



## *Reducing Unwarranted Disparities: The Challenge Of Managing Knowledge Sharing Between Judges*

By Sandra Taal, Mandy van der Velde and Philip Langbroek<sup>1</sup>

### Abstract:

In their role as decision-makers, judges face the challenge of the law failing to provide clear answers to concrete cases. This may result in dissimilar decisions and outcomes in similar cases. In order to reduce unwarranted disparities, judges should participate in knowledge exchanges on a regular basis. That way, they can benefit from each other's expertise, insights and experiences and make better informed decisions. In order to manage this process in the court more effectively, a better understanding of the knowledge sharing behavior of judges is required. In this article, we will discuss how four dimensions (the technological, managerial, social and motivational dimension) can influence the knowledge sharing behavior of judges. Based on this discussion, a research model is proposed.

**Keywords:** Knowledge Sharing; Court Management; Judicial Behavior.

### 1. Introduction

In the decision-making process, judges are bound by the law. The law provides the general framework in which they need to maneuver to find a correct solution to the case at hand. In this process there is often ample room for divergent reasoning and alternative ways of handling a case. It is the responsibility of the judge to deal with this discretionary space correctly and provide justice-seeking citizens with a fair court process. Based on the principles of legal certainty and equality before the law, similar cases should be treated in a similar manner. To a certain extent, those who seek and expect justice need to be able to predict the outcome of their legal proceedings. However, ambiguous legal terms and alternative interpretations in previous cases can leave the judge puzzled with questions. Also procedural rules can cause interpretation problems. In hard cases, solutions need to be constructed based on both the law and on interaction with party's representatives. Another cause of uncertainty may have to do with recent changes in legislation. Judges need to be able to handle such changes consistently in different cases. Knowledge sharing between judges may help to prevent deviant outcomes in similar cases and otherwise enhance the quality of reasons and content of court decisions. This presupposes knowledge sharing on a regular basis. Through knowledge sharing, judges can benefit from the expertise, experience and ideas of other judges in order to make better informed decisions.

One of the main goals of this article is to feature knowledge sharing as a form of collaboration that enables judges to reduce unwarranted disparities. In the early 1990s, knowledge management started to gain popularity as a new management concept (Hislop, 2013). The general idea of knowledge management is that knowledge is essential for the success of an organization. And, in order to use the full potential of the existing knowledge in an organization, this knowledge should be captured and disseminated (Ipe, 2003). In more recent years, the popular management term also received some scholarly attention in the judicial context. Here, the focus lies primarily on technology-supported information systems that are designed to support judges in their search for more detailed information and expert knowledge from others (Apostola, 2010; Casanovas et al., 2005; Wang, Noe, & Wang, 2014). Less attention has been given to the related process of knowledge sharing between judges. This is unfortunate, because knowledge sharing between judges is an important (more informal) method to promote coordinated action and uniform decision-making. Without knowledge sharing, judges cannot benefit from each other's expertise, experience and ideas on pressing matters. In that sense, knowledge sharing between judges is as important as knowledge sharing between professionals in other knowledge-intensive organizations, like hospitals and law firms. Ultimately, a lack of knowledge sharing between judges can be detrimental for the overall quality of judicial decisions.

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In this article, we propose a theoretical framework that identifies four dimensions that are relevant for the individual engagement of judges in knowledge sharing. These four dimensions are listed as: the technological dimension, the managerial dimension, the social dimension and the motivational dimension. A better understanding of the knowledge sharing behavior of judges in relation to these dimensions is needed to manage this process more effectively. First, we will start with a more general discussion on knowledge sharing. After that, the four proposed dimensions will be discussed and applied to the judicial context.<sup>2</sup>

## 2. Defining Knowledge Sharing

In the knowledge management literature the concept of knowledge is often used, but not always clearly reviewed and provided of an accurate meaning. The reason is that there is no consensus on what exactly is knowledge (Wilson, 2002). For the purpose of this article, no lengthy discussion needs to be held about the definition of this complex concept. It is, however, important to make clear how 'knowledge' and 'knowledge sharing' are interpreted and used in the context of judicial administration.

