CHAPTER TWO

2: INFORMATION SERVICES IN THE SOUTH AFRICAN LAW FIRM

2.1 Introduction

The previous chapter introduced the investigation of library and information services in South African law firms by suggesting that corporate information services were under pressure to justify the capital investment made in them. No effort was made to evaluate the particular risk to the private law firm other than to draw attention to the very public restructuring of the Chicago office of Baker & McKenzie in 1995. This incident showed that law libraries were not immune to business process re-engineering that characterised corporate America at the end of the 20th century.

Efforts to demonstrate value of corporate library and information services to the decision-makers in an organisation recognised that business support services were derived from the character and requirements of the environment in which they operated. Chapter two outlines the business context of this research study with reference to the South African legislative and judicial process, the incorporated law firm as a legal entity, and the nature of the information services typically provided to attorneys.

2.2 South African national law

National law was described in the literature as those rules of human conduct that were made and enforced by the organs of state (Wille, 1991: 3). Binding law in South Africa was derived from legislation, judicial precedent, modern custom and Roman-Dutch authority (Hahlo & Kahn, 1973: 140).

2.2.1 Legislative process

Statutory law was promulgated by the passage of Acts through both houses of the South African Parliament, the National Assembly, representing the country's electorate, and the Council of Provinces, a nominated body that represented
provincial opinion. After ratification by both houses the Act was signed into law by the President of the country and was published in the official Government Gazette. Provision was made for promulgation to coincide with the publication of legislation or for this to occur at a later date by proclamation in the Government Gazette. Acts were amended by an Act of parliament according to the same procedure.

The departmental minister under whose jurisdiction an Act was promulgated could proclaim regulations in respect of the Act. Regulations had the same legal force as the Act under which they fell. They were not debated in parliament. They were frequently published in draft form in the Government Gazette with an invitation to interested parties to make representations with regard to the content of the regulations or implementation of regulatory mechanisms. Regulations were amended in the same way by publication in the official Government Gazette or by publication in draft form to provide an opportunity for comment from interested parties.

Legislative and regulatory law was published by the Government Printer for public information. Acts from 1993, and Bills from 1995 became available on the Internet at official government web sites. Local publishers consolidated many of the South African Acts and regulations and these became available to subscribers in print and non-print media, particularly on compact disc (CD) and on the Internet. Consolidations were understood to refer to the most recent versions of legislative or regulatory material and which incorporated amendments into the principal Act or regulations. Some state departments published consolidated Acts and regulations at their official web sites.

2.2.2 Judicial precedent

Judicial precedent was the interpretation of legislation by the courts of the land. At the period under review these courts were categorised as either superior or lower courts. The list of South African superior courts in 2001 were identified at the web site of the Department of Justice as follows:

- Constitutional Court that deliberated on matters of constitutional import;
- Supreme Court of Appeal;
- Regional and local divisions of the High Court in each geographic region;
- Labour Appeal court and Labour court;
- Land Claims Court
- Special Income Tax courts;
- Competition Appeal Court;
- Special (Consumer) courts;
- Electoral Court.

The lower courts were identified as follows:
- Magistrates courts;
- Divorce courts;
- Small claims courts;
- Short process courts.

Not all judgments were reported. Judges marked certain cases as reportable and publishers then exercised their editorial discretion in the matter of selection. There might be lengthy delays in seeing a judgment in print, and many did not meet the selection criteria. Printed law reports were typically made available by arrangement with publishers on a subscription basis.

Unreported judgments presented a problem for practitioners but copies of judgments could be requested from court transcription services when the case details were known. At the time of writing one publisher, Butterworths South Africa, published some unreported judgments as a fee-based online service.

