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**The effect of proposed legislation changes in conveyancing on  
small and medium sized law firms.**

**By**

**Lance van der Westhuizen  
(202514597)**

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**Graduate School of Business, Faculty of Management  
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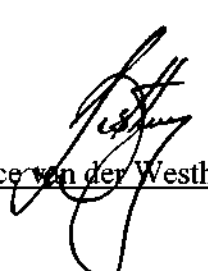
**Supervisor: Dr. Anesh Singh**

**January 2005.**

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## DECLARATION

This research has not been previously accepted for any degree and is not being currently submitted in candidature for any degree.

  
Signed: Lance van der Westhuizen

Date: 27<sup>th</sup> January 2005.

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The benefit of looking back and analysing decisions made in the past can only make you shake your head in amazement. The decision to study towards an MBA was a lot easier than understanding the implications and expected commitment in order to be successful. In all honesty, a student does not acquire this achievement on his own but rather with the assistance, contributions and encouragement of almost everyone connected to his personal life.

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## **ABSTRACT**

The small legal enterprise has a role to play in the current market place.

To maintain this position, it must be able to compete against the major players who offer any prospective customer the perceived benefits of a large firm and the corresponding security that this provides. It should be able to identify the external attacks on its livelihood and respond in such a way as to deter future claims to its market share.

The small legal firm can compete against any competition; provided it has implemented adequate systems and the management and staff present a unified front with specific regard to customer satisfaction and maximisation of shareholder wealth.

The effects that the proposed legislative changes may have on the organisation would at this point in time be mere speculation, yet the likelihood of this scenario becoming a reality should spur management and staff alike, to ensure their own future sustainability.

## **TABLE OF CONTENTS**

### **CHAPTER ONE - INTRODUCTION**

|                                | <u>Page</u> |
|--------------------------------|-------------|
| 1.1 Introduction               | 1           |
| 1.2 Background                 | 2           |
| 1.3 Motivation                 | 7           |
| 1.4 Value of the project       | 10          |
| 1.5 Problem Statement          | 10          |
| 1.6 Objectives of the study    | 11          |
| 1.7 Research Methodology       | 14          |
| 1.8 Limitations of the project | 15          |
| 1.9 Structure of the study     | 16          |
| 1.10 Conclusion                | 18          |

## **CHAPTER TWO - STRATEGIC DECISIONS**

|  | <u>Page</u> |
|--|-------------|
| 2.1 Introduction   | 19          |
| 2.2 Anticipated effects of legislation changes                               | 20          |
| 2.2.1 Estate Agencies  | 22          |
| 2.2.2 Financial Institutions   | 23          |
| 2.2.3 Human Resources  | 25          |
| 2.2.4 Financial Implications   | 26          |
| 2.2.5 Technology   | 28          |
| 2.3 Strategic Decisions – How to survive industry changes                    | 29          |
| 2.3.1 Business Level Strategy  | 30          |
| 2.3.2 Outsourcing  | 32          |
| 2.3.3 Alliances with other law firms – Economies<br>of Scale                 | 33          |
| 2.3.3.1 Human Resource Pool  | 34          |
| 2.3.3.2 Streamlining non-core functions                                      | 35          |
| 2.3.3.3 Virtual Offices  | 36          |
| 2.4 Organisational Change - Implementation                                   | 37          |
| 2.4.1 Corporate Governance   | 37          |
| 2.4.2 Organisational Structure and Control                                   | 38          |
| 2.5 Strategic Plan   | 40          |
| 2.5.1 Proposal   | 41          |
| 2.5.2 Strategic Alliance with an Integrated<br>Cost/Differentiation Strategy | 41          |
| 2.6 Conclusion   | 44          |

## **CHAPTER THREE - OLIVIER & O'CONNOR INCORPORATED**

|  | <u>Page</u> |
|--|-------------|
| 3.1 Introduction                               | 46          |
| 3.2 Methodology and current company status     | 48          |
| 3.2.1 Strengths                                | 49          |
| 3.2.2 Weaknesses                               | 51          |
| 3.2.3 Threats                                  | 53          |
| 3.2.4 Opportunities                            | 56          |
| 3.3 Results                                    | 58          |
| 3.3.1 Time – The essence of recovery           | 58          |
| 3.3.2 Staff – The backbone of the organisation | 62          |
| 3.3.3 Marketing – Seizing the opportunity      | 64          |
| 3.4 Client Base Analysis                       | 66          |
| 3.5 Costs versus Income                        | 68          |
| 3.6 Conclusion                                 | 70          |

## **CHAPTER FOUR - MODEL COMPARISON**

|  | <u>Page</u> |
|--|-------------|
| <b>4.1 Introduction</b>  | <b>71</b>   |
| 4.1.1 Alliances  | 72          |
| 4.1.2 Outsourcing and streamlining<br>non-core functions                       | 74          |
| 4.1.3 Virtual Offices  | 75          |
| 4.1.4 Model Proposal – Integrated cost leadership/<br>Differentiation Strategy | 76          |
| <b>4.2 Customer Value Analysis</b>   | <b>79</b>   |
| 4.2.1 Rationale and Implications of<br>Customer Value Analysis                 | 80          |
| 4.2a Strategic Value of Customer Analysis                                      |             |
| <b>4.3 Differentiation</b>   | <b>84</b>   |
| 4.3.1 Service differentiation  | 84          |
| 4.3.2 Conveyancing Tariffs   | 86          |
| <b>4.4 Conclusion</b>  | <b>87</b>   |

## **CHAPTER FIVE – FUTURE STRATEGY: CHANGE IMPLEMENTATION**

|   | <u>Page</u> |
|---|-------------|
| 5.1 Introduction  | 88          |
| 5.1.1 Overcoming the institution of change<br>in conveyancing legislation | 88          |
| 5.2 Government Considerations   | 89          |
| 5.2.1 Deeds' Office   | 90          |
| 5.2.2 Local Municipal Councils  | 91          |
| 5.2.3 Receiver of Revenue   | 92          |
| 5.3 Financial Institutions  | 93          |
| 5.4 Future Sustainability   | 94          |
| 5.5 Conclusion  | 97          |
| 6.0 BIBLIOGRAPHY  | 99          |
| Appendix 1  | 101         |

# CHAPTER ONE

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## 1.1 INTRODUCTION

The legal industry in South Africa has to a large extent been favoured with a certain degree of protectionism, it has benefited with the application of fee protection due to fixed tariffs implemented by the relevant law societies which are used as a base for the minimum charge to their customers and therefore the legal industry has created its own exclusivity, which is the perception shared by most South Africans.

The fact is that there exists an inequality of legal representation to the larger population as a whole and this can be measured by the amount of cases that are brought before the court where the respondent has no, or cannot afford legal representation. Protective business measures applied by the respective law societies and the proposed changes to the process of conveyancing, can and will affect the livelihood of most players in this industry and more specifically it will affect the small to medium law firm radically.

Connected to the suggestion of legislation changes to adopt these proposals, as well as the tremendous technological changes made in the industry, specific to the legal process of conveyancing, are the essential expenses required by the smaller law firm's to maintain a level of competition and competence. The small law firm would have less than three partners and a medium firm may more than likely not have more than ten partners.

The legal profession finds itself in a position where the future viability of the smaller law firm will depend on its current financial resources and its ability to apply these to achieve maximum benefit as well as the organisational commitment to educate its employees to cope with the radical technological changes that are required to maintain a presence in this market on the part of both the competitors and the customers.

## **1.2 BACKGROUND TO THE STUDY.**

Olivier & O'Connor Incorporated is a small law firm, situated in the south of Johannesburg. The members practice out of their own premises and have been in operation for 19 years.

The offices are conveniently situated, in the south of Johannesburg, with easy access for clients from both the M1 and other well known arterial roads such as Booysens road and Klipriversberg drive. The premises provide for on-site parking for both clients and staff. Furthermore the premises provide individual offices for all the executives and secretarial staff, as well as various signing offices and boardrooms.

Olivier & O'Connor Incorporated has developed a loyal client base in the Southern Suburbs of Johannesburg and Alberton areas over the past nineteen years, which has grown substantially over this period. The company is probably one of the oldest law firms in this particular area.

The greater percentage of income, per company financial statements, is derived from conveyancing activities, which accounts for almost 65% of total monthly income. The residue is derived from litigation, commercial and motor vehicle accident (MVA) work.

The practice has not survived simply due to luck or lack of competition but rather due to the diligent application of its management and staff, continuous supplementary training and by nurturing customer relations.

Evidence of the increase in the competition has emerged from the change in market circumstances as well as the radical increase of law firms serving the surrounding areas. In 1984, there were only four law firms serving the previously mentioned areas. Currently, there are 19 active law firms trading in the area. It must be noted that the population has increased dramatically in this area and property coverage has matched the

population growth therefore it is only natural that the demand for conveyancing services would increase.

Therefore the requirements for property related law transactions have also increased. An interesting fact is the increase of visibility of the traditional “large” law firms, who historically avoided the southern suburbs of Johannesburg. The only explanation for this type of reaction must be the increase of pressure on their survival, as well as strategy changes to take advantage of any relative business opportunity. Another factor that could explain the change in competition is that property prices in the “New South” have substantially increased making this a viable financial proposition, due to the fact that conveyancing work is as lucrative in the South of Johannesburg as in the North.

The increase in competition is a dilemma facing the smaller law firms, which has become a threat to their economic survival. This is exacerbated by the possibility of changing legislation that will affect the conveyancing process will allow the independent conveyancer to work under the banner of an estate agency or a financial institution.

Permission for this type of practice could have far reaching effects on the industry as a whole. If one analyses the income streams available to Olivier & O’Connor Incorporated, it becomes clear that their dependency on both the estate agents in the area, as well as the financial institutions will be affected. Economic viability ensures future participation in this industry, yet by cutting off the source of income, as is the likelihood in the face of the proposals to change the conveyancing process, the demise of the small and medium sized law firms is imminent.

A factor that has potential financial implications is the advances in technology, its related software as well as the major decrease in the time required to perform a property transaction. The proper application of such would increase a firm’s competitive advantage.

To be more specific, conveyancing success is measured in turnaround time, and there is software, such as Ghost Bond and Ghost Conveyancing applications that assist the conveyancer in expediting this process. Unfortunately there is a price to pay for this assistance, namely the cost of staff training as well as the cost accompanying the continuous technological upgrade required. Currently, conveyancing remains a lucrative income stream due to the fact that the conveyancer controls the process. The successful law firm that has employed allowable marketing techniques, as set by the respective law society and fostered genuine customer relations will have a sufficient stream of incoming work. Yet all of this could and would change if the proposed legislation changes are implemented.

The proposed legislation changes are set out below.

- a) The first proposal allows for legal representation to the population as a whole, which can only be achieved by allowing persons with a lesser education, the current interpreters and scribes, to be able to act in a capacity similar to those of the qualified attorney.
- b) The second proposal is to permit independent conveyancers to work within a financial institution, or for an estate agency.

These proposals may have a far reaching effect. There would be definite benefits to the clients if their legal representation understood the client's language in any litigated matter. Naturally this is presently not always the case, but the mountain of associated problems this could create, of which a few are detailed below, may have an effect on both the industry and the client, as is discussed later, that it was intended to assist in the first place.

First, mention must be made of the problems this could bring upon the client. Even though his/her legal representation might be able to communicate and understand the crux of the problem better, it is in the situation where a greater understanding of the law

is required which will afford comprehensive arguments within the confines of the law, that the situation becomes precarious for the client.

Another factor that becomes a reality is the administrative problems that the newly appointed legal representative will encounter. Just like the current law firms, one needs to be able to control one's finances, employ staff to assist in matters legal and administrative. The possibility exists that all that the changes in the legislation will create, are more law firms that are not qualified to run a practice, let alone attend to their clients needs adequately.

Permitting conveyancers to practise within a large financial institution, or for estate agencies, creates its own set of challenges. Any of these players will identify with the relative cost saving as well as the creation of a profit centre within the organisation. Unfortunately these are the surface benefits that are immediately noticeable.

Currently the standards set by the Law Societies of the provinces require that the law firms act in the best interest of their clients. This might not always be the public perception due to the enrichment of some attorneys to the detriment of their clients, but in many cases this is at a major cost to the law firm. There are ethics and standards as laid down by the law societies within their regulations, which are strictly adhered to and "policed" by the law societies. Therein lies the difference: even though the law firm is in business for financial gain, this will never detract from ensuring that the customer's interest and wishes are always adhered to and acted upon. Clearly this will not be the case if conveyancing is done outside the confines and regulations of the law society (<http://www.derebus.org.za> ).

Internationally some of these proposals and ideas have been tested and have caused numerous problems for the legal industry. For example, in Hong Kong in the late 1990's, the then Attorney General, Mr. Jeremy Mathews, suggested that the fixed scale fees for conveyancing be abolished. He was spurred on by the allegation that solicitors were making excessive profits from conveyancing. (Hong Kong Lawyer, 25 February 2003).

This action brought about a situation where clients negotiated fees with solicitors which caused a price war. Naturally declining service levels resulted from this.

More specific to this study is the decline of registered law firms, for those who remained in business; they cut back on support staff in order to remain in business. (<http://www.ghostdigest.co.za>)

Similar proposals to those presented in South Africa have been opposed by the Law Society of the United Kingdom. According to the Lord Chancellors Department in the Public Interest consultation paper, authorised conveyancing practitioners could be introduced by the government, allowing banks, building societies and others to offer conveyancing services. (<http://wwwmpmagazine.com>)

The second draft response to the proposals in the United Kingdom has taken issue with the paper, saying that conveyancing could hit high street firms hard and harm access to justice. The proposal put forward by the Law Society of the United Kingdom is to open up conveyancing services to non-solicitor bodies by allowing employed solicitors to offer their services direct to the public. This they anticipate would ensure consumer protection.

The deregulation of conveyancing in Australia started as early as the early 1990's in New South Wales. This process gave rise to an increasingly competitive market. The deregulation meant that solicitors were able to advertise their prices. In 1994, the Law Society of New South Wales asked the Justice Research Centre to survey some randomly selected small firms, to establish how they set fees and to what extent they were advertising. In the first survey, only 341 firms responded. When the study was repeated in 1996, 587 firms responded.\*This study was useful as it was one of the first in Australia to illustrate how advertising affected this sector of the legal market.\* Other interesting results of the survey were that fee levels dropped by approximately 17% - 23% and clients definitely shopped around for the best available price.

\*(Conveyancing fees in a competitive market, 1996 – J. Baker)

In New Zealand a new occupation of licensed conveyancer has been proposed. Such conveyancers will have to meet the qualifying standards of the Society and will also have to hold practising certificates. This proposal was put forward to make the legal profession more responsive to the changing legal services market. The feedback is that this will be of limited value and benefit to the public, since lawyers are already working in fierce competition between themselves. As a concession lawyers will now be able to compete with estate agents in the sale of property. \*\*

\*\* (New Zealand Herald, 2003)

### **1.3 MOTIVATION**

The future economic survival of many smaller law firms is definitely in the balance if the proposed legislative changes to the conveyancing process are effected. This study must be undertaken to measure the possible disadvantages as well as to serve as a guide towards determining new methods that need to be adopted to avoid the possible economic harm to the small law firms which may be caused by such changes.

The study must evaluate the damage that could be caused in the market place that could have a direct influence on the organisations future existence. Most of the smaller law firms have financial commitments that will place undue pressure on the partners/directors at times of crucial decision making, as and when they encounter a reduction of viable work.

Furthermore, the possibility exists that the financial institutions might prefer to perform their own registration of mortgage bonds in-house. The benefits and advantages to the financial institutions are numerous and several that will weigh heavily on their process of decision-making are set out below.

- a) There will be the added financial benefit of retaining the cost of registration to themselves and thereby increasing the profitability of the bond;
- b) The interaction with the client makes for better personal relationships and this is a position that most of the large financial institutions have been competing for of late;
- c) Improved customer relations might assist the financial institutions to retain their mortgage clients and not lose them to other financial institutions and thereby forgo future profitability.

The estate agencies have an entirely different reason for possibly adopting the proposed changes. In their case, it would be to maximise the earnings per transaction and thus increase their own wealth. The Estate agent industry, has effectively become the tail that wags the dog, in other words, the estate agencies have sought to change their status to the party which initiates the workflow, and the legal and financial institutions are dependent on their goodwill in granting the opportunity to them. It is common knowledge that unfair business practices have emanated from this profession and the different regional law societies are putting in place measures to clamp down on this corruption. Conveyancing, marketing and ethics declare that “the buying of work of any nature is strictly prohibited. Payments of cash, gifts, benefits or any contribution to expense or equipment made to any estate agent/agency are strictly prohibited.”\*

The reason for the study becomes clear if one considers the relative benefits to the attorneys who earn their income from the conveyancing process. For some the proposal will result in increased wealth and to others the locking in of long-term future profits and relationships. To the smaller law firms it could result in their demise.

\* ([http://www.derebus.org.za./derebus\\_s.pl?ID=63860&index=200208](http://www.derebus.org.za./derebus_s.pl?ID=63860&index=200208) pracman August 2002)

## **1.4 VALUE OF THE PROJECT**

The danger involved in remaining ignorant of the threats that may affect the future of the organisation is certain closure. The company must assess the threats and compare these with adjusted strategies and methodologies and the effectiveness of these, to accept the challenges that will definitely affect their future economic survival. The attorneys in conveyancing practice must devise a strategy, which needs to be implemented, to ensure the organisations readiness to overcome any possible changes in workflow, income and profits.