Although often used interchangeably, the concepts knowledge and information are not synonymous. Information refers to 'just' facts and figures (Kluge, Stein, & Licht, 2001) whereas knowledge is often perceived as 'information plus', i.e. information added or mixed with interpretation, experience, skills and attitude (Lee & Yang, 2000; Weggeman, 1997). But what does this mean for knowledge sharing? Lee and Yang (2000, p. 783) state that "information is transformed into knowledge when a person reads, understands, interprets, and applies the information to a specific work function". This means that "one person's knowledge can be another person's information" (Lee & Yang, 2000, p. 783).

"If a person cannot understand and apply the information to anything, it remains just information. However, another individual can take that same information, understand it and interpret it in the context of previous experience, and apply the newly acquired knowledge to make business decisions or redefine a laboratory procedure. Yet a third person may take the same pieces of information, and through this unique personal experiences or lessons learned, apply knowledge in ways that the second person may never have even considered." (Lee & Yang, 2000, p. 783)

According to Senge (1998, pp. 11-12), "sharing knowledge is not about giving people something, or getting something from them. That is only valid for information sharing. Sharing knowledge occurs when people are genuinely interested in helping one another develop new capacities for action; it is about creating learning processes". Lin (2007a, pp. 316) states that individual-level knowledge sharing is about "talking to colleagues to help them get something done better, more quickly, or more efficiently". So, how should we perceive all of this from a judicial perspective?

Most importantly, administering justice is a knowledge intensive activity (Apistola, 2010). Applying legal and procedural rules to concrete cases should be done correctly and consistently. From a normative perspective, assigning a case to a particular judge should not make any difference for the outcome of the legal proceeding (Langbroek & Fabri, 2007). In practice, differences in knowledge or knowledge-use between judges do exist (Apistola, 2010). Judges have different backgrounds and different sets of experiences. In hard cases, these different stocks of knowledge may lead to different individual actions. Knowledge sharing is basically about connecting these different stocks of knowledge (Christensen, 2007). However, in order to make this work, basically two processes need to take place: knowledge donating and knowledge collecting. According to Van den Hoof and De Ridder (2004, p. 118), knowledge donating is about "communicating to others what one's personal intellectual capital is". And knowledge collecting is about "consulting colleagues in order to get them to share their intellectual capital" (Van den Hooff & De Ridder, 2004, p. 118). Both processes need to take place in order to create a "reciprocal process of knowledge exchange" (Renzl, 2008, p. 207).

Knowledge sharing is not a new activity for judges. Many judges would even state that it is already part of the job. Multi-judge panels, case law meetings, symposia and training sessions; judges are used to have informative discussion sessions with their peers. In this article, we would like to broaden our view on knowledge sharing. Here, knowledge sharing is about the willingness of judges to help each other with work-related issues by putting equal efforts in donating their knowledge to others and collecting knowledge from others.

## 3. Explicit versus Tacit Knowledge

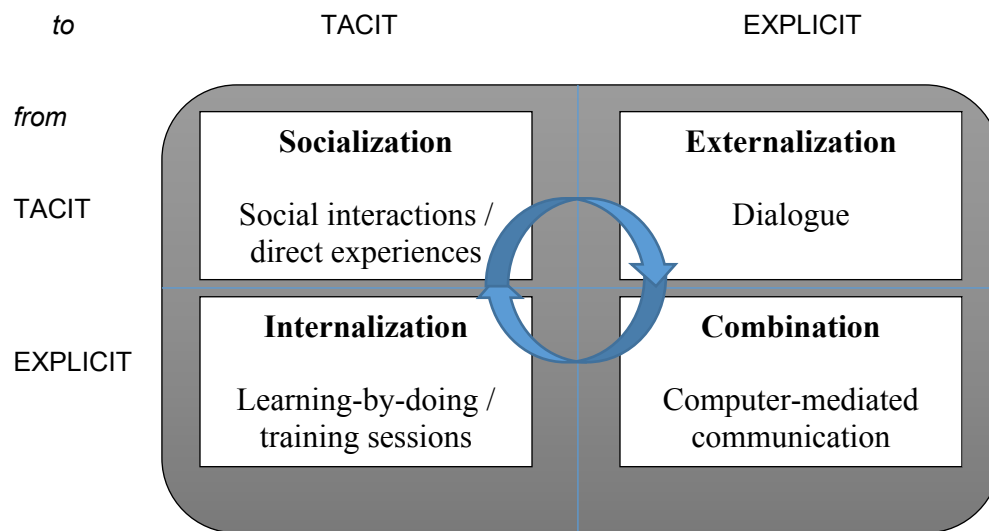
Numerous classifications of knowledge have been constructed to identify the types of knowledge relevant for collegial knowledge sharing. The most dominant psychological distinction in types of knowledge is between explicit knowledge and tacit knowledge. Explicit knowledge is knowledge that is easy to codify and, in that sense, easy to disseminate and communicate to others (Frappaola, 2008). In contrast to explicit knowledge, tacit knowledge is knowledge that, in

