necessary financial resources required to invest in knowledge management. In general terms, it can be very expensive to purchase and implement some of the typical law firm technologies for knowledge management such as automated document, content and practice management systems, intranets and portals. Studies have also shown that small firms do not usually consider knowledge management as a

Table 4: Factors critical to the success of knowledge management in the law firms

| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree |
|---------------------------------------------------------------------------------------------------------|----------------|-------|---------|----------|-------------------|
| There is monetary and non-monetary rewards for sharing knowledge | 11.4 | 41.4 | 30.7 | 7.9 | 8.6 |
| Promotions are based on the ability to share knowledge | 5.7 | -0.0 | 52.9 | 35.7 | 5.7 |
| There is special recognition of staff for the time spent in knowledge creation sharing and distribution | 6.4 | 24.3 | 40.0 | 18.6 | 10.7 |
| Mutual respect, trust, care and concern exist among lawyers | 22.1 | 56.4 | 21.4 | 0.0 | 0.0 |

* Table values are percentages, which may not add up to 100% due to non-responses.

promotions, incentives, and special recognition as extrinsic motivation for encouraging the knowledge creation and sharing among lawyers. Nevertheless, 78.5% of the lawyers agreed that there was mutual respect, trust, care and concern amongst individuals. This is an encouraging finding because several researchers have noted that an organisational culture where ideas are sharply criticised, individuals are respected, and staff are encouraged to discuss their mistakes is crucial for knowledge management to flourish (Maiden, 2000; Nonaka & Takeuchi, 1995; Nonaka et al., 2002; Smith, 2001; Soliman & Spooner, 2000; and Stover, 2004).

Factors that Inhibit Knowledge Management in the Law Firms

Table 5 summarises the data on the extent to which the lawyers agreed that certain factors could inhibit knowledge management in law firms.

The lawyers agreed that inadequate technological infrastructure and limited financial resources and the size of the firm were the major

priority and that the size of a firm has something to do with the willingness of the firm to devote personnel and money to new technologies (Campbell, 2002; Curve Consultant Survey Report, 2001; Nathanson & Levison, 2002).

Most participants did not view knowledge as a source of power (53.5% disagreed, and 23.6% were neutral), whereas it was revealed in the interviews that lawyers in Botswana are often not willing to share their expertise, because knowledge is regarded as power and lawyers believe that monopoly of particular information will lead to personal indispensability, job security, influence, and professional respect within the firm. It could therefore be that lawyers did not quite understand the implications of knowledge as a source of power. The knowledge is power culture is typical of law firms (Carine, 2003:3; Handy, 1985; Hunter et al., 2002; Maiden, 2002; Rusanow, 2003; Rusanow 2007; Terrett, 1998). A major cultural shift is needed for law firms in Botswana to move from the concept of "individual knowledge is power" to "collective

knowledge is competitive advantage” where the benefit of sharing information and knowledge is seen as real.

Most of participants did not consider the inability of the firm’s leadership to implement knowledge management as a barrier to knowledge management initiatives in the firms whereas, generally, lack of leadership commitment has been observed as a major obstacle to knowledge management (Mason &

management (Fombad et al., 2008). Lawyers should be proactive and consider talking to others in the legal fraternity about knowledge management, attend meetings and workshops on knowledge management, invest time and money in creating bulletins boards, sample skill directories, form alliances with international professional associations and get connected to physical or electronic forum that engages in collaborative thinking. Law firms in

Table 5: Factors that inhibit knowledge management in the law firms

| | Strongly agree | Agree | Neutral | Disagree | Strongly disagree | Non-response |
|------------------------------------------------------------------------|----------------|-------|---------|----------|-------------------|--------------|
| Lawyers’ view of knowledge as a source of power | 5.7 | 15.0 | 23.6 | 31.4 | 22.1 | 2.1 |
| The perception that knowledge management is an additional workload | 12.9 | 23.6 | 42.9 | 17.1 | 1.4 | 2.1 |
| The feeling that it puts pressure on billable hours | 14.3 | 20.7 | 40.0 | 20.7 | 0.0 | 4.3 |
| The feeling that the firm size is too small | 23.6 | 22.9 | 26.4 | 22.9 | -0.0 | 4.3 |
| Limited financial resources | 21.4 | 33.6 | 40.0 | 5.0 | -0.0 | -0.0 |
| Inadequate technological infrastructure | 24.3 | 42.9 | 27.8 | 5.0 | -0.0 | -0.0 |
| The inability of the firm’s leadership to enforce knowledge management | 11.4 | 23.6 | 53.6 | 7.1 | -0.0 | 4.3 |

Pauleen, 2003; McDermott & O’Dell, 2001:78 2003; Ndllela & du Toit, 2001). The fact that 53.6% participants were neutral could be that most of the firms are small, and one may therefore not be talking of leadership because a single lawyer mans the firm. It may also be that lawyers in firms with more than one lawyer were being cautious to say anything about management or did not understand the implication of the role of leadership in knowledge management because they are still grappling with the concept.

Recommendations

The need for lawyers to have access to current and accurate knowledge in a profession where there are constant changes in legislation, legal precedents and opinion cannot be gainsaid. Sole proprietors and partnership should also consider investing at least 1/10 of their time each week on knowledge

Botswana should also consider working with stakeholders across multiple streams and institutions with different expertise such the Law Society, the University of Botswana legal academics, the courts, the legal secretaries, the law librarians and professional associations for effective implementation of knowledge management in law firms.

This study addresses only a few of the numerous aspects of the concept in the context of law firms thus leaving gaps for many other issues to be explored in the future. Future studies may concentrate on the knowledge processes in the law firms. There has also been little acknowledgement from lawyers of the importance of managing the knowledge about clients, the skill and expertise of staff, or knowledge about the third party. Attention should also be paid to the identification and sharing of tacit knowledge and on the knowledge management process. Although the research approach, the instruments for data

collection and methods of data analysis were found very suitable for the purposes of this study, it is likely that other insights could still be gained if other research approaches and methods of data collection were adopted.

Conclusion

The findings show that lawyers in Botswana are still grappling with the concept, requirements and consequences of knowledge management. However, with the rise of the knowledge economies worldwide, law firms in developing countries like Botswana have to get out of the box, and consciously and systematically acquire and leverage knowledge effectively to gain competitive edge in the fiercely competitive markets of today. Knowledge management may not be a quick fix or ready-made panacea to all the challenges posed by the rapidly emerging knowledge society. Nevertheless, it will certainly help to prepare law firms to face the challenges of an increasingly competitive legal environment in rapidly globalising world.

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