The identification of anticipated threats to the organisation will assist the management to formulate appropriate measures which will reduce the impact of the proposed legislation changes or alternatively guide management into new business directions where the changes will be experienced as minimal. Continuous evaluation of the company's strengths and weaknesses will that ensure management remains focused on the anticipated problems and allocates resources to combat them accordingly.

The value of such a project is currently indeterminable and by not investigating the possible changes in their organisation, could lead to unforeseen consequences.

## **1.5 PROBLEM STATEMENT**

The livelihood of the small to medium size law firm is under threat in the face of the proposed amendments, with specific regard to conveyancing, the effect of e-commerce and legal representation.

The proposed legislation which will allow legal representation to all will have profound effects on the litigation divisions of all law firms, irrespective of their size. The acceptance of in-house conveyances by estate agencies as well as financial institutions will adversely affect the small to medium sized law firm.

Any hope of maintaining sufficient system control and customer satisfaction will depend upon the firm's adaptability as well as available financial resources. The constant upgrading of computer systems, coupled with the relative software available, places enormous pressures on the financial planning of the organisation.

For the small to medium sized firm this could once again hamper their ability to adjust their systems and strategy gainfully, to cope with the threats that will affect them. Unfortunately, if they do not have the financial means to upgrade their computer systems, adapt their marketing strategy and identify subsequent opportunities in the marketplace, their future viability is rather limited.

With the proposal of legislation changes to the conveyancing industry, it is essential to determine how these proposed changes will affect the small to medium sized law firm.

## **1.6 OBJECTIVES OF THE STUDY**

The study will assist in evaluating the effects which the proposed legislation changes and e-commerce advancement will have on the organisation. The following are factors that must be assessed.

- a) The appointment of in-house conveyancers by estate agents will affect the workflow of the practice.
- b) The law firm will need to adjust the human resource strength due to the reduction of incoming work.
- c) The reduction in income may affect the monthly cash flow of the organisation and limit the organisations capability to cope with their financial commitments.
- d) If the financial institutions perform the registration of mortgage bonds internally, this will have a direct effect on the bonds division in the firm. This

situation will impact on the staff and increase the financial burden on the organisation.

- e) The necessity for management to stay up to date with their computer and electronic communication methods and to invest in changing technology requirements will place a heavy burden on the available financial resources. Management needs to identify alternative opportunities to regain the financial resources.
- f) It is clear that the organisation must continually educate their staff with up to date skills development programmes that are industry specific, as well as linked to technological advances. Their limited financial resources create a management dilemma in addressing this problem.

The abovementioned questions will represent a thorough test of the management skills of the organisation. To be able to face the challenges to their skills of financial management, human resource management, strategic thinking and application, as well as marketing analysis, will be tested.

Therefore management must determine the impact of the proposed legislation changes as well as the demand the technological advances in e-commerce will place upon their financial reserves as well as their management capacity.

The crux of the study will be to establish methods of transforming these challenges that the organisation will face into opportunities. An assessment of the possible methodologies that will be implemented by the financial institutions as well as the estate agencies can assist in pre-empting the negative effects this will have on the organisation by instituting new work methods.

This will entail the identification of estate agencies that will not be in a position to take on in-house conveyancers. Not only must these companies be identified but a customer relationship must be fostered with these parties before these proposals are enforced.

The same will apply to the financial institutions. Due to the financial costs in setting up fully fledged conveyancing departments, they will not create a large overhead structure in order to copy the law firms. A distinct possibility is that they might retain the lucrative work such as notarial bonds, covering bonds and development bond work and still pass on the mass mortgage bond work to selected law firms. If this is so, then the organisation must ensure that it maintain its current favourable position on the banking panels. This will make the decision to invest in technological changes easier for management.

Another option would be to establish virtual legal chambers. This would allow groups of independent firms to share premises and save overheads through economies of scale by having the administrative or back-office work done at a central position. By electronically mimicking the brick and mortar chamber the lawyer enjoys a number of advantages. These would include the features presented below:

- a) There would be the freedom to concentrate on legal work, as all the non-legal work would be done at central administration.
- b) There would be benefits to being part of a network of lawyers with the advantages of branding and cross-referral opportunities.
- c) There would be the advantage of using technology and more efficient processes which have been proven to be effective.
- d) An on-line library would be available.
- e) Economies of scale would be enjoyed.

In this manner the law firm could operate in the way it believes is best for their particular needs. The provision of office accommodation and back-office secretarial and telephone support to small practitioners would create substantial cost savings. This does not mean that the face to face lawyer and client relationship would change. All that would change is the way the lawyer is enabled to provide his service.

## **1.7 RESEARCH METHODOLOGY**

“Exploration is particularly useful when researchers lack a clear idea of the problems they will meet during the study. Through exploration researchers develop concepts more clearly, establish priorities, develop operational definitions and improve the final research design.”\*

In the problem facing Olivier & O’Connor Incorporated, although it is being stated definitively, the area of investigation is relatively new and the writer will have to establish his priorities in such a way as to assist him in determining the actual effects on the business. The unknown factor that this researcher needs to establish is the methodology firms will implement to overcome the challenges posed by changes in legislation.

This exercise will be done as a case study coupled with interviews. It is necessary to design a formal industry specific questionnaire, which will be used in interviews with members of the legal fraternity who are dependent on the conveyancing function for the majority of their firm’s income and survival. The intention is to gain information from members of both medium and small firms. The need is to assess their perception of the problems they might encounter and the strategy decisions that they intend to make if the situation so demands.

The questionnaire, to be used as a conversational tool with specific guidelines, will not

\* (Cooper &. Schindler, 2003)

afford this researcher the luxury of making a predicted forecast, but rather put him in a position of determining different operational values, strategic analysis and company redirection techniques.

Subsequent to initial discussions the researcher had with practicing conveyancers, he is of the opinion that due to the sensitivity of the information to their respective organisations, the writer anticipates that not all members will be willing to participate in the discussion and naturally some would not be forthcoming with strategic information. The major benefit to be gained from this exercise would be the different interpretations of the anticipated problems.

Finding a correlation in identification of the problems would assist this researcher to identify more clearly the threats facing the organisation, should these proposed legislative changes be implemented.

## **1.8 LIMITATIONS OF THE PROJECT**

The general response from organisations that were willing to share their views was guarded and to some extent very restricted. The overall perception was that any information, if shared with other firms, would be extremely sensitive and therefore their willingness to discuss their probable actions were limited. In some cases they would not divulge their strategy for correction of any imbalances created by the proposed legislation changes. The companies were more willing to share their perceptions and identification of the problems that the legal industry might face more freely, rather than specify any corrections.

Therefore it is fair to say that whatever the findings, they will not be perceived as industry wide answers to anticipated problems, but rather specifically adapted to suit the firm of Olivier & O'Connor Incorporated in adjusting their strategy to position themselves against the anticipated repercussions of legislative changes.

## 1.9 STRUCTURE OF THE STUDY

The researcher will briefly detail the follow-up chapters as he envisages them to be incorporated into this study.

### *Chapter Two*

In this chapter the need is to identify the effects which proposed legislation changes may have on the organisation. It is essential to identify the strategic decisions “*Corporate Strategy can be described as the organisations sense of purpose*” – more clearly defined as “*the pattern of major objectives, purposes or goals and essential policies or plans for achieving those goals*” (Lynch, 2000), which management must make to negate the possible effect these proposals may have and the future directional changes which may be implemented to counteract possible loss of profits. The researcher will endeavour to develop a model that will assist the management in making the right strategic decisions.

### *Chapter Three*

This chapter will detail the strengths and weaknesses of Olivier & O'Connor Incorporated and utilise the developed model of the previous chapter to review the case study. The actual background of the organisation will be highlighted as well as the market in which it competes. The researcher will study the client base of each of the divisions; highlight their functions as well as detailing their profitability. Furthermore it is necessary to compare the workflow of each division in terms of costs versus income, to determine the future viability of each division.

#### *Chapter Four*

In this chapter the researcher will apply Strategic Analysis Techniques to determine the organisation's strengths and weaknesses when compared to the model here. Possible strategic routings will be discussed and the importance of Customer Value must be considered. Specific measures will be discussed which are factors of consideration for the management of Olivier & O'Connor Incorporated when the matter of differentiation is evaluated.

#### *Chapter Five*

The strategic planning that needs to be implemented by the management of Olivier & O'Connor Incorporated will be discussed in this chapter. The need is to assess areas of concern and how management proposes to overcome these challenges to their financial viability and future survival. The management decisions reflecting an enhancement of current strengths must be analysed and measures of future growth and how this will be attained, must be reflected. Lastly, it is important to consider the implications that government should evaluate prior to the promulgation of any new conveyancing laws.

## **1.10 CONCLUSION**

The law firm, Olivier & O'Connor Incorporated, may be entering a phase in their existence that will bring about radical challenges to both its perceptions of sustained growth as well as its management abilities.

The timeous identification of threats to its future sustainability will place the firm in an advantageous position to analyse the threats strategically and plan the methodology of coping with these challenges. It has been proven that the firm will face challenges on all fronts of management, from human resources to financial planning. As is the case with most of the smaller law firms, this one also has financial constraints due to bad management decisions in the past that currently limits their financial resources and this will hamper its ability to "buy" itself out of their predicament. In this instance it depends entirely on the firm's ability to face up to the challenges, analyse them according to the threat that they hold and implement sound strategic thinking to determine the path forward.

The researcher has been able to identify specific threats to the organising as well as possible avenues of rectification. Unfortunately much will hinge on its financial planning and its ability to utilise its available financial resources effectively.

Although the future prospects may not appear rosy if legislation changes to the conveyancing industry are implemented, the situation of identifying new possibilities and the implementation of innovative work methodologies may put Olivier & O'Connor Incorporated in a position to ensure its future sustainability and growth.

# CHAPTER TWO

## STRATEGIC DECISIONS

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### 2.1 INTRODUCTION

Olivier & O'Connor Incorporated has been operational in the Southern Suburbs of Johannesburg for 19 years and this has been a period of relatively stable financial growth and one of minimum upheaval due to their strategy to concentrate on the conveyancing market. To date the company has only had to deal with new law firms encroaching on their target market. The result of this by and large was the retention of their customer base due to their commitment to service.

It is necessary to consider the fact that the most profitable strategy for any organisation to adopt would be to align its resources to provide superior customer value. The result of pursuing this strategy is an increase in profitability which results from customers paying premium prices for superior value. Leveraging the firm's existing strengths offers a cost effective route to supplying customer value. Word of mouth advertising is the cheapest method to grow market share and superior customer value will protect the organisation from losing its most valuable assets through customer retention.

The target market of Oliver & O'Connor Incorporated has remained active and this has allowed a certain perception by the management of Olivier & O'Connor Incorporated of invincibility and continued future sustainability. The firm of Oliver & O'Connor Incorporated's marketing strengths has never really been tested due to the fact that the property realtors in the area have remained loyal, even though administrative mishaps have caused minor upsets with relationships. Yet all this could change if the proposed legislation changes to allow in-house conveyancers to operate under the official auspices of estate agents and financial institutions.

The duty of conveyancers in terms of the act is: “to ensure that the standards of competence and professional conduct among persons who practise as licensed conveyancers are sufficient to secure adequate protection for consumers and that the conveyancing services provided by such persons are provided both economically and efficiently”. (Jones, 1976)

The threat and challenge that could face Olivier & O'Connor Incorporated (and similar sized law firms that depend on conveyancing as their major source of income), even though unquantifiable at present, may result in dire consequences for some and incredible exponential growth for others. It merely depends on the management's ability of recognition, formation of strategy, implementation of change and management of the respective companies within stringent financial measures and absolute utilisation of available resources.

## **2.2 ANTICIPATED EFFECTS OF CHANGES IN LEGISLATION**

The government has indicated that there is an inequality of legal representation and this directly affects a large percentage of the population, due to the current situation being biased in favour of those members of the population who understand and communicate in either English or Afrikaans. For the balance, there is a breakdown in communication due to their failure to understand their legal representative substantially, possibly because of poor education. These matters in particular will see a drive to empower more people to ensure the availability of not only fair but good legal representation universally to all members of the community.

The proposed changes required to make the above vision workable will have an effect on the majority of law firms in the country but in tandem with this, and more applicable to this case study, is the suggestion that conveyancing be made less exclusive and transformed into a function that can be performed by legally qualified members other than lawyers in professional practice.

The proposal to allow conveyancers practise from the offices of estate agencies or financial institutions will have far reaching financial effects on the legal fraternity, in particular the small to medium sized law firms, who have built their economic sustainability around these types of practices.

There are several factors to consider when identifying what the implications of such legislation changes will be and what effects might result from this. In Chapter One the author noted six strategic factor implications and will now assess each area of concern individually.

The current scenario for Olivier & O'Connor Incorporated is that due to their visibility as well as the years of practising in the particular area, they have established themselves in the property market as one of the leading conveyancing firms. This naturally allows for a certain level of overconfidence, as most property transfers in the area are channeled to their firm. The question that has to be considered now is what the implications on both their financial resources as well as their human resources would be, if there were to be a sudden and major downturn of work.

Olivier & O'Connor Incorporated currently has a conveyancing system in which the registrations of bonds and the transfer registrations are treated as two separate divisions with internal communication. Furthermore each conveyancing secretary in the bonds division is responsible for a particular and different financial institution, and the conveyancing secretaries in the transfers division are allocated certain estate agencies. This company strategy as well as workflow procedures could suffer severely if financial institutions decide to retain future work and if estate agencies perform the same property transfer function in-house. The company could find itself having too many staff and a diminished income.

The expected reaction to the employment of conveyancers in estate agencies and financial institutions will have far reaching effects on the firm. It is necessary to consider

which type of estate agencies would opt for this opportunity, as well as what effect this would have if financial institutions also decided to take this route.

### **2.2.1 Estate Agencies**

Lawrence Miles (1947) states that “Inherent in the philosophy of value analysis is full retention for the customer of the usefulness and aesthetic function of the product/service. Identifying and removing unnecessary cost and thus improving value must be done without reducing in the slightest degree quality, reliability and dependability that the customer wants.” This philosophy represented a significant new idea at the time because it placed the customer squarely in the center of business philosophy.

The performance of a Customer Value Analysis will highlight three critical concepts i.e. the concept of service quality, the concept of cost to the total customer value equation and recognition that quality is properly defined by the customer, not the company. Simply put, customer value is the most important source of competitive advantage.

When considering the above concepts and applying them to the customer base, critical factors will be highlighted. Those organisations that are the larger and stronger estate agencies, with more representatives and greater area coverage, will embrace the concept of total cost and investigate the possibility of presenting an in-house package to their customers by offering a complete service from the actual sale to the registration of transfer of the particular property bought or sold. Not only do they stand to gain additional income but they will also extend their hold on the customer base and in doing so cause the reduction of workflow as well as diminish the customer base for the firms such as Olivier & O'Connor Incorporated.

The reduction of their workflow will be a serious concern to the management of small to medium law firms. Also there is the fact that their competitive barriers could change, for now they will have to compete against some of their former customers. From a marketing point of view their strategy would have to change as well because they will have to adjust

their campaigns so as to avoid alienating all estate agencies and still endeavour to retain and grow their customer base.

### **2.2.2 Financial Institutions**

The financial viability of any organisation is of the utmost importance to all shareholders. Being the risk takers they feel justified in claiming the lion's share of the profit. When confronted with the opportunity of taking in conveyancers, the financial risk will be evaluated against the financial gains that could be achieved by taking advantage of such legislative changes. Corporate decisions will definitely take advantage of the situation if there is a greater financial gain and explore the possibilities. The question should not be whether the financial institutions will take advantage of the presented situation but rather when.

The decision now, if this scenario becomes a reality, would be to ensure future sustainability and financial viability for themselves by all the small and medium law firms who more than likely will be affected by such radical legislative changes. When considering the possible effects, Olivier & O'Connor Incorporated must have an action plan ready for just this case scenario. Their current workflow and company structure have to be considered. The bond registration division has a unique structure; each conveyancing secretary is responsible for a financial institution and therefore oversees all those bonds for registration purposes. In the event of work being withheld by an institution, the organisation will find itself with excess resources, both human and financial.

Cutting back on employee costs might seem to be the short-term answer, yet is not the correct decision. When considering there are only four large financial institutions, the loss of one or more would impact very severely on the organisation from a financial point of view. Firstly, each bond conveyancing secretary has a financial fee target to achieve and this is set at eight to ten times his/her normal salary. The loss of such income would not only affect the operational side of the business but the administrative side of the

business as well. The administrative division has no means of earning fees yet it remains the necessary evil, the company could not function without it. In this case scenario, additional staff and operational cuts would have to be made.

The reduction of the administrative function and the division's functionality as a whole could impact very negatively on the organisation. The decision would have to be made as to where in the administrative division to make cutbacks and who should be made redundant. Thus it is clear that the effective daily workflow would be affected and this would influence customer service and future income. Secondly, the organisation receives a fair amount of property transfer transactions that are linked to mortgage bonds from financial institutions. In the likelihood of a cutback of mortgage bonds, there would also be a negative effect on future income streams. Thus in summary, the organisation could be affected in the following ways:

- (i) reduction of customer base
- (ii) reduction of workflow
- (iii) reduction of income stream
- (iv) reduction of profitability
- (v) negative impact on cash resources
- (vi) excess staff
- (vii) excess computer equipment
- (viii) Poor labour practice if staff issue is not treated correctly.