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<sup>2</sup> This article is part of a doctoral research on knowledge sharing between judges. The empirical results of this research are expected to be published in 2015.

Polanyi's definition (1973), cannot be articulated, is highly personal and hard to formalize. It is "embedded in an individual's action in a certain context and, therefore, cannot be easily codified" (Joshi & Sarker, 2003, p. 31). The concept of tacit knowledge was first introduced by Michael Polanyi (1958), and later used by many other scholars in the field of knowledge management. Whereas tacit knowledge, by definition, cannot be articulated, it forms a serious challenge for knowledge sharing (Hansen, Nohria, & Tierney, 1999). Nonaka and Takeuchi (1995), triggered by the tacit dimension of knowledge, identified four modes of knowledge conversion: tacit to tacit (socialization), tacit to explicit (externalization), explicit to explicit (combination) and explicit to tacit (internalization). Nonaka and Takeuchi's model implies that tacit knowledge can be shared, but that it requires a somewhat different approach (Figure 1). In their view, tacit knowledge can be articulated through dialogues amongst individuals and, in that sense, converted into explicit knowledge. Nonaka and Toyama (2003, p. 5) state that "dialogue is an effective method to articulate one's tacit knowledge and share the articulated knowledge with others." They further explain that "through dialogues among individuals, contradictions between one's tacit knowledge and the structure, or contradictions among tacit knowledge of individuals are made explicit and synthesized" (Nonaka & Toyama, 2003, p. 5). Based on our definition of knowledge sharing, we are especially interested in the explicit-to-explicit and tacit-to-explicit knowledge (sharing) processes.

**Figure 1: Four modes of knowledge conversion**



Source: adapted from Nonaka and Takeuchi (1995), Nonaka and Toyama (2003)

Although some researchers make a strict distinction between explicit and tacit knowledge sharing (Zaqout & Abbas, 2012; Hau, Kim, Lee, & Kim, 2013), we perceive knowledge sharing as a form of interaction in which explicit and tacit knowledge are intertwined. According to Nonaka and Von Krogh (2009, p. 637), knowledge exists along a continuum that ranges from tacit to explicit and vice versa. It is therefore hard to depict knowledge as purely explicit or purely tacit. Nonaka and Von Krogh (2009, p. 637) further state that "tacit knowledge can be accessible through consciousness if it leans towards the explicit side of the continuum". In that sense, we are interested in those parts of tacit knowledge that are consciously transferable. In the remaining sections of this article, we will consider knowledge sharing as a process that combines knowledge that leans more towards the explicit side of the continuum, i.e. theoretical legal knowledge, with knowledge that leans more towards the tacit side of the continuum (but is still consciously transferable); i.e. practical know-how and experience-based knowledge.

#### 4. Four Dimensions of Knowledge Sharing Enablers

In general, knowledge management initiatives are implemented based on the assumption that knowledge sharing will automatically follow as a result of the opportunity that has been created. But is this true? Does a Wiki Juridica<sup>3</sup> really stimulate judges to share their knowledge? Or, does a formally organized meeting really leads to more knowledge sharing between judges? In our view, knowledge sharing cannot simply be assumed. Instead, the knowledge sharing behavior of judges should be better understood in order to manage this process more effectively. In the below sections, we will discuss four dimensions that have, on the basis of previous research, shown to be relevant for individuals to engage in knowledge sharing. We will present these dimensions and discuss their relevance within the judicial context.

<sup>3</sup> Wiki Juridica is a technological tool, used in the Dutch judiciary, that allows judges to upload information and edit existing pieces of information.

