FUNDING LEGAL AID

Mafokwane M.I

Student Number: 23231343

Dissertation Submitted to the Graduate School of

Business and Government Leadership

North-West University

Dissertation in partial fulfilment of the requirement for the Masters Degree in Business Administration

Supervisor: Dr. J Kruger

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DECLARATION

I, Maphipidi Irene Mafokwane, hereby declare that this dissertation for the MBA in Graduate School of Business and Government Leadership at the North West University (Mahikeng Campus) is my original work and has not been submitted by me or any other person at this or any other university for any qualification. I also declare that all reference materials contained in this study have been duly acknowledged.

Signature: ----------

Name: Maphipidi Irene Mafokwane

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Lastly, I want to acknowledge my parents, my four sisters, five brothers and my late brother Joshua, we were born eleven children from one couple. I want to be a good role model to their children. It is my hope that they can pursue their own education and make a different to the lives of people.

ABSTRACT

Government programs usually do not earn proceeds; this is making it difficult to fund legal aid. Legal aid has a mandate to provide legal services to the poor on state expense. During this time of economic crises and continuous recession, it is becoming difficult to increase service delivery, which includes legal services to the poor. For legal aid to expand its services and to deliver quality legal services, it needs resources. Resources in the form of money require adequate funding and cost effectiveness.

The purpose of this study is to examine how legal aid can be funded and how the budgeting system can support service delivery during fiscal deficits in conditions of recession and economic frustrations. With the current economic status, it has been a challenge for organisations to balance the organisational objectives with economic factors to overcome budget constraints.

Data Collected from Legal Aid South Africa is used to test two research questions. Results confirm that the use of alternative dispute resolution save the cost of litigation by using more paralegal avoiding the use of more legal professionals; the use of internal staff is cost effective than the use of judicare (external legal professionals); trust account is a powerful tool to increase funds for legal aid and that legal aid can be funded by third-party investors.

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FUNDING LEGAL AID IN SOUTH AFRICA

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2013/01/31

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FUNDING LEGAL AID IN SOUTH AFRICA

CHAPTER 1: ORIENTATION

1.1 Introduction and general background of the study

A budget is an economic map outlining how much money an organisation has at its disposal and how much it needs to spend on important operating costs. It is an outstanding way of balancing cash flow: making sure that you spend enough money on your operational needs, without overspending and putting yourself under pressure. It also provides a clear overview of where your money is going if you need to cut costs.

In this study we focused on budgets and cost monitoring of Legal Aid in South Africa. Legal Aid South Africa has its own resources to fulfil its objectives of offering free legal services to the poor. It is funded from the national fisc and it is accountable to Parliament for service delivery and effective use of its budget allocation.

The IMF (International Monetary Fund) Code of Good Practices on Fiscal Transparency underlines the importance of clear fiscal roles and responsibilities; public availability of information; open processes of budget preparation, execution, and reporting; and independent reviews and assurance of the integrity of fiscal forecasts, information, and accounts (IMF, 2001). Although not all African countries can meet all aspects of the IMF Code at this time, its principles are generally applicable, and progress toward achieving its standards should be a major objective of budget reform in Africa (Campo, 2007).

For an organisation to be able to meet its objectives, budgets should be linked with strategies. However, there is a challenge in linking budget and strategies; the fundamental structural inappropriateness of the budgeting process and strategic planning also make it complex to link budgeting, which is a short-term process and strategy, which is a long-term process.

Strategic planning is focusing on future and proactive procedures in which exactness of information is not of primary importance. Budgeting is a traditional process, sloping toward the present and past; accuracy is of primary importance. The two processes are dissimilar and must be managed independently, yet they must also be coordinated. It is the organisation's duty to coordinate the budget to fit into the strategy.

With regard to Legal Aid South Africa, the lack of financial controls and sound management frustrated honest practitioners who had to wait unreasonably lengthy periods for the payment of accounts and the lack of financial controls also provided the opportunity for corrupt private payment of accounts and created the opportunity to corrupt private practitioners (Judicare) to defraud the organisation (Clark, 2007).

Budgeting now occupies a central position in the design and operation of most management accounting systems. However, regardless of its problems and the other means for influencing behaviour, the preparation of a quantitative statement of expectations regarding the allocation of the organisation's resources tends to be seen as an essential, indeed indispensable, feature of the battery of administrative control. Nevertheless, despite its wide acceptance, budgeting remains one of the most intriguing and perplexing of management accounting procedures (Srinivasan, 1980).

1.2 Purpose of the study

The purpose of this study is to examine how legal aid can be funded and how the budgeting system can support service delivery during fiscal deficits in times of recession and economic frustrations. In the current economic climate, it has been a challenge for organisations to balance the organisational objectives with economic factors to overcome budget constraints. Various strategies by public and private sector leaders to build support were also examined.

It is strategic to prepare organisations for the future to meet service delivery challenges regardless of bottlenecks, such as limited budget and new regulations that influence how an organisation may make or not make adjustments to its organisational strategies.

The desire for an appropriate budgeting system or the improvement of an existing one is a challenging task that faces both practitioners and researchers. Understanding the budgeting process, discovering the different factors in play and knowing why things work the way they do is an indispensable (though not the only) part of determining how to make them work better, especially in an environment were little exploratory work has been done before (Turkin, 1981).