The proper analysis of the abovementioned effects will clearly indicate that any small to medium sized law firm in South Africa would experience tremendous operational pressure and the only possible preventative measure would be strategic planning in advance of the possibility of legislative changes.

### **2.2.3 Human Resources**

It has been briefly mentioned that there would be enormous logistical implications for the organisation if the proposed legislation does materialize, more specifically, the effect on the company resources. The success of any firm lies in the ability and skills of its human resources.

Olivier & O'Connor Incorporated had the foresight to ensure continuous training and skills development for their staff. Furthermore, the company maintained a high level of remuneration which almost guaranteed employee stability and a very low staff turnover. The benefit of retaining employees for a number of years, as is the case with the firm in question, has allowed the organisation to enhance their competitive advantage and maintain a standard of customer service that is very difficult to emulate by other firms in the area. The constant approaches made to staff of Olivier & O'Connor Incorporated by other law firms confirms that staff from Olivier & O'Connor Incorporated is sought after for their skills and their loyalty. In this lies the predicament if the company cannot retain staff due to reduced workflow and income.

The identification by management of this fact early enough might allow them to readjust their in-house workflow and change their internal systems to accommodate the expectant reduction in work. The current Bonds division system here will have to be adapted to cope with the expected drop in bond registration instructions.

In the opinion of the writer, the financial institutions will not act impulsively and cut of all bond registration work immediately, but rather investigate the type of work that is more lucrative and retain this, and still forward the normal day-to-day bond registration instructions to the different law firms represented on their panels. Of vital importance to the company is their future position on the banking panels.

The essence of time management must be realised by the management of firms like Olivier & O'Connor Incorporated. The decision to revise internal systems, identify the

human resources who need to be retained and those who will have to be made redundant, must be made as soon as possible.

There will be a financial implication for the firm in either scenario, firstly in the reduction of the more lucrative bond registration work, and secondly the retrenchment packages that need to be paid out. Moreover there will be the re-structuring of the administrative division and its respective functions. The firm will have to streamline the organisation as a whole and not only make cutbacks in the directly affected division but in the non income earning division as well. Once again, this will affect the ability of the organisation to operate to their expected standards and this could impact on their customer base if service levels deteriorate.

Currently the company prides itself in ensuring that its staff are kept up to date with the latest technological changes, be it computer software, hardware or any relevant technological changes. It is imperative that all transactions are completed in the shortest possible time because that is the essence of a successful conveyancing practice – i.e., turnaround time. The possible reduction of staff and financial capabilities can and will affect this company policy.

#### **2.2.4 Financial Implications**

The object of any venture when initiated is to make profits and increase member/shareholder wealth. A law firm is established with the exact same business principles and future goals. Although some lawyers are poor business men due to their studies concentrating upon the law as opposed to business strategies, this does not preclude them from establishing a practice whose aim it is to be financially advantageous and economically viable.

The firm of Olivier & O'Connor Incorporated has enjoyed the financial rewards for their risks and has invested heavily in their human resources as well as their in-house computer

technology. Now the company faces a possible new threat that will affect those same areas of investment.

In order to understand the financial implications of any downturn in work flow or reduction of output due to declining human resources it is first necessary to explain the income and costing structures that make up a small to medium sized law firm. The incomes derived from operations in Olivier & O'Connor Incorporated are split up as follows:

- Property Transfer division – 40% of income earned
- Mortgage Bond Registration division – 30% of income earned
- Litigation division – 20% of income earned
- M.V.A. division – 10% of income earned.

It must be remembered that the administrative functions which include the secretarial, financial, logistical and human resources divisions are not income earners and therefore have a major effect on the profit generated. Furthermore, all divisional heads are costed within the overhead structure as opposed to their operational divisions. The total company overheads need to be carried by the few income earning divisions, yet these only comprise of the company resources. Simple mathematics indicates that 65% of resources need to cover 100% of overheads. Now it becomes very clear that any change in the operating division's capabilities will have a radical effect on the operating ability of the organisation. Thus it is clear that any change of income resources will impact heavily on the organisation as a whole and not just the particular division.

Staff cutbacks in an operating division will result in a reduction of income earned. Unfortunately, the surgical cut that might have to be implemented in the operational divisions would also have to be applied in the administrative divisions. It is well known that the "back office" staff performs a vital function in the smooth running of the business. From the drivers and messengers to the accounts assistants, they are all required to add value to the process of delivering outstanding customer service. The decision in

this case would be as to who needs to be removed and how this will affect the functionality of the organisation as a whole. Once again these are the vital decisions that have to be made to ensure maintenance of competitive advantage as well as improved customer satisfaction.

### **2.2.5 Technology**

In the world of conveyancing, the most expensive commodity is time and because of this every effort has to be made to reduce the turnaround time of every transaction. Staff competence and continuous training are vital elements that contribute to the success of the process but this is not the only resource that must be maintained. Researched investment in up to date technology that will assist in this primary goal remains a never ending process. Olivier & O'Connor Incorporated can base their relative success on their incessant research into the latest technology, staff training and drive to retain their competitive advantage.

The company has made their mark in the larger market to the extent that they were selected as one of the test companies in the Standard Bank pilot programme for their electronic bond instruction system. This reflects their standing and efficiency in the eyes of financial institutions. But merely having the reputation means nothing if it cannot be backed up by continuous outstanding performance. Naturally this also means that the company must maintain a position of advantage when it comes to their technological systems and this is where the future problem might arise.

Technology and training costs money and, if there is a decline in available cash resources; there might be an adjustment in the current thinking with regard to continual investment in state of the art computer systems and software applications.

Olivier & O'Connor Incorporated have now successfully implemented electronic media to correspond with all the major banking institutions and this has been achieved at great cost as well as considerable expenditure on staff training. If in the event of legislation

changes and the financial institutions do decide to reduce their outgoing work and perform those functions internally, this could result in the redundancy of equipment and staff.

### **2.3 STRATEGIC DECISIONS – HOW TO SURVIVE LEGAL INDUSTRY CHANGES**

The success of a company is based on its management's ability to create a strategy suitable to their sphere of competence and implementing this strategy in order to establish a competitive advantage. Closely linked to this is the ability to perform their chosen service in such a way as to increase customer demand for their service and do this in a profitable manner. By maintaining a position of continuous growth in shareholders' wealth, the organisation will create additional opportunities to increase their resources and in so doing increase their competitive advantage.

Historically this is what Olivier & O'Connor Incorporated have achieved, but now management need to apply themselves to adapting their strategy, workflow, marketing and their available resources to adjust to the possible changes that might be experienced in their industry. The management needs to re-evaluate their business level strategy. In order to achieve positive results they must coordinate a set of commitments and actions that will assist the firm to utilise its core competencies to gain and maintain a competitive advantage. There are key areas that must be considered when addressing their business level strategy such as the service they offer to customers, how to create and how to deliver that service to the marketplace. The essence of their decision should be to identify, plan and implement the activities that they perform better than their rivals.

The formulation by the management of their mission, subsequent analysis of their remote environment (PEST), performance of an industry analysis (PORTER) and finally identifying their own strengths and weaknesses (SWOT) should result in a choice. This could be either to diversify or outsource, but the crucial factor is that they should always

stick to their core competencies, because these are the competencies which have resulted in past successes.

### **2.3.1 Business Level Strategy**

Olivier & O'Connor Incorporated is a service delivery organisation and therefore should ensure that they satisfy their customers by using their competitive advantage to offer superior customer value. They should have the flexibility to prove to their customers that they are a vital part of the organisation. If they can maintain this relationship, it would enhance customer loyalty and this may result in greater profitability.

The company has spent large sums of money on internet technology and should now utilise this to establish a competitive advantage through their relationship with their customers along the dimensions of reach, richness and affiliation. The effective management of customer relationships helps the firm answer questions related to who, what and how to serve.

The company needs to divide their customers into groups based on their needs and their future dependence on the organisation. Once they have identified and clustered customers with similar needs together, they can develop a marketing plan suitable for each customer group. At this point in time they will have identified the customer segment that may become a form of opposition in the future and should implement a plan to prove to these customers that they can still perform the service better and more cost effectively.

It is fair to predict that the different customer segments will each have different needs and these must be identified in order to assist management to decide which features to present low cost or differentiation. Management must realise that their capacity to improve, innovate and upgrade their competencies continuously will result in exceeding customer expectations.

There are five different business level strategies which the management of Olivier & O'Connor Incorporated could pursue, each offering their target market a different value. The effectiveness of each strategy is contingent on both the opportunities and threats in the organisations' external environment as well as the possibilities offered by the firm's unique resources, capabilities and core competencies.

Past successes have proved that Olivier & O'Connor Incorporated can adapt quickly to environmental changes, learn and implement new skills and technologies and effectively leverage their core competencies while competing against their rivals in the market place. Therefore it would be wise to implement an integrated cost/differentiation strategy. They have the flexibility to respond quickly and efficiently to opportunities that reduce cost or increase differentiation. Their current information networks increase their flexibility and this, combined with the current systems in place, will facilitate the implementation of an integrated strategy.

Earlier it was mentioned that time was of the essence in the conveyancing industry and this factor can be exploited to the benefit of the organisation, if electronic linkages are established with customers. This activity, if implemented correctly, will assist in increasing delivery satisfaction and reducing the time needed to perform the required service. In addition to this the firm must continually strive to maintain a position of Total Quality Management (TQM). This can only be achieved if the company meets customer expectations while striving to exceed them in terms of quality, focusing on work processes in order to eliminate inefficiencies and wasteful business processes and continuously striving to improve the quality of their service.

There are risks that must be considered when implementing an integrated cost/differentiation strategy. Firstly, the company must ensure that they provide their services at a lesser cost relative to their competitors and this can only be achieved if their internal systems are structured in such a manner to be efficient and cost effective. Secondly, they must provide the quality of service for which their customers will be

willing to pay and lastly, their competitive action must allow them to offer differentiated features, while still maintaining a low cost structure.

### **2.3.2 Outsourcing**

Internal evaluation of company resources, strengths and weaknesses should highlight areas of duplication or alternatively, functions that are non-core and cannot be produced more cost effectively. Consideration should then be given to these specific areas of excess cost or low competence strength. The organisation should maintain a position of core capabilities and strive to perform these services to match TQM and possibly distance themselves from functions that are not their core competence. Outsourcing is effective because few, if any, organisations possess the resources and capabilities required to achieve competitive superiority in all primary and support functions.

This is easier said than done, but there could be functional divisions in the organisation that could be outsourced to organisations that perform those functions as their core capability. Not only will the latter be able to perform those functions more cost effectively but management will have the benefit of cutting away responsibilities and variable overhead costs and replacing these with a fixed monthly cost.

An integral part of implementing a cost leadership/differentiation strategy is to ensure that the company can perform their core services at a lower cost than their competitors. By achieving this they increase their competitive advantage. Divisions that may be investigated are those that do not form part of the company's core functions but are necessary to supply a complete service to their customers as well as the organisations ability to function.

These divisions may be financial, administrative or human resources and, for each of these, there are organisations in the marketplace that perform these functions as their core business. By outsourcing these functions, the organisation could be faced with a fixed

monthly overhead for vital work performed by professionals in those respective fields. The benefit that could be gained from outsourcing, is that the activities in which the company lacks competence or competitive advantage are passed on to professionals who perform this activity as their core function, which results in the organisation being able to focus on the functions and areas where they can create value and a competitive advantage.

One must remember ourselves that today's core competencies may not hold the same value tomorrow and one should be wary of rigidity setting in where the assessment of the core functions is done with blinkers and management becomes complacent.

### **2.3.3 Alliances with other law firms – Economies of Scale**

The analysis of the "Grand Strategy Selection Matrix" shows different quadrants and information relative to each. In comparing the possible problem that Olivier & O'Connor Incorporated might encounter with the different proposals as put forth by the matrix, there are two unique designs that need to be evaluated. It is necessary to consider the internal environment. This is a matter of redirecting the company's internal resources so as to ensure that the current competitive advantage being enjoyed is maintained.

Olivier & O'Connor Incorporated has endeavoured to maintain a position of leadership when it comes to technology and the exploitation thereof to ensure a competitive advantage. This strength must be maintained and utilised to overcome the possible consequences of legislation changes. Furthermore it should be used both to develop the adjusted strategy as well as enhance the future viability of the firm.

To date the firm has continued to pursue a strong and well-educated staff complement and this factor will come in to play when the firm seeks alliances or joint ventures. There are certain definite possibilities and one of these would be retrenchment of human resources. This would be required if the company had definite weaknesses that had to be

overcome, yet that would not be the resultant problem, but rather a situation of excess staff.

In considering the external environment, it appears that an option available to the company is to form joint ventures. In order for a firm to grow, the management needs to pursue internal opportunities and therefore perform better than their competitors through strategic execution or innovation. The possibility exists for a merger with, or acquisition of other professional companies. This would allow the streamlining of non core functions to serve more than one organisation. If implemented properly, the joint venture should reap the benefits of economies of scale.

There is a third major alternative to consider and that would be a cooperative strategy whereby they develop value creating competitive advantages together and thus create differences between themselves and their competitors. This type of alliance would be a logical and timely response to intense and rapid changes in both economic activity and technological advancement.

This alliance could take the form of a non-equity strategic alliance. This occurs when two or more firms develop a contractual relationship to share some of their unique resources and capabilities to create a competitive advantage. Naturally they do not establish a separate company and therefore do not take equity positions.

#### **2.3.3.1 Human Resource Pool**

Establishing a joint venture would have to be done with meticulous planning and implementation. There would also be the consideration of which companies to approach and how they would all fit together.

It would be feasible to approach other law firms with a similar structure and fields of expertise to those of Olivier & O'Connor Incorporated, i.e. those firms that have a strong conveyancing arm with possible divisions that could link with the current fields of

Olivier & O'Connor Incorporated. If this happened, management could decide which staff members would be vital to the future success of the organisation and adapt their systems to cope with the influx of work that would emanate from the joint venture. Naturally there would be the casualties in areas like accounting, logistics and administration, yet joining two or three companies and streamlining those functions that do not generate income, could perhaps ensure the future survival of some of the smaller law firms.

### 2.3.3.2 Streamlining non-core functions

Each firm has a fixed overhead that relates to non income generating divisions. The same applies to any law firm. Consolidating a few firms and retaining the best in their respective administrative fields could produce with a firm with multiple inputs from various companies and a singular administrative function. This could allow for a cutback on fixed overheads with an increase in operating income.

Furthermore, the joint venture would retain only those staff members in the income generating divisions who would be required to fulfill the obligations related to their workflow. This could mean that conveyancing staff might also become redundant. This exercise must not be perceived as downsizing, because this results in a different set of problems as detailed by Hitt, Ireland & Hoskisson \*.

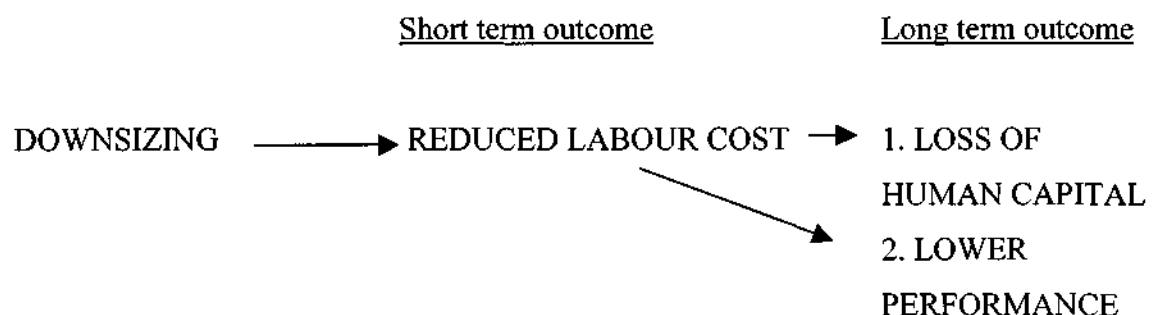


Figure 2.1

### **2.3.3.3 Virtual offices**

A virtual chamber is another attempt to overcome the possible problems that may arise with legislation changes. Due to time constraints which require a reduction in reaction time, change has become the norm and this is an unpredictable reality.

\* (2003)

Modern organisations confront a turbulent environment that requires rapid, flexible response to changing conditions. The company must develop mechanisms to support response to those changes. Both intra- and inter-organisational coordination are needed. IT is often regarded as an integral component of these shifts in organisational design. Flexibility in IT enables the fast adaptation necessary to accommodate this rapid change. IT is seen as a critical force in the transformation of competition, firm structures and firm boundaries. Those organisations which adapt to the IT technology available are in a better position to shuffle their resources to meet customer needs and this could be done, as preciously mentioned, by implementing strategic alliances and inter-organisational collaborations and partnerships.

In this instance, the use of IT and internet technology allows smaller practitioners or independent firms to share premises, save overheads through economies of scale and gain by cross referral or branding. IT plays a fundamental role in supporting critical activities, enabling organisations to make efficient and effective changes in the manner in which work is performed.