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#### **4.1. Technological Dimension**

A discussion on knowledge management often goes hand in hand with a discussion on the use of Information Technology (IT). For many organizations, IT is a “natural medium for the flow of knowledge” (Borghoff & Pareschi, 1997, p. 837). To that end, investments in IT-solutions are a popular method to deal with knowledge management issues, such as knowledge sharing. However, previous research has shown rather mixed results (Alavi & Leidner 2001; Cabrera, Collins, & Salgado, 2006; Kim & Lee, 2006; Lin 2007a, McDermott 1999; Newell, Scarbrough, & Swan 2001; Van den Hooff & Huysman, 2009). McDermott (1999, p. 104) states that, “if a group of people don’t already share knowledge, don’t already have plenty of contact, don’t already understand what insights and information will be useful to each other, information technology is not likely to create it”. On the other hand, Kim and Lee (2006) found in their study that IT application usage is a strong determinant of employee knowledge sharing in the public sector. Within the judicial context, it could be wondered whether IT-solutions can influence the knowledge sharing behavior of judges. In other words, are IT-solutions primarily suitable for the function of storing information in databases (i.e. jurisprudential databases)? Or, can collaborative IT tools, such as e-mail, intranets and electronic discussion forums contribute to the engagement of individual judges in regular knowledge exchanges.

Focusing on the link between information technology and knowledge management, there are basically two knowledge management strategies: the codification strategy (‘people-to-documents’) and the personalization strategy (‘person-to-person’) (Brink 2003; Hansen et al. 1999; Scheepers, Venkitachalam, & Gibbs 2004). The role of information technology slightly differs between the two strategies. In case of the former, the focus lies on databases and electronic repositories to store knowledge in order to make this codified knowledge available to others in the organization. Scheepers et al. (2004, p. 204) state that “the investment in IT infrastructure should enable people easy access to reusable codified knowledge”. The Dutch information system ‘Wiki Juridica’ would be a good example here. For the personalization strategy, the focus lies more on interpersonal relationships in the organization and the associated technological tools to “facilitate networks between people to share and learn from their individual skills, experiences, and expertise” (Scheepers, 2004, pp. 204-205). Here, online communication tools, such as discussion forums or internal instant messenger programs are good examples. Although both strategies can contribute to a more effective knowledge flow in the court organization, the personalization strategy is probably better suited for establishing a dialogue between judges. A dialogue in which personal views and professional opinions can be exchanged.

Considering the increased importance of technology-supported information systems in court organizations, we should increase our understanding on the impact of these systems on the knowledge sharing behavior of judges. In other words, to what extent is technological support a knowledge sharing enabler? And, under what circumstances are technological tools the most effective? In the next sections, we will discuss three other dimensions that will put this discussion into perspective.

#### **4.2. Managerial Dimension**

Previous research has shown that the support of (top) management and/or immediate supervisors is positively associated with knowledge sharing (Kang, Kim & Chang, 2008; McDermott & O’Dell, 2001; Wang & Noe, 2010). Due to the voluntary character of knowledge sharing, ‘support’ is primarily perceived as encouraging professionals to share their knowledge. Some scholars link management support for knowledge sharing to the organization’s culture (Connelly & Kelloway, 2003; McDermott & O’Dell, 2001). By supporting knowledge sharing, managers show their commitment to this voluntary act and make it a visible component of the organization’s culture (McDermott & O’Dell, 2001). Compared to most other organizations, the court organization has a flat structure, which makes the role of managers different from those working in more hierarchical organizations. Due to the constitutional demands of judicial independency and judicial impartiality, a manager can never be the ‘boss’ of the judge (Maan, 2009). As judges do not have a typical manager-employee relationship, it could be wondered whether judges are sensitive for this type of support.

In the court organization, there are several managerial positions. The term ‘manager’ could refer to the heads of courts (the court president), the heads of divisions (e.g. the administrative law division or the civil law division), or the heads of the work units within the court (“specialised parts within a division” (Fabri & Langbroek, 2007, p. 34), such as teams or chambers) or some other managerial positions within the court (Fabri & Langbroek, 2007). The court president and other board members are mainly responsible for the development of a knowledge management strategy. But, the heads of work units within the court are the most suitable persons to encourage individual judges (and the group of judges in the work unit) to participate in knowledge exchanges.