Towards the end of the 20th century there was a global trend to provide free public access to legislation with initiatives by the Australasian Legal Information Institute (AUSTLII), the British and Irish Legal Information Institute (BAILII) and the Canadian Legal Information Institute (CANLII). In South Africa the web site of the Law School of the University of the Witwatersrand published reports of the Constitutional Court, the Supreme Court of Appeal, the Labour Courts and the Land Claims Court. Some of these judgments were published on the Internet within a few hours of the judgment and electronic mail notifications sent on request to online subscribers.

The word "subscriber" in the context of online information sources was unsatisfactory because it did not make clear whether the service was fee-based, like those from commercial publishers, or whether it was made available in the public interest at no charge.
2.2.3 Custom and old authority

Customary rule of law was derived from "... the legal convictions of the people" (Hahlo & Kahn, 1973: 302) that had been confirmed in the judgments of the courts. Customary rule of law was not to be confused with African customary law, which was neither generally tested nor confirmed by South African judicial opinion. Hahlo and Kahn (1973: 302) held that law by custom was relatively insignificant as a source of binding law.

Old authority or common law in the South African legal system was derived from Roman-Dutch law. It was consulted in the absence of binding legislation or judicial precedent (Hahlo & Kahn, 1973: 303).

2.3 The South African law firm as a legal entity

The legislative authority binding the professional conduct of South African attorneys was vested in the Attorneys Act 53 of 1979 as amended. This Act consolidated the laws relating to the admission and practice of attorneys, notaries and conveyancers as well as the laws relating to the Attorneys Fidelity Fund and the law societies in the country.

The Attorneys Act regulated the admission of attorneys, including the admission of a private professional company as a juristic person. In terms of section 23 of the Act a private company was permitted to conduct a practice provided that it was incorporated and registered under the Companies Act 61 of 1973 with a share capital and articles of association. Only practising attorneys could be shareholders and could share in the profits of the incorporated law firm. The shareholders, all of whom were practising attorneys, had to be directors, and all the directors had to be shareholders. The Attorneys Act did not make provision for so-called multi-disciplinary practices.

Information services in the incorporated law firm were simplified to the extent that shareholders were also information users and understood the importance of legal information as a source of legal knowledge.
2.4 Library and information services in South African law firms

2.4.1 Legal information and legal advice

Legal information was not to be confused with legal advice provided by a legal practitioner. Legal information services were limited to the provision of appropriate materials to practising attorneys who would then evaluate the contents on points of law.

2.4.2 Library and information professionals

There was no authoritative directory regarding the staffing of South African legal libraries in the private sector. According to the Continuing Legal Education (CLE) section of the Law Society of South Africa there were 5872 registered law firms in South Africa in February 2001. The CLE was however unable at that time to supply data regarding size, composition and legal character of the registered firms in South Africa. The national professional organisation, Library and Information Association of South Africa (LIASA), did not maintain a register of information professionals in legal organisations during this period. The Organisation of South African Law Libraries (OSALL) offered a professional support network for librarians and information specialists associated with the supply of legal information to South African legal practitioners and advisers. In 2001 it had a membership of approximately 100 members across academic, commercial, public and private sectors. Approximately 40 South African law firms were represented in the OSALL membership. It was from this small sample group that data relating to library and information services in South African law firms was obtained during the course of this study.

In April 2001 a survey was conducted on the OSALL listserv regarding the staffing of South African law libraries. It was hoped that the results could be used to confirm how many South African law firms had information professionals. For the purposes of this survey information professionals were regarded as information workers who had tertiary qualifications (university or technikon) in library and information sciences. The results were disappointing on two accounts. Firstly, that many people who were active on the listserv did not respond, and secondly that the Organisation had no access to data about library and information services in South African law firms that did not have OSALL-registered members. This survey is reported in Appendix 3.
2.4.3 Legal information services

The laws of the country were subject to constant revision and reinterpretation, and legal practitioners were under pressure to remain aware of developments in their areas of practice. Alerting agencies available to practitioners included collegial input, media reporting, professional publications and commercial resources. The Information services within each legal practice varied according to the nature of work undertaken by the practitioners, the commitment of practitioners to their professional growth and the capacity of the practice to support such services.