By electronically imitating the brick and mortar world, the legal practitioner could enjoy a number of advantages:

- The freedom to concentrate on legal work with all non legal work being done at the central chambers;

- The benefit of being part of a network of attorneys with the advantage of branding and cross referral opportunities;

- The benefits of using technology and more efficient processes which work;

an on-line library;  
economies of scale.

In this situation each firm can work in the way that they believe is best for their particular needs. IT can allow organisations to create more flexible structures, so that the experience and expertise of employees are available wherever they are needed.

This is a solution which has worked since the first virtual solicitors' chambers were set up in Peterborough in 1991, so it is not a theoretical construct. Providing office accommodation and back-office secretarial and telephone support to sole practitioners for almost the last ten years has meant that the overhead/fee income ratios are very impressive.

## **2.4 ORGANISATIONAL CHANGE - IMPLEMENTATION**

"Unless today's leaders constantly re-think the way they do business there is a very real danger their companies will not survive".\*

Organisation theory states that for firms to achieve sustainability, they must adapt. These changes can range from very specific responses to switches in general strategy.

### **2.4.1 Corporate Governance**

The management team of Olivier & O'Connor Incorporated has to identify a methodology that would ensure that not only are decisions made effectively but also implemented efficiently. The predetermined alignment of management focus is imperative to guarantee that all concerned treat the threat facing the organisation with the same urgency and consideration.

\* (JeanVanhoegaerden, Finance Week, 22/09/2004).

The goal of each business organisation is to maximize shareholder value. Threats to this goal have now become a distinct reality and one for which management must prepare. Due to the high degree of ownership participation in the small to medium sized law firms, the probability is greater that manager's strategic decisions will be intended to maximise shareholder value.

In this case study it is worth mentioning that the management of Olivier & O'Connor Incorporated will be better informed about the possible strategic actions and the reasons for them as well as the anticipated outcome. Therefore, the decisions to be made to counter the threats posed by legislation changes must be made and implemented by the management team because they will have first hand knowledge. The effectiveness of the management team will be a product of the diversity of the team with specific regard to the competence and background of each member. Whatever the strategic decisions made by the management team, are essential strong accounting controls as well as internal management remains imperative. There must be consistent and regular reviews of the effects of strategic change and management's ability to cope with it.

#### **2.4.2 Organisational Structure & Control**

Successful implementation of the firm's strategies will depend on the alignment of structures within the organisation. Management must ensure that internal structures such as reporting, communication channels, internal systems and procedures are all aligned with each other and more importantly with the strategy being implemented.

Olivier & O'Connor Incorporated are about to experience a period of uncertainty and management need to implement the structural stability that will allow the firm to manage their daily routines consistently and predictably. The establishment of a sound structural base will create the opportunity to explore competitive possibilities and subsequently allow for the allocation of resources in order to pursue a competitive advantage.

The modification or adjustment of the firm's current strategy will call for changes to the organisational structure. It has become obvious that the company should alter their strategy if they want to overcome the threats being posed by possible legislative changes.

The stability that is provided by the structure within the organisation will facilitate predictable and manageable daily routines and systems while the flexibility provided due to the internal structure will allow management the opportunity to explore competitive possibilities and the luxury of allocating the correct resources to shape and enhance the competitive advantage this may provide.

Olivier & O'Connor Incorporated enjoy a competitive advantage in the market place. They have highly trained staff, strong internal systems and workflow procedures as well as an IT culture that has ensured that they are perceived by their peers and customers to be at the forefront of technology where applicable to their specific requirements. These are the internal strengths around which the structure and strategy must be formulated because these factors must carry the organisation through the possible changes the company might have to implement.

The author is aware that, with the proposed legislation changes, the company and many like it will be affected in various ways. Firstly, there will be a reduction in workflow from their main customer bases; secondly, this could result in excess staff; thirdly, the reduction in income will affect cash-flow as well as management abilities and finally, and this may be the most important for future sustainability, the organisation would no longer be able to afford the high cost of technology that has to date allowed the company to retain their competitive advantage.

The management of Olivier & O'Connor Incorporated needs to analyse their internal structures and identify those that will assist the organisation in the future if these proposed threats present themselves. Those controls such as communication between management and line managers, as well as strong financial controls, are imperative for future sustainability. They should not only place emphasis on their financial controls

because these are merely comparatives to past performances. At this point in time the company should remain focused on the future, their market share and sustainability if the proposed threats do materialise.

If the organisation is effected, they should have already established a match or synergy between their strategy and structure. If this is achieved and pursued by management they will be in a position to maintain their competitive advantage, which they currently enjoy, because the match between strategy and structure is valuable, and cannot be either imitated or substituted.

Olivier & O'Connor Incorporated currently operate on a divisional level, with each division being treated as a separate profit centre. The income generating divisions, property transfer, bond registrations, MVA, Commercial and Estates are all expected to add to the value offering of the company. This is not only from a financial point of view but as a value offering to their customer base as well. This multidivisional structure has distinct benefits: (i) it eases the control process as each divisional head monitors his/her own area of expertise, (ii) it facilitates comparisons between divisions and allows for quicker adaptation and resource allocation, and (iii) it stimulates managers from poorly performing divisions to find ways of improving their respective division's performance.

It is clear that all the factors required to overcome the threat of changes to conveyancing legislation and the expected threats to the organisation, are currently in place. It is a question of correct interpretation and adaptation by management and their ability to turn this threat into an opportunity and a means of increasing their competitive advantage.

## **2.5 STRATEGIC PLAN**

Peter Drucker (1956) stated that "There is no one right organisation any more. Rather the task is to select the organisation for the particular task and mission at hand." Thus the firm must select a structure that is appropriate to pursue the firm's strategic intent and mission.

The author has identified the strengths and weaknesses of Olivier & O'Connor Incorporated. Fortunately the firm can turn their weaknesses into strengths if management applies strict organisational, financial and procedural control. The possible consequences of legislative changes could have dire effects on the company's sustainability, and for this reason the management should endeavour to implement a strategic plan that may result in system changes, expeditious removal of under-utilised human resources, critical alliances and vertical relationships.

It remains obvious that the future survival of the small to medium sized law firm will depend on the impact and consequence of legislative changes. To counter these external threats the author will present a strategic plan, evaluated in conjunction with current company resources, and the anticipated effect of such legislation changes on the organisation.

### **2.5.1 Proposal**

The evaluation of the company as it currently exists was used as the basis of a successful medium sized law practice. Furthermore the researcher considered the possible effects the proposed changes might have upon the organisation and finally, how the organisation could deal with these.

It is evident that no strategy or future planning can be cast in stone and for this reason, as well to maintain a high degree of flexibility the author proposes a specific strategic.

#### **2.5.1.1 Strategic Alliance with an Integrated Cost/Differentiation Strategy**

The likely consequences of the proposed legislative changes are anticipated to be:

- reduction in workflow

- definite impact on financial resources

reduction of customer base  
inability to remain competitive on the IT front  
excess human resources and  
future viability of organisation under threat.

Effectively this could result in the demise of the small to medium sized law firms with the larger and financially stronger firms taking up the remaining market share. These larger corporations have the financial muscle as well as the economies of scale to remain competitive. It is in this statement that the solution can be found to the future existence as well as financial viability of the smaller law firm.

To date there has been a place for the smaller law firms in the market place and if they adjust to accommodate the perceived threats, this position can and will still remain theirs. The smaller firms must change their strategic thinking and firstly form alliances with similar companies. This type of alliance will allow them to achieve a position of economies of scale without sacrificing their own independence. By reducing administrative costs and ensuring that the operating divisions are staffed with highly skilled staff, they could emulate, if not improve on, the service provided by the larger firms. This goal, coupled with internal flexibility and diversity of service, will assist the organisation to remain operational and competitive.

Secondly, they should endeavour to form alliances with some of their bigger customers. In this scenario they should pursue agreements with the larger financial institutions whereby they are prepared to provide the bond registration function at a cost which is difficult for these organisations to maintain. Thus they will assure themselves of future work for the bond registration division. In addition to this they should target the larger estate agencies and present a similar proposal to them. This might not always be feasible due to the greed and arrogance of the Estate Agencies and their management as a whole. If these firms react negatively, the management of Olivier & O'Connor Incorporated must form alliances with the smaller estate agencies, for these latter have always remained the bread and butter of the organisation and they do not have the financial

means to appoint in-house conveyancers. Naturally this can only be viable if the law firm is able to produce results that are cost effective to the customer and financially viable to the law firm.

Thirdly, the law firm must utilise their resources as cost effectively as possible. This can only be achieved and maintained if they take advantage of their IT capabilities. They must remain at the forefront of electronic communication and strong internal electronic systems. All possible duplication of work, which eats into the most expensive commodity in a law firm, namely time, must be avoided at all cost. This can be accomplished if their staff is competently trained, their work-flow processes are designed cost effectively and their IT capabilities are the source of their competitive advantage.

Finally, the management of Olivier & O'Connor Incorporated must remain focused and ensure that the energy of the organisation is directed towards both producing effective service and also continuously evaluating their product offering. By becoming complacent they run the risk of being caught of guard and this could have serious consequences. Continuous assessment of their capabilities and customer service is required in order to be able to adjust to any external changes in the marketplace. The strength of the company's offering is measured against the diversity and the flexibility of the company as a whole. Their product offering should be assessed against the market offering and be adjusted to offer a consistently superior cost effective service. The utilisation of their computer capabilities will also offer management diversity of product and delivery superiority.

## 2.6 CONCLUSION

Anticipating problems and their resultant effect may only be speculation, as is the situation in this case study, yet for the management of Olivier & O'Connor Incorporated the future holds more unanswered questions and possible scenarios than really needed. In this lies the crux of the matter. Is the company in a position to ward off future threats?

Further questions that must be answered are listed below:

- (i) Does the company possess the management decision making skills to adjust current strategies and structures?
- (ii) Is management adept at forming constructive financial planning to ensure future viability?
- (iii) Will management realise timeously that strategic alliances may be the only outcome?
- (iv) With the likelihood of financial constraints, how will management overcome this to ensure the company remains at the forefront of IT?
- (v) Do they have the skill to identify staff shortcomings and the ability to release staff when the staff members are measured against their added value as opposed to personal relationships?

The framework of a strategy may assist management in identifying and subsequently structuring a feasible method of future survival. The company will constantly encounter external threats and these may be overcome with current capabilities. Unfortunately, if the proposed legislative changes become effective, the company will face external threats and internal shortcomings that may seriously affect its future sustainability and existence.

It remains important for the management of Olivier & O'Connor Incorporated to reevaluate and develop a strategy which will allow them the flexibility and allocation of resources in the future, whatever the eventuality. Even if the proposed legislative

changes do not come about in the short term, the company will have enhanced their profile within their market share as well as adding value to their customer offering.

# CHAPTER 3

## OLIVIER & O'CONNOR INCORPORATED

### 3.1 INTRODUCTION

The firm of Olivier & O'Connor was established in March 1984 and incorporated on the 1<sup>st</sup> of July 1998. JJ O'Connor is the sole director and shareholder since incorporation, after the dissolution of partnership in May 1998.

The company practises from its own premises in Booysens, south of Johannesburg. It is conveniently situated, with easy access from the M1 highway and well known major arterial roads. The premises provide for on-site parking for both staff and clients. Furthermore the premises provides for individual offices for all the executives and secretarial staff as well as various signing offices and major boardrooms.

Olivier & O'Connor Incorporated has developed a loyal client base in the Alberton and Southern Suburbs areas over the past eighteen years, which has grown substantially over this period. The company is probably one of the oldest law firms in this particular area. A large portion of the practice is dedicated to conveyancing work which accounts for almost 70% of the business; the residue covers litigation, MVA and commercial work as illustrated in Figure 3.1

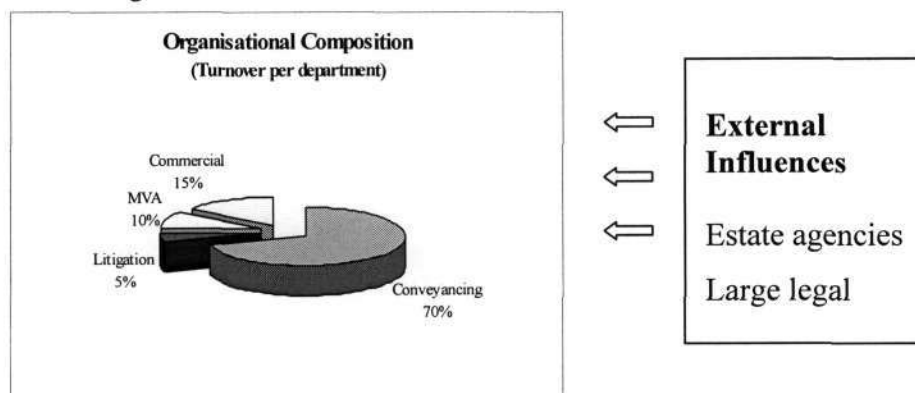


Figure 3.1 Income apportionment per division.

The company has solid relationships with a number of estate agencies in the area and this has afforded the company the benefit of continuous support even when interest rates are high and bond approvals are difficult to obtain, which fortunately are not a major factor in the current housing boom.

Currently Olivier & O'Connor Inc is on the panel of all the major financial institutions and enjoys the benefit of bond instructions from all concerned.

The company has maintained a stable financial growth for the last decade and this is noted by the standard of equipment utilised in the offices as well as the standard of living enjoyed by the senior management of Olivier & O'Connor Incorporated

Although the company has enjoyed relative success in the past, the current and future outlook has changed. Profits have fallen, incoming work has declined and therefore it is expected that the buffer of work in hand has diminished substantially. This is due to current market situations created by competitive rivalry and not the anticipated effect of legislative changes.

Fortunately the financial measurements and controls in place have alerted management to the declining trend and their future financial implications if this is not arrested and rectified. Coupled with this, is the possible effects on the company if the proposed legislation is implemented. Management will not only have to cope with their current external threats but also devise a strategy to adjust to a changing marketplace.

The shareholders of Olivier & O'Connor Incorporated will have to address these problems that may affect the future success of the organisation alternatively their continued survival is at stake. The existence of actual competition and the current market threats combined with a possible effect on the companies internal strengths will provide for interesting decision-making by the management of Olivier & O'Connor Incorporated.

### 3.2 METHODOLOGY AND THE COMPANY'S CURRENT STATUS

The brief background can only present a broad perception of the possible problems facing Olivier & O'Connor Incorporated in the current market situation. For this study to provide meaningful information about Olivier & O'Connor Incorporated in their current form, and possible solutions to their current challenges, it is necessary to analyse the organisation in depth. It was decided to do a SWOT analysis and in doing so endeavour to provide solutions to the management of the organisation as well as to assess organisation's current predicament. Subsequently the proposed model which was presented in chapter 2, will be utilised and assess the organisation in the face of the possible threats of the proposed legislation changes.

| <u>SWOT ANALYSIS (Summary)</u>  |  |
|---|--|
| <b>3.2.1 <u>STRENGTHS</u></b> <ul style="list-style-type: none"><li>➤ IT capabilities</li><li>➤ Staff competence</li><li>➤ Focus on core business</li></ul>                       | <b>3.2.2 <u>WEAKNESSES</u></b> <ul style="list-style-type: none"><li>➤ Cash resources</li><li>➤ Staff turnover</li><li>➤ Lack of continuity planning</li></ul>               |
| <b>3.2.3 <u>THREATS</u></b> <ul style="list-style-type: none"><li>➤ Mortgage originators</li><li>➤ Corrupt practices of Estate Agencies</li><li>➤ Large Legal Practices</li></ul> | <b>3.2.4 <u>OPPORTUNITIES</u></b> <ul style="list-style-type: none"><li>➤ Improved turnaround times</li><li>➤ Decreased borrowings</li><li>➤ Increase market share</li></ul> |

Table 3.1 SWOT Analysis

### **3.2.1. Strengths identified**

The SWOT analysis has highlighted the immense threats faced by Olivier & O'Connor Incorporated as well as the firm's internal weaknesses as mentioned earlier. The strengths and opportunities have also become obvious.

Olivier & O'Connor Incorporated has the benefit of strong computerised systems and the hardware to run the management software to its true potential. The management's foresight in maintaining their IT capabilities represents a major strength to the organisation in the process of strategy change and implementation. "Technological changes, especially those related to IT, have had and continue to have a significant effect on the way the organisations are managed" (Robbins & Decenzo, 2001)

#### **(i) IT Capabilities**

The result of the management planning with regard to the ongoing process of updating their computerised systems and hardware is that their staff has continuously been sent on training courses. The constant upgrade of systems has demanded greater skills in staff.

Another major benefit to Olivier & O'Connor Incorporated is that their level of competence has effectively levelled the playing fields with specific reference to the bigger law firms who are encroaching on their market. This core competence must be exploited in the organisation's resistance and utilised to their full advantage.

Although Olivier & O'Connor Incorporated has the resources available to do the majority of their transactions electronically this benefit has not been utilised to its full potential. The benefit of e-commerce and internet communication, if utilised properly, can afford the organisation sufficient cut backs in time, as well as a reduction in operational costs. This is an added advantage to the firm and an area of competence that must be exploited to increase their competitive advantage.