The role of these heads of work units are not the same in all judicial systems. In the Netherlands, for instance, team managers (‘teamvoorzitters’) are part of the management team of the court organization. The team manager can be a judge, but this does not have to be the case. If the team manager is also a judge, he or she has judicial tasks as well. In



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Germany, the role of the head of the work unit is quite different. Here, the work units ('Kammern') are highly specialized and judges can be assigned to more than one work unit (Fabri & Langbroek, 2007). In these work units, the chairperson ('Vorsitzende') is always a judge and in that sense also involved in concrete cases. The role of these chairpersons is more judicial and less managerial.

Although, the court organization is a rather flat organization in which typical manager-employee relations are non-existent, persons with executive responsibilities can still have a positive effect on the knowledge sharing behavior of judges. Above all, they can make judges in their 'team' or 'Kammer' aware of the importance of knowledge sharing. In the Netherlands, team managers have the explicit task of stimulating knowledge sharing. In Germany, the work units are generally smaller in size. Here, the chairpersons are more substantively involved in the content of judicial work and are not so much managers. The extent to which 'management support' positive influences knowledge sharing behavior, can therefore differ between countries.

#### **4.3. Social Dimension**

From a social capital perspective, it is assumed that knowledge sharing between individuals depends on the "social dynamic between group members" (Van den Hooff & Huysman, 2009, p. 2). Nahapiet and Ghoshal (1998) consider three types of social capital: structural social capital, relational social capital and cognitive social capital. Structural and relational social capital both refer to "the connections between individuals in an organization" (Bolino, Turnley, & Bloodgood, 2002, p. 506). However, structural social capital puts emphasis on "whether employees are connected at all" (Bolino et al., 2002, p. 506) and relational social capital is more focused on "the quality or nature of those connections" (Bolino et al., 2002, p. 506). Next to that, cognitive social capital is about "the extent to which employees within a social network share a common perspective or understanding" (Bolino et al., 2002, p. 506). Previous research has shown that factors associated with these three types of social capital are positively associated with knowledge sharing (Chow & Chan, 2008; Chang & Chuang, 2011).

Social capital factors, such as social ties (Liu & Besser, 2003), the level of social trust among organizational members (Chow & Chan, 2008) and the shared goals between organizational members (Chow & Chan, 2008) are also expected to be relevant in the judicial context. As knowledge sharing is a social process in which a voluntary participation is required, it seems only logical that (the nature of) connections between judges also affects knowledge sharing behavior in the judicial context. Focusing on the individual engagement in knowledge sharing, it is expected that the social dimension is important, if not, more important, than the technological and managerial dimension. After all, social relationships are the basis for voluntary cooperative behaviors, such as knowledge sharing.

However, in order to build and sustain social relationships, some face-to-face contact is desirable (Nohria & Eccles, 1992; Cummings, Butler, & Kraut, 2002). This does not necessarily mean that judges (still) have to work in the same work unit (Agrawal, Cockburn, & McHale, 2006), but it does mean that it is highly unlikely that technological solutions alone foster close interpersonal connections between judges. But, if technological solutions are not enough, what else is expected from court organizations? Based on their findings, Bock, Zmud, Kim and Lee (2005, p. 101) suggest that "those leading knowledge-management initiatives or otherwise desiring to encourage knowledge sharing within their organizations" should first take the effort to "nurture the targeted social relationships and interpersonal interactions of employees before launching knowledge-sharing initiatives" (Bock et al., 2005, p. 101). They suggest that social relationships form a primary condition for effective knowledge sharing.

Within legal (sub)fields, judges meet on a regular basis. These meetings vary from small-scale team meetings within the court to large-scale network meetings outside the court. These meetings do not immediately have to lead to structural knowledge exchanges between judges. However, regular attendance of these meetings can contribute to enduring social relationships, which in the long run can have a positive impact on structural knowledge sharing. Across legal (sub)fields, less contact moments exist. As a result, there are less opportunities for judges to formally meet with other judges. This may limit the creation and sustainability of cross-field social connections and in that sense cross-field knowledge exchanges between judges. In order to foster coordinated action and uniform decision-making across legal fields, the added value of these contact moments should not be underestimated (Riege, 2005). In some Swedish courts, a project has been introduced that gives judges and other court staff the opportunity to participate in group discussions on the general functioning of their court (Hagsgård, 2008). These so-called internal dialogues do not only get judges involved into matters of court functioning, but it also opens the door for further discussions on other pressing matters (Hagsgård, 2008).