Legal information services provided direct, personal assistance to information users and created systems that facilitated practitioner access to information resources. Direct services to information users typically centred on enquiries with regard to the status of legislation and enquiries with regard to case law. The status of legislation referred to enquiries about the commencement date of Acts and regulations, and the importance of securing the correct version of an Act or regulation.

Legislative and regulatory material was subject to revision and amendment. Publishers consolidated Acts and regulations so that information users might have access to the complete, corrected version of the national law. Looseleaf manuals were introduced in South African legislative services in the late 1960s so that amended sections of statutes could be replaced with amended pages, and new Acts inserted into the collection. This was a practical solution to the difficulty of producing a complete and current version of legislation. It was not, however, without its problems, including the delay in receipt of replacement pages, the time-consuming task of inserting new pages in the manual, and the difficulty of retrieving earlier versions of legislation when pages were discarded.

Litigious matters were dealt with in the courts according to the legislation as it existed at the time of the dispute. When information users required copies of legislative or regulatory material in the preparation of a case they worked from the version of the law that was in operation at the time of the incident under review. The provision of information resources and services to satisfy these specific information requirements was arguably the central operational objective of the library and information services in the South African law firm.
Status with regard to judicial precedent referred to the authority of the court that pronounced a judgment. The more senior the court or the greater the number of concurring judges, the greater was the authority of the judicial pronouncement. Ranking of precedents was facilitated with reference to a citation guide such as the various units of *Shepard's Citations* used in the United States of America. A local product, *Butterworths Legal Citator*, was undergoing trials by information professionals and legal practitioners during July and August 2001. The product aimed at addressing the problem where practitioners relied on legal principles and judgments that were no longer valid because a conflicting decision of greater authority had since been handed down.

Library and information services included all the operational activities relating to the acquisition and organisation of information resources in order to facilitate access to the information contained in them. Operational activities aggregated at four service points:

- Organising, developing and managing in-house information services;
- Assisting reference and research work by providing information and information resources as required;
- Alerting practitioners to legislative judicial and other environmental developments that might impact on their practices; and
- Arranging training to enable practitioners to optimise information resources and services and work unassisted.

The range of library and information services was expressed graphically in Figure 1. In this representation the operational activities relating to the acquisition and organisation of the information resources were seen to be foundational for the direct user-based services assisted research, current awareness and training. In the context of the private law firm, information resources were acquired and organised in such a way that legal practitioners were able to interrogate these resources in the expectation that the information was adequate and correct. The development of such a library and information system could be regarded as a service in its own right.
It was shown that legal practitioners in South African law firms were generally given unrestricted access to the corporate library and information resources. In an email study conducted in June 2001 it was found that the responding information professionals all worked in law firms where legal practitioners had access to the corporate library and information resources at all times (Appendix 4). In two of the seven organisations access to the library was monitored by means of a coded card. All other legal practitioners had office keys that enabled them to move freely through the office building. There was no evidence that South African law firms had installed automated security systems to prevent unauthorised removal of books and other information resources, although one organisation was contemplating such a system.

2.5 Summary

Chapter two affirmed that the nature of corporate information services was derived from the particular context in which these services operated. Legislative and judicial
process in South Africa were outlined in order to indicate some of the concerns of practitioners with regard to obtaining accurate and appropriate legal information.

The legal status of the incorporated law firm was regulated by the Attorneys Act, 53 of 1979. It was subject both to professional ethical regulation and also to corporate accountability in terms of the Companies Act 61 of 1973. It was suggested that this legal entity simplified the process of accountability because shareholders were also information users.

Library and information services were most often regarded as those operational activities that satisfied direct requests for reference and research information. Since, however, library and information resources in the private law firm were also available to information users outside of normal office hours information services had to be designed and developed to be available and accessible to information users at all times.

The chapters that follow report on the investigation of measures of performance of these services.