(ii) Staff Competence

Due to the continuous staff training, Olivier & O'Connor Incorporated have created a fountain of resources that should be utilised. Rather than merely trying to keep customers happy with adequate service, management should strive to influence the organisation as a whole to keep improving quality of service and increasing productivity.

By implementing Total Quality Management, the organisation will ensure that they “get it right the first time.” The success of TQM depends on “management’s ability to create an environment that supports innovation, creativity and risk taking to meet customer demands. Problem solving is an issue that requires the combined effort and input from management, staff and customers. Finally, communication between management and employees concerning customer needs, development opportunities and resource utilisation needs to be enhanced.” (Noe, Hollenbeck, Gerhardt and Wright, 2000)

Thus far Olivier & O'Connor Incorporated has provided their employees the benefit of adequate training and increasing individual staff competencies. The focus of management’s drive and reason for this must be communicated correctly so that the benefits become mutual. The organisation must reap the fruits of their input with the resultant improvement of output from their employees. The employees will continuously increase their knowledge and skills as well as their own job security combined with the ultimate benefit of working as a team. The organisation on its part will compete more effectively and be able to maintain and even grow their market share as well as increase their profitability.

These two strengths, IT and Human Resource competence must be utilised optimally and form the integral part of management’s strategic planning to recapture lost market share and profitability.

(iii) Focus on core business

The management of Olivier & O'Connor Incorporated has adopted the strategy of outsourcing non-core business processes such as:

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- specialised system support to maintain optimum system availability;
- courier services for effective communication between the organisation and correspondents/customers;
- facilities maintenance for continuous upkeep of the offices and premises;
- The printing of company specific stationary such as letterheads, envelopes and financial institution files as expected from professional organisations.

### **3.2.2. Weaknesses (Effects on the organisation)**

Although identifying external threats and internal weaknesses has afforded the company an insight into their own shortcomings, the rectification process needs to be planned, implemented and monitored.

The actual effects of the reduction of work, as illustrated in Figure 3.2 below, not only impacts on future profits but also on the continued existence of Olivier & O'Connor Incorporated.

The slow erosion of the work in hand buffer (i.e. 300 bonds in hand at an average output of 30 bonds per secretary and utilising four secretaries equates to two and a half months of work in hand), is of major concern to management, with specific reference to staff reduction.

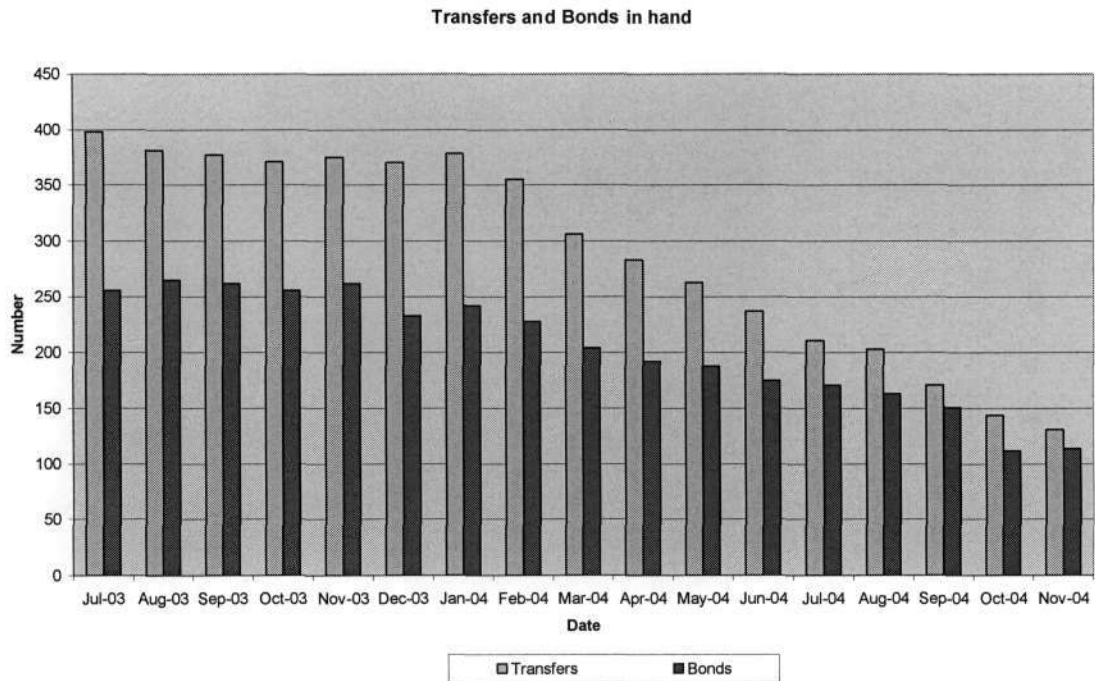


Figure 3.2 Transfers and bond grants in hand

The possible reduction in staff could translate into lower outputs and lower revenues. Not only will this result in decreased profits but more importantly weaker cash flows. Reduced cash resources will seriously hamper the organisation's ability to fighting back to maintain and possibly increase their market share. It is important to realise that a reduction in staff overheads does not necessarily translate into an immediate improved cash position. This will take a period of time to filter through and by then the object of the exercise would seem irrelevant.

Borrowings from financial institutions are a distinct possibility, but one must bear in mind that these institutions would require some form of personal surety and this is normally dependent on personal income. In cases like this the financial institutions would be loath to increase or extend additional finance, their expectation would be that the organisation trade out of this position first. Effectively this is a Catch 22 situation.

The objective of the management must be to move themselves back into a position of strength and financial viability. Improving their efficiency and effectiveness could achieve this goal.

Although the organisation has "key man policies" in place, there is no formal succession planning in place. It is evident that a law firm's existence is strongly linked to the senior directors. In the instance of Olivier & O'Connor Incorporated there is currently only one director and should something happen to him, the organisation could effectively grind to a halt. Not only has the company tied customers to them due to his presence but also all financial obligations are in his name. Financial institutions would undoubtedly cut back all funding should he no longer form part of the organisation.

Formal succession planning should be performed and implemented.

### **3.2.3 Threats (Influences on the organisation)**

In order to understand the implications of the company's declining profits one first needs to understand the causes of the problem. The company must realize that it does not exist in a vacuum but rather competes in a vibrant environment.

External and internal strengths and weaknesses must be analysed to determine the company's exposure to attacks on their market share from competing forces and their own fallibility due to internal weaknesses.

The detailed analysis of the environment has highlighted numerous external influences that have impacted on the company and its market share.

(i) Mortgage Originators

The establishment of another middleman in the process of obtaining a bond from the financial institutions has proved costly to the legal fraternity as a whole. The mortgage originator has taken over the function of providing a service to the buyer and is thus able to influence the decision as to which legal firm will perform the actual registration of the bond. The reluctance by most legal firms to pay a form of compensation to the originator has resulted in the benefits being passed on to a few law firms who do not completely abide by the rules of their relevant provincial law societies.

Unfortunately they have prospered due to the fact that they have lightened the estate agents workload by obtaining the bond for the agent's client without compensation from the client or estate agent. The mortgage originator looks elsewhere for his/her remuneration, namely to the financial institution from whence he sources the bond. The estate agent benefits from this action by not only having a reduced workload but also receiving compensation from the mortgage originator for effectively passing on his/her workload and responsibility.

This particular player has awarded himself/herself the status and authority of demanding financial recompense from both the financial institutions and the conveyancers.

Furthermore he/she determines where the bond instruction is sent for registration and naturally this would only be for the benefit of law firms who support his/her cause.

Olivier & O'Connor Incorporated have to date refused to deal with these institutions and this has directly impacted on their inflow of bond instructions.

(ii) Estate Agencies

Like Olivier & O'Connor Incorporated numerous law firms have been affected, with resultant declining work inflows.

The affected law firms have now resorted to unscrupulous methods of attracting work from estate agencies. The indication is that some law firms are willing to pay a certain portion of their professional fee to the estate agents if the estate agents forward the corresponding transfer to their company. Naturally they will insist that the bond registration must accompany the instruction.

This practice is in direct conflict with the rules of the Law Society. Although flagrantly practiced by some firms, this is something in which Olivier & O'Connor Incorporated will not participate which results in a further decline of incoming business.

(iii) Large Legal Practices aiming to increase their market share

The proliferation of legal firms starting up in the area has affected the workflow of Olivier & O'Connor Incorporated but not as directly as the encroachment of large firms into what was always perceived to be their area of dominance.

It would be fair to speculate that the larger firms are being affected by the same problems as Olivier & O'Connor Incorporated and due to the former, and their stronger resources, they are now looking further afield to maintain their market share.

The external factors affecting the organisation must not be seen in isolation, but rather in conjunction with internal shortcomings of the organisation. An investigation of the internal strengths and weaknesses of Olivier & O'Connor Incorporated revealed that the staff was expected to be knowledgeable in all aspects of conveyancing, with particular regard to bond cancellation, bond registration and transfer registration. Not only does this

curtail the possibility of specialisation but it also diminishes the output of a particular secretary.

In the service industry it is imperative that the customer is always satisfied and the current work methodology will definitely hamper this objective.

The major strengths of the company are also highlighted by this exercise. Not only are they perceived to be efficient by their customers, they also have state of the art computer equipment and systems comparable to those most large organisations, which allows Olivier & O'Connor Incorporated the means to compete with large firms at a lower cost.

#### **3.2.4 Opportunities presented**

In the light of the SWOT analysis, the management of Olivier & O'Connor Incorporated have noted that they are presented with opportunities, which if seized could not only recoup lost market share but also increase their share.

Management need to re-evaluate their mission and objectives and therefore adjust their strategy. The obvious strategy to implement is a competitive strategy. That is a “strategy to position the organisation in such a way that it will have a distinct advantage over its competitors” (Robbins & Decenzo,2001) In applying this form of strategy, the organisation will endeavour to capitalise on their strengths and thereby gain a distinct advantage in their industry. The combination of three types of competitive strategy can be implemented. They need to be a low cost producer; this can be achieved with efficiency of operation with optimum utilisation of their IT capabilities. The emphasis on high quality service, as well as their IT capability will see the management effect a differentiation strategy. Lastly the organisation should focus on their own strengths and not try to compete with the whole market at their level.

The benefit of a strong IT capability coupled with highly skilled staff is the obvious strength of Olivier & O'Connor Incorporated. This should be used to gain a competitive

advantage. In this level of industry the significant factor for all players is time. Cutting the time it takes to process and register a bond; transfer or bond cancellation will ensure the future survival of the organisation.

All the parties involved in property transactions are hampered by time. The sooner the bond is registered, the sooner the financial institution earns an income on its financial assistance. The estate agent earns his/her commission sooner and the prospective buyer can move into his new home sooner. By cutting the duration of the process to a point which one's competitors cannot match, one has ensured one's survival. For now the financial institutions will favour the organisation with additional instructions, the estate agents will forward more transfer registrations and the greatest benefit is that both old sellers and current buyers will effectively "spread the word".

The proper implementation of this strategy will increase the organisation's market share due to their efficiencies and the favourable market response to their service. Marketing in the service industry is extremely difficult, and in the legal field firms are further hampered by rules set by the law society. If Olivier & O'Connor Incorporated can achieve improved service and a reduction in turnaround time, the value of word-of-mouth marketing will be priceless.

Naturally the improved turnaround time will have an effect on both profitability and cash flow. Proper management of increased cash resources will reduce the organisation's dependence on excessive loans, thereby not only reducing their interest overheads but also improving their balance sheet.

Thus by seizing the opportunities presented, the organisation can achieve its main purpose of maximising shareholders' wealth.

### **3.3 RESULTS**

#### **3.3.1 Time – The essence of recovery**

Olivier & O'Connor Incorporated have identified their shortcomings; the factor that will determine future success is their ability to utilise their strengths. This study has identified a combined competitive strategy: this is the secret to their continued survival in this industry.

It is common knowledge that the organisation looks towards its conveyancing function to ensure sustainability and future growth. The secret is to ensure that they perform this function better than any competitor and thereby ensure customer satisfaction thus creating a competitive advantage. It is imperative that all activities are directed towards the common goal of all parties involved i.e. that is the transfer of ownership.

The conveyancing process is detailed in Figure 3.3 below, but an understanding of its complexities requires elaboration of the variables. The ability of the organisation to remain flexible at all times will be highlighted by the process.

The process starts with an instruction received from an estate agent to transfer ownership of a property from the seller to the buyer. The buyer needs to obtain a bond from a financial institution to secure his/her obligations according to the offer to purchase. It has been observed that mortgage originators are currently trying to hijack the bond process. Olivier & O'Connor Incorporated have to appoint a client liaison officer who needs to perform this function on behalf of the client and estate agent thereby ensuring that the instruction to register the bond remains in house.

## Conveyancing Process

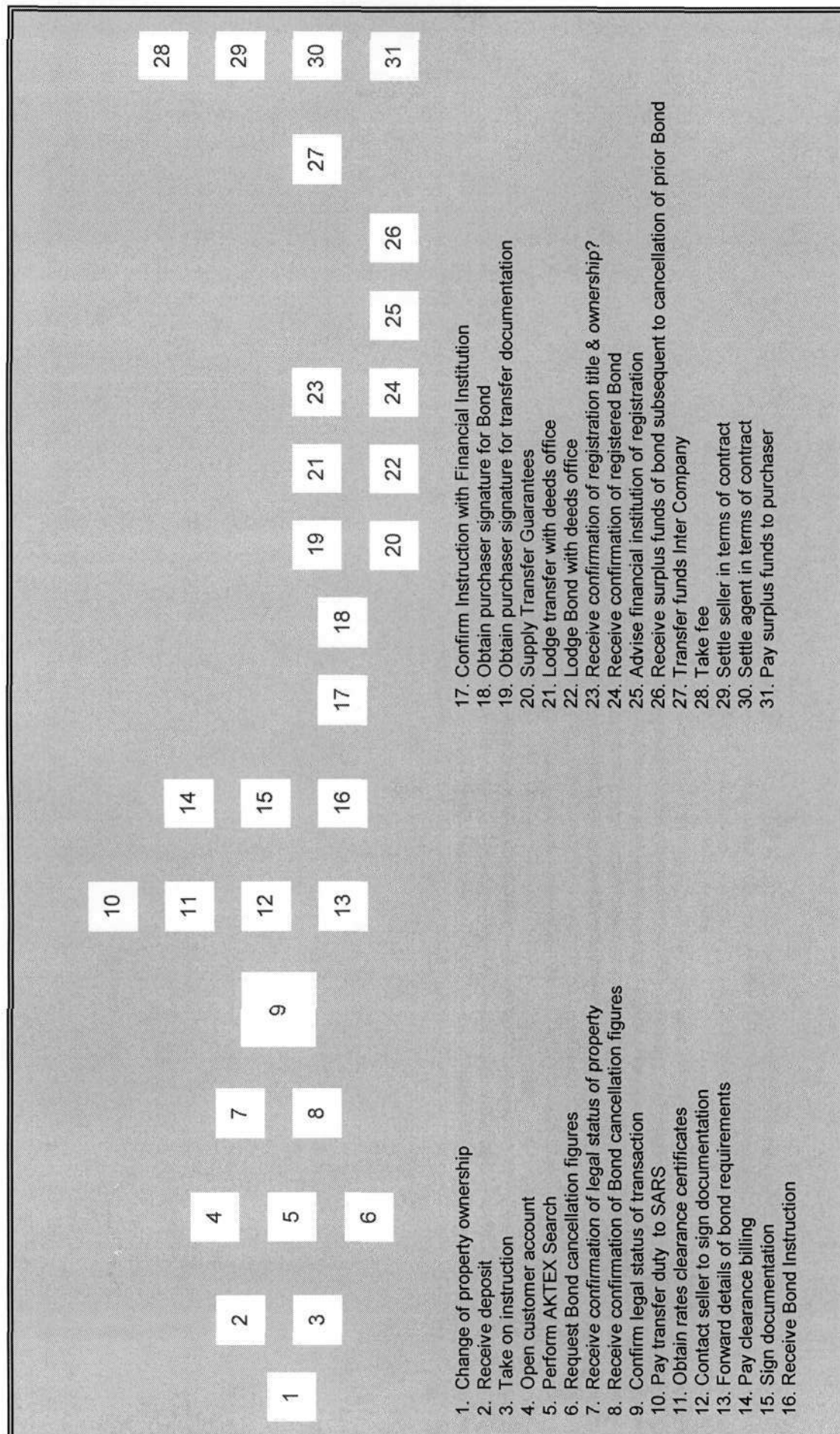


Figure 3.3

Once the purchaser has fulfilled his/her obligations in terms of the contract, the conveyancing process starts. The cancellation figures of the seller's bond must be obtained from the relative financial institution, the ownership must be confirmed by checking the title deed and lastly clearance is sought from the municipality for the seller's rates and taxes account. Although the process appears to be quick it must be noted that the organisation needs to deal with three external institutions. The length of time required this point determines whether a transfer is regarded as being successful or merely another process.

The collusion between the transferring process and the bond cancellation of the seller and the bond registration of the purchaser is vital. This will once again determine excessive time lost or a successful process. It is important to remember that both sellers and the buyers need to sign all their relative documents and this once again is a time factor that could determine success or failure. The customer must encounter convenience within the framework of transferring the property and sometimes this could enforce a time loss situation due to the customer's inability to attend the transferring attorney's office timeously. At the point where all the legal processes have been addressed, all parties have performed in terms of the contract and all documentation has been finalised and signed, the matter can be forwarded to the deeds office for formal registration and recorded. Needless to say any intervention by government organisations, such as the deeds office, can be time consuming.