#### **4.4. Motivational Dimension**

Knowledge sharing is not enforceable. Several studies have shown that motivation is an important determinant of work-related behaviors, including knowledge sharing (Lin 2007b; Lu 1999). Individual motivation can be divided into intrinsic motivation and extrinsic motivation. According to Lee, Cheung and Chen (2005, p. 1097), "intrinsic motivation refers to the

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fact of doing an activity for its own sake: the activity itself is interesting, engaging, or in some way satisfying". And, "extrinsic motivation pertains to behaviors that are engaged in response to something apart from its own sake, such as reward or recognition or the dictates of other people" (Lee et al, 2005, p. 1097). Intrinsic and extrinsic benefits are expected to be important motivators for the participation in knowledge exchanges (Kankanhalli, Tan, & Wei, 2005).

Referring to intrinsic motivators, 'enjoyment in helping others' and 'knowledge self-efficacy' have both shown to be relevant factors of knowledge sharing behavior (Kankanhalli et al., 2005; Lin 2007b). From a social exchange perspective, individuals would exchange knowledge due to the perceived benefits of feeling satisfied, feeling knowledgeable and feeling good about themselves (Kankanhalli et al., 2005). As judges are knowledge experts working in knowledge-intensive organizations, they know how important the right knowledge is to perform well as an individual and as a group. In that sense, judges may feel intrinsically motivated to be part of knowledge exchanges in the organization. However, this may also depend on the mindset of the individual judge; is he or she a solitary worker or a team player? Although the day-to-day work of judges is relatively solitary, judges need to be team players too. It is expected that judges who perceive themselves more as team players are more intrinsically motivated to engage in knowledge sharing.

Some researchers state that knowledge sharing is an "unnatural act" (Davenport & Prusak, 2000; Lee & Al-Hawamdeh, 2002). Organizational rewards, such as bonuses and higher salaries, should make individuals more eager to share their knowledge (Wang & Noe, 2010). In private companies, 'knowledge is power'. Knowledge is a personal asset which makes you of added value for the company. Simply giving your knowledge away can be detrimental for your unique position in the organization. In the judicial context, the situation is somewhat different. The motto 'knowledge is power' should be replaced with 'knowledge sharing is power' (De Angelis, 2013). As stated before, judges are knowledge experts. Donating your knowledge is a way of showing your skills and expertise. If others consult you for your expertise, it enhances your status in the organization. Participating in knowledge exchanges can thus be beneficial for your professional image, which can in that sense be seen as an extrinsic benefit for knowledge sharing (Gottschalk, 2007; Kankanhalli et al., 2005).

It is expected that intrinsic as well as extrinsic motivators determine a judge's engagement in knowledge sharing. Managing intrinsic motivation, however, is a difficult task for organizations. Compared to extrinsic motivation, the incentives for intrinsic motivation are generally less clear. According to Osterloh and Frey (2000, p. 539), "the ideal incentive system is in the work content itself, which must be satisfactory and fulfilling for the employees". Lin (2007b, p. 145) suggests that in order to foster knowledge sharing, managers "should focus on enhancing the positive mood state of employees regarding social exchange (i.e. enjoyment in helping others)". Compared to the managerial dimension, where the focus lies primarily on managers encouraging individual judges to participate in knowledge exchanges. Here, the focus is broader and lies more on the creation of a positive atmosphere towards social exchanges and interaction as a precondition for regular knowledge sharing. However, creating such an atmosphere is not only be the responsibility of the head of the work unit, but of the group of judges as a whole.

## **5. Does Context Matter?**

In the former sections, we argued that court organizations should play an active supporting role in the process of individual-level knowledge sharing. That is not to say that court organizations should start from scratch in this regard. Collaborative software systems, peer review sessions, training and permanent education initiatives, legal symposiums and international exchange programs already represent useful existing platforms for judges to deepen their knowledge, expand their skills and learn from each other. What is missing, however, is a deeper understanding of how to reinforce actual knowledge sharing behavior. The above discussion already provided a general overview of how technological, managerial, social and motivational factors are expected to influence the knowledge sharing behavior of judges. The question is whether we should aim for an one-size-fits-all solution for knowledge sharing? Or, should we expect that the four dimensions (and associated factors) work out differently in different settings? In other words, does context matter?