The obvious conclusion is that time and flexibility are of utmost importance.

The effective utilisation of staff and IT can ensure that the process is shortened. Firstly, the conveyancing division should be set up with two separate divisions. The one division must be solely responsible for the transfer process and the other for the registration of the new bond and the cancellation of the old one.

Earlier the need for a client liaison officer to assist the purchaser and the agent in obtaining the bond was noted. This will cut the time required for receiving the bond

instruction from the relative financial institution. This staff member will speed up the process and keep all parties informed. This will ensure a satisfied bond applicator and an estate agent that needs to do less.

Internally, the organisation needs to change the process of receiving and performing the transfer process. A junior secretary must receive all transfer instructions. He/she must now, open the file, call for cancellation figures, check ownership details on the AKTEX and request clearance figures from the municipality. The benefit of IT available internally allows the secretary ease of access to this thereby reducing the time it takes to call for the information manually. This feature of internal strength has never been utilised to its full extent and can now create a reduction in time that can enhance the organisation's competitive advantage.

All confirmation letters must be sent out to the seller, buyer and the estate agent. This process must be completed within two working days of receiving the instruction from the estate agent. The file, once complete, will be forwarded to the conveyancer, who will check the detail and pass the file on to a senior conveyancing secretary.

The reason for this is obvious: the senior need not waste time on dealing with external parties but can rather focus on the clients and the transfer process. This will effect a major reduction in time. This further enforces specialisation of staff and encourages skill improvement.

The senior now deals with the seller and the buyer through to the conclusion of the process. This affords the secretary the opportunity to establish a relationship with the parties and the estate agent. This relationship with the estate agent can be looked upon as a marketing exercise, where the secretary's competence ensures that the organisation can secure future work from the agent. Upon completion of the registration process, the secretary will have to prepare the final accounts, and upon approval from the accountant, prepare the payout to all the parties.

Once again, the availability of IT will provide the secretary with the tools to perform all these transactions electronically. This means that the funds are paid out over a secure internet connection of which all the major financial institutions form part and provide services. The electronic medium will further reduce the time span of the operation.

The secretary is now responsible for the accounting of files that he/she has worked on and this reduces the workflow back to the accounts division. The accounting division is no longer needed to finalise customer accounts and thus there is another reduction of elapsed time.

With the proper implementation of systems, internal and external and utilisation of available resources, Olivier & O'Connor Incorporated can reduce the time it takes to perform the conveyancing function. This will afford the organisation the benefit of increasing its competitive advantage, retaining and growing its market share and finally ensuring its future survival.

### **3.3.2 Staff – The backbone of the organisation**

"Believing that employees are the key to success translates into human resource practices including rewarding employee performance, measuring employee satisfaction and investing in employee development." (Noe/Hollenbeck/Gerhart/Wright, 2000)

As mentioned earlier, the company effectiveness and competitiveness are determined by the measure of satisfaction enjoyed by all the stakeholders. These would be the shareholders in Olivier & O'Connor Incorporated, the customers of the organisation and the employees responsible for the output.

In the process of reclaiming lost market share, management needs to look to their employees to lead this process. The implementation of a balanced scorecard will afford management an indication of the degree of success into satisfying stakeholders' needs. This will allow management to look at the company from the perspective of customers,

employees and shareholders. The balanced scorecard system will emphasise the critical indicators based on the company's business strategy and competitive demands.

|            |                                 |   |
|------------|---------------------------------|---|
| Customer   | How do customers see us?        | Time, Service, Performance.                     |
| Internal   | What must we excel at?          | Processes that influence customer satisfaction. |
| Innovation | Can we improve and add value?   | Improve operating efficiency.                   |
| Financial  | How do we look to shareholders? | Profitability, Growth.                          |

Table 3.2 Balanced Scorecard

The preceding SWOT analysis has determined that the organisation has a competitive advantage over their competition due to their staff resources. In conjunction with the balanced scorecard, it becomes imperative that this resource is nurtured and grown to the benefit of the organisation.

Olivier & O'Connor Incorporated need to invest in their employees through proper training and development, compensation commensurate with output and performance management. This will enhance employee motivation and commitment. Furthermore, this will ensure that employees earn more than their counterparts in the industry and this should result in a reduction of staff turnover.

Employee development will result in improved quality of service and better utilisation of IT. Due to the expectancy that the organisation must continuously adapt to the changing demands of customers, the emphasis on training and development has increased and should be applied by Olivier & O'Connor Incorporated.

### **3.3.3 Marketing – Promoting seized opportunities**

The restraints placed on all law firms in South Africa by the Law Society make marketing an extremely difficult exercise. Olivier & O'Connor Incorporated are dealing in a service industry and their relative success will be determined by their ability to satisfy their customers.

The concept that the organisation needs to adopt is a market concept; this is the effort spent on customers at a profit. Marketing is "the RESPONSE to CUSTOMER needs for the exchange of services with monetary value through the management of MUTUALLY beneficial relationships". (Arbee & Naidu, 2001) The aim of the organisation must be to ensure total commitment from the entire organisation to achieve customer satisfaction, thereby creating a focus on the customer as the core component.

Marketing done within the guidelines as set by the Law Society must be customer driven. Management need to establish relationships with all the relevant players in the industry. Although the needs of each will be different, management must remain flexible and ensure complete customer satisfaction. Importantly, this can only be achieved with a full understanding of their needs and requirements.

Marketing is the responsibility of the entire organization. If Olivier & O'Connor Incorporated wishes to increase their competitive advantage they must ensure customer satisfaction to retain their clients. This process must be management driven.

Management has spent prodigious amounts to improve staff competence and efficient computer capabilities. Unfortunately this could be totally negated if not applied effectively to ensure the satisfaction of customers.

The goal of the organisation is to achieve and increase profitability but if this is achieved at the expense of their customers in the short term, it will result in the loss of customers.

In order for Olivier & O'Connor Incorporated to apply strategic marketing, the organisation must take into account the continually changing environment. More specifically, the needs of their customers will vary. The financial institutions as well as the estate agents will have specific demands with regard to time and service; these must be addressed and implemented accordingly.

The SWOT analysis has highlighted the relative strengths, weaknesses, opportunities and threats that face the organisation. From a marketing point of view, the opportunities and the strengths of Olivier & O'Connor Incorporated must be exploited to create a competitive advantage.

The customer base has declined in the last year, but this can be reclaimed if the goals of the company are achieved with the substantial cutback of turnaround time and the increased skills development of the staff.

These specific benefits must be relayed to the market place, not only by the management of Olivier & O'Connor Incorporated but more importantly with the results being achieved by the organisation. Once again it becomes obvious that the marketing process is organisation wide. If the staff perform to their expected capabilities the results desired by customers and management will be attained.

Olivier & O'Connor Incorporated have suffered because of their failure to observe the environment and also by not completely understanding their target markets expectancies. This was an expensive lesson but one well learnt.

The management now realise that their strategic planning, which encompasses marketing, is not merely planning the future but creating it.

### **3.4 CLIENT BASE ANALYSIS**

It would be fair to say that any change in circumstance afforded any organisation, would be analysed by the particular management to assess the benefits that could be gained. In the proposed scenario of legislative changes one must consider the particular effects these changes may have on the different client groupings and what their individual responses to this may be. Furthermore one would want to know to what extent their decisions would impact on the small to medium sized law firm.

#### **3.4.1 Estate Agencies**

This particular industry, although very lucrative, has unfortunately attracted some members who have a strong disregard for business ethics and with this has earned the reputation of doing any type of transaction, as long as they perform the minimum and earn the maximum. It would be unfair to label the whole industry as such, but unfortunately a few have caused this to be the general perception by the attorneys who deal with them in conveyancing matters. Due to the perception that, without them, neither the banks nor the legal fraternity would survive, a situation has arisen where the initiator of a conveyancing matter, being the estate agent, is dictating the routing of the transaction in such a way as to enrich himself.

Although they are the initiators of the transaction, they must not be allowed to interfere with the professional service that the legal industry performs, nor should they be in a position to dictate how it should be performed. Currently, some estate agencies have created a power base, because some law firms pay the estate agents for the transactions allocated to their law firms. This in itself already proves that certain players in both industries are not complying to expected business ethics, nor should their role in the future be disregarded. The fact that the unscrupulous attorneys and estate agents may become distinct competitors in the near future proves that these types of relationships are not in the best interest of their customers.

The expectation would be that the larger estate agencies would certainly investigate the benefits of appointing in-house conveyancers and in the process increase their income levels. Unfortunately the decision would not be made in the best interest of the client, who may be making the biggest investment he/she would ever make in his/her life, but rather to increase the profitability levels of each transaction.

The smaller estate agencies would not be in the position to carry the additional financial burden a qualified conveyancer would bring to the firm. Their decision could be one of two, either to maintain the status quo and remain loyal to their current conveyancing firm and perhaps make them aware of the situation by charging a fee for all work forwarded to them, or alternatively create alliances with other agencies with the goal of creating a strong enough joint venture, able to appoint a conveyancer to perform all of their work, while they split the income proportionately.

### **3.4.2 Financial Institutions**

Although it may appear lucrative, there are certain questions that the management of the financial institutions must answer.

- (i) Is this our core business?
- (ii) Do we need to establish an income stream that we currently only know as a cost centre?
- (iii) Do we have the capacity to compete in this environment?
- (iv) Will our customers benefit from such an application?

Establishing a whole new department to cope with the in-house conveyancing of mortgage bonds may not be the superior choice to make, due to the financial implications that the financial institutions will encounter as well as the basic question of customer satisfaction. Moving away from the core business to gain profitability at the possible expense of customer satisfaction is a gamble that might not be worth the higher transactional profitability.

It becomes apparent that, although the financial institutions have the financial muscle to embark on such an undertaking, their decision may not only be taken in the light of the financial benefits to be gained but rather measured against their current customer expectations and the value they add to their customer experience. If the institution of in-house conveyancing affects current customer service levels and satisfaction, the financial institutions may not take advantage of the proposed legislative changes but rather focus on their current competitive advantage and the measures required to increase this.

A case in point is the current clean-up being done by the management of Nedbank. Their acquisition a number of years ago for a reported R 400 million of the large law firm, Edward Nathan and Friedlander, has not delivered the financial results as anticipated in the initial planning. Currently it appears as if the management of Nedbank is planning to sell off Edward Nathan and Friedlander from their portfolio. This action should serve as a warning to those financial institutions who might venture away from their core business in the anticipation of increased profits.

### **3.5 COSTS VERSUS INCOME**

Having identified the various client bases and their possible responses or actions in the event of legislative changes, it is important to consider the permutations of effects on the financial viability of the company.

It is clear that any negative change to the current workflow being enjoyed by Olivier & O'Connor Incorporated will have a devastating effect on the company's capability to remain competitive in the marketplace. However, merely adapting their strategy, workflow, customer relationships and alliances may not result in an effective response to the problem. It was mentioned earlier that controlling finances and ensuring the retention of competitive advantage within the financial capabilities and constraints of the organisation, would result in a goal-orientated strategic performance and sustained competitiveness.

The inter-organisational reporting and controls must now become important in order to ensure that each division is monitored from a cost versus allowances point of view. Pre-approved budgets and targets must be set and maintained. These targets should be reviewed every quarter, and on a monthly basis the actual income and expenditure should be compared with the budgeted projections. Any deviation from these set goals must be analysed and rectified, because the alternative to poor financial control will be the demise of the company.

Each division should be costed in finite detail and this must be related to profitable income targets. If the targets are not met, management must act accordingly and change staff, systems or strategic planning to adapt to any difficulties and changes. It is imperative that management stay ahead of the game by constantly being aware of the effects of external challenges. The only way to monitor this is to maintain a strong “real time” accounting system coupled with strong management monitoring.

Management must not close their minds to radical changes if the external situation demands these. If a division becomes a financial burden, they should act in the best interests of the company and not retain a problem due to emotional involvement or archaic business principles. It must be remembered that in the current volatile market, the ideas and strategies of the past may not be the correct route to ensure future sustainability.

### 3.6 CONCLUSION

Olivier & O'Connor Incorporated virtually circumnavigated. After their initial startup they focused on what their customers wanted and performed profitably. Unfortunately, they lost sight of their core strength at great cost to themselves. Now they have to face the challenges presented or cease to exist.

The SWOT analysis has highlighted areas of concern and competencies that should be nurtured and utilised. No organisation exists in isolation and this is the lesson to be gained from their current situation. The environment, an organisation's capabilities and market are under continuous attack from competitors who wish to increase their market share at someone else's expense. An additional threat could be that legislative changes may affect their workflow, income and future survival and for this reason the organisation should constantly monitor their external market and align their internal strengths to cope with the challenges.

Olivier & O'Connor Incorporated are in the strategic position of having invested in skilled staff, up-to-date computer technology and the internal systems implemented to reclaim not only their lost market share but also a position of control in the current market.

The question now is, has management the vision and strength of conviction and self belief to implement a planned strategic route for the future, to lead the entire organisation in the fight for market share and sustainability? Or will they languish in the belief that they will not be affected?

All indications are that management has identified the process they need to follow and the core competencies that they need to build upon in order for Olivier & O'Connor Incorporated once again to perform to customer satisfaction and increase shareholders' wealth.

# CHAPTER 4

## MODEL COMPARISON

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### 4.1 INTRODUCTION

In Chapter Two certain options were identified that may present feasible strategy routing for the management of Olivier & O'Connor Incorporated. Although these are merely proposals it must be remembered that nothing can be cast in stone if one wants to compete in the current volatile market.

At present the company has to maintain constant surveillance of the external market to ensure that their market share is not attacked or diminished. If the proposed legislative changes are added to their particular industry problems, management will have to identify and implement a strategy that will maintain the current status quo. Coupled to this strategic adaptation must be the flexibility and speed of implementation required to ensure that their customer base and financial income viability are not compromised.

It remains imperative that the company management does not lose sight of its core business and the methodology required to ensure current customer satisfaction and maintenance of their competitive advantage.

It is obvious that the proposed legislation changes will impact on the company in a variety of ways. Now it is necessary to present a strategic routing for the organisation to implement if the proposed legislative changes become a reality.

The evidence presented in the previous chapters makes it apparent that the role players who directly affect the income stream of the organisation will take advantage of the legislative changes only when there is a profit incentive and achievable benefit.

Thus, to speculate is difficult, yet there are definite risks that the organisation will have to take in order to safeguard their company from financial demise.

The current company formation and systems will have to change in order to cope better with the expected changes in workflow and cash resources. In addition to this, the establishment of alliances or strategic partnerships will have to be negotiated and implemented.

A number of options were highlighted in Chapter Two which should be evaluated in the light of a specific strategy. The first was the proposed establishment of strategic alliances with other similar organisations.

#### **4.1.1 Alliances**

This option has a definite advantage, as the main benefit will be the reduction of non-income generating overheads. In addition to this, management now have the benefit of cutting back deadwood by only retaining the stronger employees and in doing so increasing their income generating capabilities, by in effect implementing economies of scale.

It makes sense that the expectation would be that the reduction of workflow would have an industry-wide effect and the small to medium sized law firms would have excess resources and insufficient work to absorb their capabilities. Although the formation of alliances would have a negative effect on human resources, the essential decision to be made will hinge upon management's desire to remain in practice as well as be competitive.

The creation of alliances affords those participating organisations the opportunity to streamline their administrative functions, reduce duplications of work and cut out non-productive resources. In order to identify the cost saving that could take place one should take a closer look at the human resources element that would change.

There are certain positions that only require one employee and for this reason alone any formal alliance makes good financial sense. The accountant, receptionist, administrative clerks, drivers and general office assistants could now be reduced accordingly to ensure smooth operational effectiveness and achieve a cost saving that would impact not only on the bottom line but also upon all the parties involved in the alliance. In addition to these savings the alliance would also save on asset and maintenance expenditure resulting from the cutbacks on vehicles, computers, software and the general maintenance costs associated with these resources.

The major benefit as expressed above would be the establishment of economies of scale and the proper implementation of such would afford the new organisation the benefit of supplying a service at a cost that other firms could not emulate.

This strategy coupled with a diversity of services could afford the organisation the ability to maintain and perhaps even increase their market share at the expense of those organisations who did not act upon the likelihood of legislation changes. The first mover theory would definitely apply in this scenario.

It must be emphasised that due to the arrogance and self-importance of the majority of legal practitioners, this type of remedy may not always be feasible because of each members desire to claim of the lion's share of the savings with the argument of his/her organisation delivering the greatest output. The practicality of such an arrangement is obvious but may be curtailed due to professional jealousy. The financial argument is the one that will enable an alliance or cause its breakdown.

The prospective partners should not argue from their current point of strength but rather as to what value their organisation will add in the new alliance. It must be emphasised that the individual companies would not be performing to their past capabilities due to the expected changes in the industry as a result of the proposed legislation changes, and it is

from this point of view that the alliances should be formed, as opposed to initiating alliances on the strength of past individual performances.

The actual benefits to be derived from the alliance will ensure the future sustainability of the alliance and this must not be clouded by a judgement that ponders to the ego of past performances of an organisation that more than likely may be forced to close its doors if it does not act with flexibility and focus to overcome the threats these proposed legislative changes may pose.

#### **4.1.2 Outsourcing and streamlining non-core functions**

The indication is very clear that external influences brought about by proposed legislation changes will have a material effect on the smaller law firms. As discussed earlier there are numerous avenues that the affected firms may follow to ensure their own survival and future competition in the legal industry.\* The concept of alliances has already been discussed and the next routing is very similar in concept, yet the individual firms do not form agreements in which they share fees.

If the management were to decide to outsource their non-core functions they might gain a short-term benefit in that they will concentrate solely on their income generating divisions.

Outsourcing and having other professional bodies perform non-core duties creates distinct benefits, as these organisations will ensure the most cost efficient methodology in order to maintain the profit level to which they aspire. It must be noted that there will only be a short-term benefit to the firm that outsources its administration or any other non-core department, as the other firm will have the continuous benefit of increased workflow and increased profit levels. Furthermore, the firms which perform the administrative function now become future competitors as they have direct insight into

\* (See Chapter 3, page 31-35)

the operations of Olivier & O'Connor Incorporated and could easily copy or establish partnerships with other law firms and in so doing give away information that is sensitive to operations.

Yet it is in their income generating divisions that the greatest threat will be realised. The likelihood that current customers will become opposition in the eventuality of the proposed legislation is the actual threat that management should focus upon. This requires insightful strategic planning and implementation as opposed to short-term quick fixes that result in short-term cash savings and not continued organisational sustainability.

#### **4.1.3 Virtual Offices**

In Chapter Two the benefits of virtual chambers were discussed and this remains a very promising solution to the problems that may arise if the legislation is changed. Unfortunately this also creates a different set of management problems such as implementation, control, client satisfaction and cost.

The effect upon the financial resources of the small to medium sized law firms will be enormous and this is where their strategic and management skills will be tested if they pursue the virtual office avenue. On their own, the legal practitioners do not have the capabilities or the expertise to establish the virtual office in such a manner as to make technological sense or create operational benefit.

It is clear that all the small to medium sized law firms will have to face up to challenges which they, as business wo/men, have never had to deal with in the past. The problem will be industry-wide, thus it will not be a unique situation for one group of management to deal with, but in this lies the difficulty. The majority of legal practitioners are just that, legal experts, and now they will be faced with business decisions that will radically affect the future sustainability of their particular organisations.

It must be remembered that the business acumen that these members of management have gained will be directed towards their particular fields of expertise and now they will need to make decisions that require additional skills, which they may or may not possess.

The possibility of establishing virtual chambers is more than a pipe dream, but to make it work the management of Olivier & O'Connor Incorporated and other such firms will have to do additional research into the practicalities of this task. In addition to this they will have to identify those partners in the industry who may share their beliefs in business methodology as well as work ethics. This will require collaboration with members of the IT industry, which has a different work methodology which could frustrate the establishment of the virtual office. Only after this exercise has been concluded will they be in a position to implement a virtual office and positively overcome the obstacles such as implementation, control, customer satisfaction and cost.

Modern information technologies have helped create adaptable operational systems by increasing the flexibility of human, physical and information resources. The virtual office will be a computer controlled process that strives to enhance flexibility and human resource application with minimum manual intervention.

#### **4.1.4 Model Proposal - Integrated Cost Leadership/Differentiation Strategy**

The ability of a firm to integrate the means of competition required to implement the cost leadership and differentiation strategies may be critical to developing competitive advantages.

“The company that successfully uses an integrated cost leadership/differentiation strategy should be in a better position to:

- (i) Adapt quickly to environmental changes;
- (ii) Learn new skills and technologies more quickly and
- (iii) Effectively leverage its core competencies while competing against rivals.” (Hitt, Ireland & Hoskisson, 2003)

Olivier & O'Connor Incorporated can gain a competitive advantage if they tightly integrate their primary and support activities. If they implement a cost leadership/differentiation strategy, they should reap the benefit of being able to adapt quickly as an organisation, learn rapidly due to their internal operational strengths and in so doing leverage their core competencies, while competing against their rivals in the legal industry.

There is evidence that suggests a relationship between successful use of the integrated strategy and above average returns. Yet, the implementation of such a strategy requires more than initiative on the part of management, it requires a high degree of strategic flexibility and management's commitment to such a routing.

The strategic flexibility that is required by the management of Olivier & O'Connor Incorporated as depicted in this case study, is one that will result from the development of internal systems that will suit customer requirements as well as deliver the results that guarantee future working relationships. Furthermore it will be rendered more effective with the introduction of procedures and methods that may allow the organisation the benefit of quick and effective responses to opportunities that may reduce costs and increase differentiation.

The diversity that a flexible operating system allows the organisation is identified when the benefits of computer controlled processes are highlighted by effective results with minimum manual intervention. This is exactly where the firm of Olivier & O'Connor

Incorporated, and many like them, can gain and maintain a competitive advantage, with the introduction and maintenance of a strong Information System that will reduce turnaround time and gain the most expensive commodity, which is time.

This was earlier identified as one of the strong points of Olivier & O'Connor Incorporated and is a field that will not only create diversity, if continuously updated and upgraded but also increase a distinct competitive advantage. This, in a nutshell, is exactly what management must strive for. Combined with internal processes, methodologies and boldness in forming relationships based on mutual benefit, the organisation will have the recipe for future customer retention and enhanced advantage.

Olivier & O'Connor Incorporated have already established proper electronic linkages with the larger financial institutions, but this must be expanded to their core of real estate customers. When creating a direct route of communication, the organisation will promote trust and maintain strong business relationships. This step will certainly enhance the firm's efforts to satisfy customer expectations in terms of quality and speed of service. These types of linkages via information networks provide another source of strategic flexibility.

Furthermore, management must create a culture of doing things right the first time. Although it is not a production entity, the service industry can benefit from the implementation of Total Quality Management practices. The legal industry has long laboured under the impression that they will produce once it suits them, yet now due to constraints that may be placed upon them by exterior forces, the realisation may dawn in that TQM is a definite option and benefit.

There are specific goals that a firm should strive for in order to gain maximum benefit from the implementation of TQM. These would be:

- (i) meeting customer expectations, while striving to exceed them;
- (ii) focusing on work activities to drive out inefficiencies and waste in all business processes;

(iii) incorporating improvements in all parts of the organisation while continuously striving for additional improvement opportunities.

Therefore, it becomes obvious that with the implementation of an effective TQM system the organisation gains a distinct benefit by developing the flexibility required to spot opportunities which will simultaneously increase differentiation and/or reduce company costs.

The essence of the implementation would be to focus on their core customers and this is of critical importance to the management of Olivier & O'Connor Incorporated. The expectation is that current core customers may not remain so in the future, if legislative changes do come about, but this does not mean that detailed analysis of their customers should be abandoned. In actual fact the analysis becomes critical because their future focus must remain on their perceived and proven future customer base.

## **4.2 CUSTOMER VALUE ANALYSIS**

“Inherent in the philosophy of value analysis is full retention for the customer of the usefulness and aesthetic functions of the product. Identifying and removing unnecessary cost, and thus improving value must be done without reducing in the slightest degree, quality, safety, life, reliability, dependability and the features of attractiveness that the customer wants!” (Miles, 1947)

It has become evident in today's marketplace that, due to the increasing sophistication of consumers, the rapidly expanding world of IT and intense competition, no organisation can depend on past performances to ensure its future viability.

The organisation must recognise the needs and wants of the customer market and supply these accordingly and continuously search for the additional service that will enhance their competitive advantage. Of vital importance in this instance is the fact that all

departmental functions must be integrated and deliver a combined solution and not be seen as independent contractors who are each fighting for survival.

The management of Olivier & O'Connor Incorporated should strive to deliver a service that their customers perceive as being of good quality, what they want, expect and finally receive.

#### **4.2.1 Rationale and Implication of Customer Value Analysis**

The strategic importance of CVA is very straightforward, in its simplest form; customer value is the most important source of strategic value.

A firm has the benefit of guaranteed profitability when it aligns its resources to provide superior customer value. This strategic decision provides the organisation with four sources of profitability.

- (i) Customers will pay premium prices for superior customer value.
- (ii) Leveraging the firms existing strengths offers a cost effective route to providing customer value.
- (iii) Word of mouth is the cheapest advertising, yet the most valuable method to growing market share.
- (iv) Superior customer value will protect the firm from losing its most valuable asset through customer defection.

Therefore, it becomes evident that by properly executing the delivery of superior service the organisation will gain the benefit of continuous financial performance.

The strongest argument for the implementation of CVA is the fact that customer retention is far more profitable than the marketing costs that will be incurred to attract new customers. In addition to this there is the fact of customer loyalty that must also be questioned. Certainly, the newly attracted customers may not share the

organisation's opinion of value and this may result in a short-lived increase in the customer base.

When this is compared to the cost of attracting those new customers, it is evident that they will not deliver the same profit margins as the existing and current loyal customer base. This, to a certain extent, results in a situation of profitless growth.

It is necessary to clarify the difference between customer satisfaction and value. The satisfaction is gained by the customer when the internal process delivers the service as expected, but the value to the customer is the result of the organisation's resources performing the right things well. Therefore, the customer value can be defined as the total benefits of ownership of the service less the total cost of the ownership.

#### **4.2.2 Application**

There are three processes that the management of Olivier & O'Connor Incorporated has to apply in order to determine their customer value.

- (i) Determine customer intimacy by making use of the following tools:
  - Customer surveys
  - Focus Panel Groups
  - Conjoint and Price Sensibility Analysis
  - Motivation Analysis
  - Unmet needs analysis.
- (ii) Conduct a formal customer value analysis by making use of the above tools as well as by determining the market perceived quality and price profile.
- (ii) Determine the strategic management of customer value.

Once the customer value analysis has been completed, the management of Olivier & O'Connor Incorporated will be in a position where they are aware of precisely which services provide superior customer value.

The third stage of the process is the factor upon which all success will hinge and that is the correct strategic management of the realised customer value. In this situation management needs to protect those activities, resources and processes that provide this value and seek ways to safeguard and strengthen them in the future.

The management of Olivier & O'Connor Incorporated is in the privileged position of knowing who their customer base is, as well as enjoying the loyalty of many years of support. Thus the application of a Customer Value Analysis may not be as time and cost consuming as is generally the case.

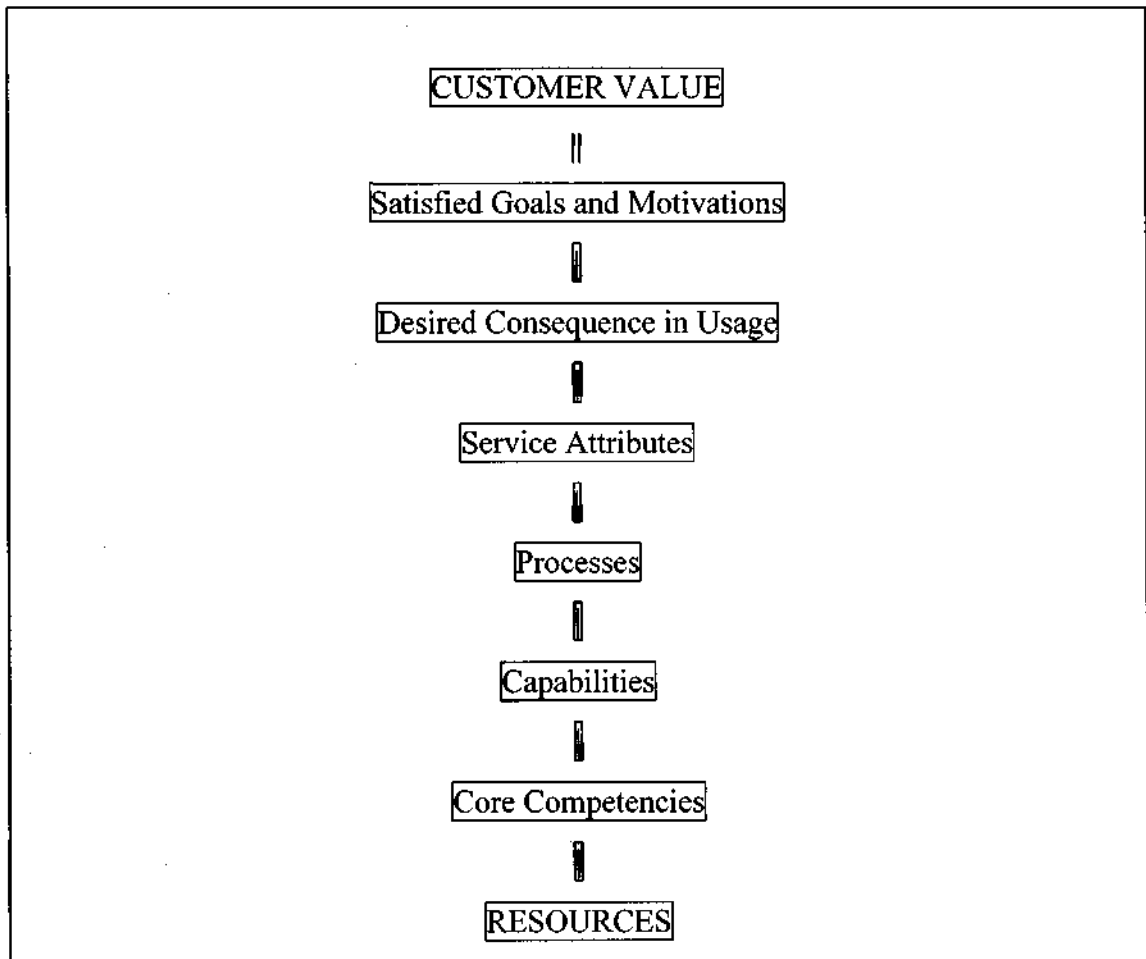


Figure 4.1 Strategic Management of Customer Value (Lynch,2000)

From the above depiction of the process of the management of customer value, the essence of customer value is obvious. The organisation should strive to match customer value with the firm's resources by providing a superior combination of product quality, service quality and price.

This can only be achieved once the organisation as a whole agree to the selected strategic option and then compete as a united front to implement their core competencies.

### **4.3 DIFFERENTIATION**

The model proposed to the management of Olivier & O'Connor Incorporated is one of an Integrated Cost/Differentiation Strategy. The preceding information has indicated that there are specific benefits that the organisation can attain if this is instituted correctly and managed accordingly, but the actual differentiation of their services must also be evaluated.

#### **4.3.1 Service Differentiation**

Olivier & O'Connor Incorporated have a fair diversity of services which they offer, but collectively they offer no more than any other small to medium sized law firm. In order to increase or create a sustainable competitive advantage, the management of the firm needs to apply some competitive thinking and implement services that no else can emulate, or alternatively supply the service at a cost that competitors find very hard to match.

An Integrated Cost/Differentiation Strategy should not only be implemented if and when the proposed legislative changes take place but rather be implemented as soon as possible to alleviate the possible repercussions that they could experience in such an event.

With FICA becoming such a prominent requirement and the relative customers being hampered by time due to their own schedules, perhaps it would be prudent for the management of Olivier & O'Connor Incorporated to consider looking at increasing their total customer experience in-house.

By appointing an in-house financial advisor, who operates in tandem with both the conveyancing as well as the commercial divisions, the organization could assist the customer with additional services which they in turn would not have to seek elsewhere. From a cost perspective the management should look at only recovering their fixed overhead, which such a position will achieve.

#### **4.3.1.1 Financial Service**

Law firms are perceived to be professional institutions that only supply the service for which they are contracted. It would be best to change this perception and supply a full in-house service that encompasses the whole spectrum of services which the customer requires when having to appoint a conveyancer in the event of property transactions, drawing up a last will and testament or drawing up a contract for a tenant. All these services are generally performed by legal practitioners.

If they had the benefit of additional professional financial advice the customer would be in a position to have his/her whole estate looked at and then structured in such a manner as to be tax effective while alive and after he/she passes away. Furthermore, the customer's insurance portfolio could now be linked with the current financial planning and this function would be performed by a professional who would be familiar with the customer's complete financial situation.

It must be realised that the majority of property transfer instructions will originate from customers who have never required the services of professional auditors, yet now they will receive a service that does not end with the property transaction but rather continues ad infinitum. By adding this type of functionality and service the organisation creates a new income stream and ties in the customer for a longer period of time. In addition to this, the organisation gains the benefit of increasing its deceased estates portfolio, which over time generates a healthy income advantage.

Thus the important factor that the management of Olivier & O'Connor Incorporated must consider is that they can create diversity of services as well as a very lucrative income stream.

Another factor to be considered in this scenario is the relevant law societies and their prescriptions with regard to the sharing of fees. This particular service must not share in

the income generated from conveyancing, establishment of trusts, finalisation of wills or any other pre-agreed legal service, but rather generate its own income from insurance policies, service fees for the establishment of financially beneficial trusts and advice on formulating the customers will where it concerns financial benefits and tax advantages.

#### **4.3.2 Conveyancing Tariffs**

Although conveyancing tariffs are set by the law society, the fact that these tariffs are merely a guideline, means there are several legal practitioners who charge fees in excess of the prescribed tariff. Although these tariffs are not cast in stone and merely serve as a guideline, the legal practitioner can charge his/her own price, more or less than the guideline amount.