Referring to the technological and managerial dimension, we expect that ICT support and management support will positively influence knowledge sharing. This is not to say that we expect that the impact of these factors is equal among different settings. First of all, it could be wondered whether the effect of ICT support on the knowledge sharing behavior of judges differs between larger and smaller courts. When we focus on intra-organizational knowledge sharing, smaller courts might be less dependent on ICT support than larger courts. In Switzerland, for instance, there are a number of very small cantonal courts in which only a few (professional) judges are employed. Due to the small-scale setting, it is unlikely that high levels of ICT support will strongly affect the knowledge sharing behavior of the judges. On the other hand, in larger courts where the physical distance between judges is probably also larger, ICT support may play a bigger role (Ruggles, 1997). With the help of technological tools, judges can easily contact each other and exchange knowledge and information.

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Second of all, as mentioned earlier, it could be wondered whether the effect of management support on the knowledge sharing behavior of judges differs between countries. In countries, such as the Netherlands, where team managers have the specific task to encourage their team members to share their knowledge, the effect of management support on knowledge sharing behavior might be stronger. In addition, the extent to which managers actively promote knowledge sharing might also reflect the priority given to the topic. In the Netherlands, professionalism is selected as one of the four core values of justice.<sup>4</sup> In the strategic multi-annual plan for the Dutch judiciary ('Vision 2020'), active and structural participation in knowledge exchanges is referred to as one of the key points of professionalism. The emphasis put on knowledge sharing in this long-term strategic policy plan enables team managers to discuss this topic more explicitly in the team setting as well.

Referring to the social and motivational dimension, we expect that these dimensions are equally relevant for all judges, regardless of their work setting. We perceive intrinsic and extrinsic motivators, and the social relationships between judges as the corner stones of knowledge sharing. Regardless of the specific country, the court size, the court level (first or higher instance courts) or the legal field, we believe that individual motivation and social connectivity are essential building blocks for creating an effective knowledge sharing environment in the court organization. An additional remark should, however, be placed here. Although related, knowledge sharing is not the same as giving and receiving feedback from and to others. In a report issued by the Dutch Council for the Judiciary, it is warranted that an open and amicable atmosphere in the court does not necessarily stimulate judges to provide feedback to each other. It can even restrict the creation of feedback-friendly culture as judges do not want to disturb the existing amicable work atmosphere (Raad voor de rechtspraak, 2006). Thus, whereas some initiatives focusing on the social connectivity of judges may foster knowledge sharing, it can restrict more critical conversations between judges.

Miller and Karakowsky (2005) underline the unique characteristics of feedback-seeking behavior. Seeking feedback can result in positive or negative comments from others (Miller & Karakowsky, 2005). Negative comments can be ego-threatening and detrimental to the self or public image (Miller & Karakowsky, 2005; Moss, Valenzi, & Taggart 2003). In the court organization, where all judges are equal, providing and receiving feedback is a useful method to improve individual performances, but can also be confrontational. In that sense, creating a feedback-friendly culture may entail other enablers than creating a knowledge sharing culture.

The above discussion leaves us at a crossroad. It seems reasonable to expect that different situations and settings require different solutions, but a more definite answer cannot be given. Also, factors that are expected to positively influence the knowledge sharing behavior of judges can have a detrimental effect on another activity: providing feedback to each other. A simple solution seems not feasible here. In order to take this discussion to the next step, empirical results are required. These empirical results will be provided in a forthcoming doctoral thesis prepared by the first author. On the basis of these results, we will be able to further structure the discussion on the impact of the four dimensions on the knowledge sharing behavior of judges.

## 6. Concluding Remarks

Unnecessary or seemingly random inconsistencies in the process of handling and deciding court cases are detrimental to the quality of court decisions. Based on the principles of legal certainty and equality before the law, it is expected that every judge makes similar decisions in similar cases. Unfortunately, this is not always the case. The law is not always clear and the knowledge of the judge is per definition limited. In addition, the knowledge that resides in the mind of the judges is unique and differs per judge. In hard cases, these different stocks of knowledge may lead to different individual actions. In order to limit the differences in knowledge and knowledge use, knowledge sharing needs to take place. In the knowledge sharing process, judges actively donate and collect knowledge in order to help each other to make better informed decisions. Knowledge sharing, in that sense, goes beyond the discussion of hard cases in multi judge panels. Knowledge sharing is a voluntary process which needs to take place on a regular basis.