These tariffs are payable by the customer, yet the customer was referred to the particular law firm by an estate agent. This agent is the particular customer upon whom the law firm focuses. The additional benefit to be gained by the legal practice in the event of him/her increasing his/her service capabilities was detailed earlier. For the writer will concentrate on the estate agent specifically.

In order to gain the loyalty and trust of the real estate industry, one must analyse their customers, even though they eventually become the customers of the legal firm. The estate agent has to create a base of customers who will always insist on using him/her in the possible purchase or sale of their home. If he/she can negotiate a better fee structure for his/her customer from the legal practitioner, he/she creates a sense of favouritism and benefit for the customer. Therein lies the benefit to the real estate agent, his/her customers would rather use him/her because of the additional service they receive and he/she has the benefit of appointing conveyancers who support his/her customers. The creation of a ring of loyalty benefits all players and the legal practitioner should consider charging tariffs that maintain the organisation's financial viability expectations but at the same time assist the estate agents customers.

#### **4.4 CONCLUSION**

The managerial changes required to cope with the effects of the possible legislation changes are plentiful and require skill, foresight, proper planning and resolution in implementing. Yet all of these can be compromised if the company as a whole does not tackle the problem. Strategic management changes are only effective once the whole team supports the future vision and strategy. Therefore the management's conviction and future goals must be attainable and beneficial to the organisation as a whole.

Any problem can be overcome if it is analysed and the required organisational changes are implemented with the speed and flexibility that will result in increased competitive advantage. Determining their customer value combined with a strong differentiation of services at affordable prices, while at the same time maintaining sustainable profitability, is the suggested route forward for Olivier & O'Connor Incorporated. The formation of alliances and enhanced dependability on IT capabilities are additional alternatives which can and will create a sustainable competitive advantage.

From a young age we are all told by our elders and teachers that we can determine our future by our choices and decisions. In this case the future of the organisation rests with the managements focus on the possible threats external changes can bring, and their desire to remain competitive in a very lucrative yet challenging market. The wealth of resources at their disposal allows the management of Olivier & O'Connor Incorporated the benefit of overcoming any external threat as long as they act swiftly, innovatively and incisively.

# CHAPTER FIVE

## FUTURE STRATEGY – CHANGE IMPLEMENTATION

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### 5.1 INTRODUCTION

“To merely speculate upon the reaction of an industry would be unwise, you should rather plan your own course of action” (Schaarl, Olivier & O’Connor Incorporated).

The fact that the industry as a whole will be affected is guaranteed, yet the reaction and methods applied by different players in the legal industry will vary to suit each competitor’s financial capabilities and the resources they can utilise.

In this lies their strength, the actual realisation of the problem, the science of problem-related research and the implementation of methodologies that will negate the effects of legislation changes and effectively enhance their competitive advantage.

#### 5.1.1 Overcoming the institution of change in conveyancing legislation

Legislative changes specific to the conveyancing industry will have a direct impact on the day to day operational effectiveness of Olivier & O’Connor Incorporated due to the organisation’s dependence upon the income derived from this specific service. In previous chapters the effects on the resources, assets and financial viability were discussed in depth and will therefore only be highlighted now as factors that will bear the brunt of changes in legislation.

The speed and flexibility employed by the management will determine the success of their strategic response in the face of such a major external threat. The strategic decisions are made relatively simple in this case study due to the many variables that exist and the major unknown factors which are time, and the actual likelihood of the implementation of

these changes. Therefore the case scenario as set in Chapter One, even though very probable, may elicit differing responses from different sectors of the legal industry.

In this case study, the requirement is to identify the possible strategic route which Olivier & O'Connor Incorporated should take to ensure their future sustainability, and the commitment of management to make it work.

From a practical point of view, there is no alternative but to institute an Integrated Cost/Differentiation strategy in the event of legislative changes. This strategic route will ensure that management remains flexible, innovative and committed to the organisation's goals, which must be sustainability at profitable returns.

The object of strategic change must be to counter the effects upon the organisation which possible legislative changes will bring about. Careful analysis coupled with strategic route which emphasise the organisation's strengths and ensure that their abundance of resources is utilised to its maximum potential in order to maintain a consistently profitable delivery of service, is the ultimate purpose.

## **5.2 GOVERNMENT CONSIDERATIONS**

Legislation that affects the conveyancing industry cannot be instituted without careful consideration and research, as such amendments will have far reaching effects not only in the legal industry but in related industries as well.

The government will have to consider the financial implications of instituting such changes and the loss of control, which they currently have. Due to the current structure, the legal practitioner is responsible for all the operations required to perform a property transfer or any other transaction that requires the deeds office as the controlling and transferring body. The legal practitioner must ensure that all clearances are settled with the relevant municipality, all transfer duties paid to the receiver and that all financial

effects are finalised prior to the documentation being handed in to the deeds office for the actual property transfer.

### **5.2.1 Deeds Office**

In the Appellate Division case of *Chief Registrar of Deeds v Hamilton-Brown* 1969 (2) SA 543 one of the judges referred to “the mysterious procedures, known only to conveyancers and officers in the Deeds Office, which are involved in transferring titles to land where successive transactions are simultaneously registered” (Jones, p14,1976).

Although the statement appears lighthearted there is a great deal of truth to it as well. Within the legal fraternity there is a distinct awareness that conveyancers practise law that is unknown to many of their peers and this ignorance causes uncertainty.

The “mysterious procedures” mentioned earlier are not all laid down in the Deeds Registries Act because much of the practice in deed registries and conveyancing is merely long established custom. It is these procedures to which the conveyancer must conform once he/she is suitably qualified, after practical examination and admission to the Supreme Court of South Africa, and furthermore the candidate may not practise as a conveyancer until he/she has been admitted as an attorney. Therefore, the task is not one merely passed on to a professional person but rather a specific duty that is accompanied by great responsibility and which must be performed to the satisfaction and best interest of the customer.

Effectively, the actual processes of registration and cancellation of bonds, notarial bonds, property transfers and servitudes all take place at the deeds office. Under the guidance of the registrar and his/her staff, the conveyancers perform these functions within the prescribed parameters and laws. Combined with this process is the initial work to be done by the conveyancer.

Firstly the conveyancer has to ensure that the selling party has to have fulfilled all financial requirements of the local municipal authority, paid all transfer fees to the receiver of revenue or complied with the VAT Act if the transaction so requires. Earlier the role of the conveyancer was described but the most important factor now is that one party is responsible and this is the conveyancer. If the other role players in the transaction were permitted to take advantage of the proposed legislative changes, this would result in diverse parties being responsible and this could result in severe time problems.

The final consideration must now be the customer and he/she is not benefiting from this type of service because the property transfer is now going to take longer than the current system allows. Thus, all the parties are affected, the customer receives his/her selling price later, the purchaser takes occupation later, the agent receives his/her commission later and the bank loses income as the new bond is only activated later.

Thus the government currently enjoys the benefit of being able to place the problem at the door of one player, the conveyancer, and must seriously consider the implication that changes in legislation would have upon their cash-flow at the deeds office as well as the clearance of all tax issues at the Receiver of Revenue.

### **5.2.2 Local Municipal Councils**

The current ineffectiveness experienced by the majority of municipal councils due to a lack of resources and extensive arrears situations means that they cannot afford a change in their planned revenue. The current determination by the deeds office in accordance with the local councils is that all clearance certificates must be paid prior to the registration of ownership at the deeds office.

In the recent past it was common practice for conveyancers to submit their documents for lodgment and once the transaction comes up for “prep”, (this is the status a transfer or bond registration document attains for final checking prior to registration), they settled the town council. Any delays at that point in time caused by the municipality might force

a default and the matter would have to be re-lodged, which represented a major loss of turnaround time and efficiency.

The implementation of the new ruling has almost ensured that the conveyancer becomes the debt collector for the municipality. All rates, taxes, electrical charges and arrears must be settled prior to lodgment in the deeds office. Therefore, if the conveyancer wants to ensure that the transaction proceeds through the deeds office in a timely fashion, he/she needs to ensure that all these fees are paid. It is worthwhile remembering that many homes are sold where the seller experiences financial difficulties and effectively the conveyancer now becomes the facilitator who ensures that the municipality account is settled prior to the actual sale being registered.

This is another factor that the government would have to consider prior to the proposed changes. If the process is driven by a multitude of parties, they should establish which party must take responsibility for the clearance of all outstanding fees to the local municipality. Another consideration would be to calculate the possible change in cash-flow which the municipalities might experience due to unnecessary delays in the transfer process. Currently this is a problem that all local councils would prefer to avoid due to their own problems in supplying the service delivery which the voters demand and expect. Government would be unwise to add to their own problems by creating additional difficulties for which in the short term there do not appear to be quick solutions.

### **5.2.3 Receiver of Revenue**

The Deeds Registry Act determines that all relevant transfer duties related to a particular property transaction must be paid to the Receiver of Revenue prior to the lodgment of any property transfer documentation therein. Once again an external government organisation receives the benefit of administrative efficiencies because current legislation ensures that the conveyancer pays all required fees to the Receiver of Revenue prior to the registration of a property transaction.

Transactions that attract VAT are managed in a similar manner by the conveyancer on behalf of the Receiver of Revenue. The ease of correlation between fees paid into the Receiver for property transactions and the actual change of ownership is now achieved through the current system. The transfer fees are paid to the Receiver of Revenue and at any point in time they can be linked to a particular transaction at both the Receiver as well as the Deeds Office.

There is a distinct risk if this process of lodgment is tampered with. The net result could be that the Receiver of Revenue would have to employ additional resources to cope with a different process caused by input from different parties in the same transaction.

### **5.3 FINANCIAL INSTITUTIONS**

There are distinct financial advantages to be gained by the financial institutions if the proposed legislation comes into being, but aligned to those are major management and strategic decisions needing to be formulated. Earlier arguments showed that it would be prudent for them to analyse the areas of increased profitability when compared to the additional costs involved if they retained the majority of their work.

The creation of large internal or company owned legal organisations such as Nedbank and Edward Nathan Friedlander, must be evaluated and compared against the actual core strengths of the institutions and their customer valuation. If they are prepared to risk their customer base and pursue a different market merely to increase their own profitability, then they would be moving away from their core strength which is banking. The gamble may be worthwhile and financially viable, yet it could alter the position of the institution in the minds of their banking customers.

Additional considerations would be the actual cost of setting up such internal law divisions or alternatively follow the Nedbank route. Coupled with this installation would be the change in the current workflow and processes.

The expense the major financial institutions went to, to create the software for packages such as Regibond by Absa, L@W by Standard Bank and now also utilised by FNB, to link the financial institutions with all their panel attorneys with electronic bond instructions, will all go to waste should any change be implemented. The historical cost of research and development to ensure that these products eventually produced the desired results ran into millions.

The research and development done by L@W not only to connect the bank with their panel attorneys but the additional link which provides direct communication to and from the agents and their respective attorneys amounted to millions of Rands and that does not take into account all the man hours and commitment.

These are factors that might diminish the eagerness of some of the financial institutions to take advantage of the proposed legislation changes, should they be promulgated.

### **5.3 FUTURE SUSTAINABILITY**

“A sustained competitive advantage occurs when a firm implements a value creating strategy and other companies are unable to duplicate it or find it too costly to imitate.” \*

It would be impossible to say when or whether the government will eventually decide to implement the legislative changes that have been speculated about for such a long time. The reality is that organisations like Olivier & O'Connor Incorporated should constantly analyse their internal and external environments. The benefit of being aware of environmental changes allows the management the advantage of being able to formulate effective strategy decisions and implement these accordingly. The decision to match the conditions of an ever changing market and competitive structure with the firm's evolving resources, capabilities and competencies, would be effective strategic action that could result in the continuous sustainability of the organisation.

\* (Hitt, Ireland, Hoskisson, 2003).

Olivier & O'Connor Incorporated have the benefit of possessing capabilities that will enhance their sustainable advantage. Their ability to satisfy their client's needs and requirements holds a value that allows them to exploit opportunities or neutralise external threats. This value is derived from their internal resources such as their staff component that have built up relationships over time and nurtured these according to customer desires. It is clear that these capabilities are both very valuable to the organisation and the value which they create is irreplaceable.

The fact that the staff affords the organisation an advantage makes it very difficult for competitors to emulate or copy purely because this capability is almost invisible yet constantly present. Management understands that one of their biggest assets is not reflected on their balance sheet, but rather affords them the capability to neutralise external attacks on their customer base.

The options available to management which could assist them to maintain a position of competitive advantage has clearly been indicated by the possible external circumstance that may arise should government implement legislation changes. The immediate reaction should be one of adaptation of their business level strategy. In the previous chapters, the sensible future strategic route has been determined by analysis of both the internal and external environments. It is clear that the selection of a business level strategy will be dependant on the evaluation of two types of potential competitive advantage.

These are:

- either the improvement and implementation of internal systems that would allow the organisation to compete at a lower cost than any of their rivals,
- or the ability to differentiate their services in such a manner as to be able to command a premium price.

The analysis has proved that Olivier & O'Connor Incorporated have the ability to implement an Integrated Cost Leadership and Differentiation strategy. The organisations

future sustainability is dependent on management's ability to implement this particular mix correctly. Their resource availability clearly represents the internal ability. The management must now prove their worth by managing this desired strategy, to their competitive advantage.

## **5.4 CONCLUSION**

The difficulty in trying to assess the reactions of a market and an industry to hypotheses allows the writer the benefit of selective decision making. Yet, the analysis performed as well as discussions with players in the industry has prevented the decision-making from being clouded by personal influences, but rather to be based on the expected market effects as anticipated by parties who will be directly affected by any legislative changes.

The investigation has presented many options available to the organisations expected to be affected as well as the likely changes that may be the result of these proposals. The response by the industry cannot be cast in stone due to the limitations, resources and management capabilities of each organisation.

Olivier & O'Connor Incorporated have the benefit of strong management, excellent human resources and IT capabilities. Coupled with their financial strength, they have the ability to adapt their internal systems when and if the external environment does change. The anticipated response from their customer base is to be expected, but by performing a comprehensive customer value analysis, they will identify the particular customer segments which they need to pursue and those that will fall away. Their particular strength in IT must be nurtured and maintained, for this will eventually be the key to their future sustainability.

The response from the different market sectors, i.e., estate agents, financial institutions and bond originators, will vary as each strives to take maximum advantage of the proposed changes in legislation. Although the anticipation is that each will analyse the benefit to be gained when compared to the changes to and effects on their current status, this must not leave the management of Olivier & O'Connor Incorporated with a sense of security, but rather an awareness of the need for constant monitoring and innovation.

The government also has a role to play prior to implementing any legislative changes that will affect the conveyancing industry and that is to consider carefully the current benefits

they enjoy due to systems and procedures which have been in place for a number of years and are currently producing results that benefit the government in many ways, least of all the assurance that one party is currently responsible for their financial control. It is a lot easier to promote legislative changes for the sake of political pandering when compared to rectifying problems in local government, deeds offices and at the receiver of revenue due to the initiation of changes without the proper investigation and analysis which such changes will produce.

The investigation into the effects which proposed legislative changes may have upon the small to medium sized law firm has highlighted certain criteria that must be addressed by such organisations if they intend competing in this lucrative yet extremely competitive industry. All the indications are that some of these companies will fail if they do not make dramatic business decisions, and some will fail because they do not have the resources or the foresight to battle the changes which the external influences will cause.

Olivier & O'Connor Incorporated have the competitive advantage in their market and should be able to sustain this for many years to come. The indication is that legislative changes will affect the organisation radically, but innovative thinking and responses to external changes may allow the organisation to retain their market share. The implementation of a new strategy, combined with value adding customer benefits, will ensure that they grow in customer perception and satisfaction. To adapt their current strategy will not be so difficult by virtue of their internal strengths and organisational flexibility. Their future sustainability rests squarely on the shoulders of management and their ability to analyse market changes, the forces that caused them and the conviction necessary to implement a strategy that will maintain their competitive advantage.

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## **APPENDIX 1**

### **Questionnaire:**

It has been rumoured for a number of years that the exclusivity of the conveyancing practice may be changed in the future. The possible allowance that qualified conveyancers may practice from financial institutions as well as from estate agencies may become a distinct reality. This situation may result in a number of changes in the small and medium sized law firms, both from a financial point of view as well as a strategic perspective. Seen in the light of this possible scenario, please address the following questions and answer how you may approach this scenario.

#### **Question 1:**

Do you believe that the proposed legislation changes, with specific regard to conveyancing, could be implemented?

#### **Question 2:**

Will the implementation of such proposals impact on your company?

#### **Question 3:**

What internal changes, systems and policies, will you implement in this scenario?

#### **Question 4:**

If you consider the amount of work you currently receive from financial institutions, bonds and cancellations etc, how much of this will they retain to perform in-house and what percentage will they pass on and to whom? (will it only be to panel members or will they cut the panel to suit?)

#### **Question 5:**

The likelihood that the larger estate agencies may take advantage of such a situation is very high and they will definitely install in-house conveyancers to take the opportunity in order to increase their income. How do you propose to retain your market share for property transfers?

#### **Question 6:**

How will you adjust your company strategy in order to retain not only your market share but your current competitive advantage? (Partnerships/Alliances/Virtual offices?)