Knowledge sharing is not only an important quality-enhancing activity for judges, but for professionals working in other knowledge intensive organizations as well. As a result, the scholarly literature that can be found on this topic is quite diverse. So far, knowledge sharing between judges has not been a much discussed topic. Little is known about the knowledge sharing behavior of judges. In this article, we use insights from other studies and apply them to the judicial context. Based on previous study results, we argue to look beyond technological solutions and take into account the managerial, social and motivational dimensions as well. In our view, it is a common mistake to implement knowledge management initiatives (often technological tools) and assume that knowledge sharing will automatically take place. We

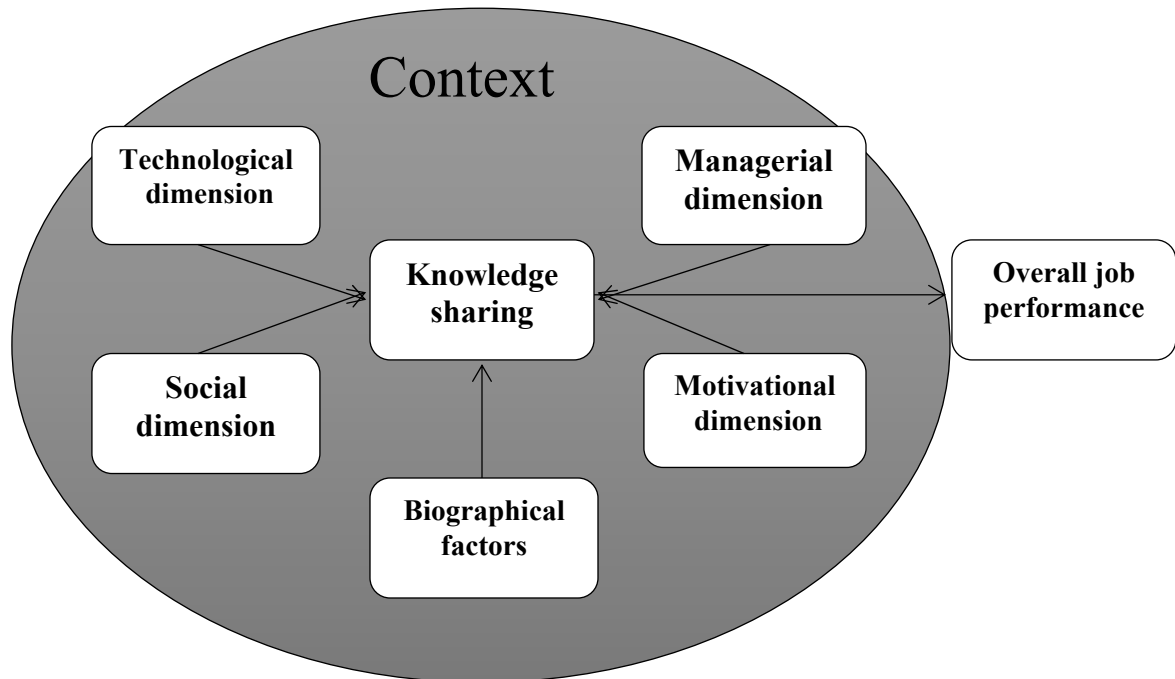
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<sup>4</sup> Next to independency, impartiality and integrity. See: <<http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Visie-op-de-rechtspraak/Pages/Kernwaarden-van-de-rechtspraak.aspx>> (last visited 3 October 2014)

expect that knowledge sharing is not only about creating opportunities to share knowledge, but also about creating an atmosphere that encourages judges to participate in knowledge exchanges.

In this article, we have presented a four dimensional framework that describes and explains knowledge sharing between judges. Based on this conceptual discussion a research model has been developed (Figure 2). This model will be empirically tested in a cross-national setting. The results are to appear in a forthcoming doctoral thesis. Understanding how important these four dimensions are for the creation of an effective knowledge sharing environment, will provide a first and essential step towards managing this process even more effectively in the future.

**Figure 2: The research model**



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