1.3 Problem statement

Government programmes usually do not earn proceeds; this is making it difficult to fund legal aid. During this time of economic crises and continuous recession, it is becoming difficult to increase service delivery, which includes legal services to the poor. Public services cannot function without resources. For legal aid to function, to be sustainable and to expand its services, it needs resources. Resources in the form of money require adequate funding and cost effectiveness.

Organisations regularly appoint consultants to examine the internal processes, and also benchmark operations against those of their rivals, and create internal performance management metrics to judge efficiency and results. To be truly successful in ensuring effective funding, these mechanisms need to consider criteria appropriate to judgement and need to provide a method to improve the status.

Times of economic crises highlight the need for sound cost management, but the need is always there. As stewards of our planet, our organisations, and our families, leaders have a great responsibility, but this responsibility brings opportunity as well: the opportunity to learn together and discover new paths. To open ourselves to this challenge, we must engage in deeper, more mindful, and more compassionate dialogue with each other (Fairnay, 2010).

In this study the main problem is:

It is not known what the best funding model is for Legal Aid in South Africa.

The challenge at hand is to develop a funding model, which will put legal aid at a competitive stage regardless of the economic crisis. Legal Aid SA should come up with a model to increase funds in order to increase service delivery.

1.4 Guiding questions

The guiding questions of this research report are informed by the following research objectives.

Research Objective 1: To determine the best mechanism of allocating funds.

Research Objective 2: To determine the best model needed to save costs.

1.5 Significance of the study

Legal aid offers legal services to the poor at state expense. However, due to the changes in the economy and the level of recession, it is becoming difficult to increase the services in legal aid in South Africa, especially in civil legal aid. During these times of economic stress legal aid should be able to survive by finding a model to fund the legal services.

Legal services are becoming more expensive, which includes the cost of paying legal services professionals. It is necessary to come up with a model that will save as much money as possible in order to increase the level of service. The research may also benefit other statutory bodies and other Legal Aid systems that share similar organisational purposes and processes.

1.6 Research Methodology

The method that is used to collect date is through secondary data. Data has been drawn from the legal aid system in order to compare the costs of the job done. This was done to assist in finding the process that will best save costs in the organisation to increase funds in order to have a reasonable budget during times of economic crisis.

Differential cost is a business term that refers to the difference in costs for a business when choosing between two alternatives. It is an important tool in the decision-making process for businesses looking to make possible changes to a business model. Closely associated with marginal cost, a term favoured by economists, differential cost can refer to either fixed or variable costs. The relevance of these costs is obvious when judged alongside differential revenue to give businesses a perspective on the positives or negatives of a decision.

The criterion used to select the relevant data through this study is through the administration data, which provided the cost of litigating, which is compared to the cost of using more paralegals in the case of alternative dispute resolution. The researcher used differential cost to compare both methods based on real expenditure.

1.7 Limitations of the study

This study relates only to South African Legal Aid. A further limitation of this study is that the data that is used relates to the business process, which operates in South Africa.

Another limitation is that most administration managers who prepare budgets and manage costs are not professional accountants; thus every effort was made to avoid or limit the financial accounting language in order to suit their level of understanding.

1.8 Summary outline per chapter

This study has been presented in five distinct chapters. A summary outline per chapter is given hereafter:

Chapter 1 Introduction and overview of the study

This chapter provides a general background to the study; it outlines the purpose of the study and documents the problem statement and the significance of the study. Chapter one also summarises the methodology adopted and highlights the limitations of the study.

Chapter 2 Literature review

This chapter contains a review of the literature based on budgets and cost management. The review covers the definition of budgets and cost and how this affects organisations if not drafted and monitored consistently. This chapter also includes a review of various legal aid systems and institutional arrangements in other countries and compares these to the legal aid system in South Africa.

Literature from other studies on funding legal aid systems in various countries has also been studied in order to combine the variances to come up with a good model to be used to fund legal aid in South Africa. This chapter is not only limited to public sectors but private sectors were also looked at in order to compare the use of resources and cost management to assist in taking a decision for the best model to be used in the organisation.

Chapter 3 Research methodology

This chapter gives the research methodology used in this study. It puts forward the researcher's ideas, as well as the basis on which participants were selected. The statistical analysis techniques, ethical considerations and limitations of the study are fully expounded upon in this chapter.

Chapter 4 Data discussion

This chapter presents the results of the data collection activities and reports on the results of the statistical tests undertaken. The chapter discusses the data collected and interpreted.

Chapter 5 Recommendation, areas for further research and conclusion

This final chapter provides recommendations on the best funding model for Legal Aid in South Africa and how to improve the budget systems and cost management systems taking into account government priorities, while the Policies and Procedures Manual was maintained to ensure compliance with statutory requirements in order to contribute positively to organisational effectiveness. This chapter concludes the study.

1.9 Ethics

Permission to collect data from Legal Aid South Africa has been granted by the Chief Executive Officer (CEO) and the Human Resources Executive (HRE) of the organisation. Data that has been collected is confidential and therefore will be treated as such. The permission granted for this study was granted for study purposes only; therefore no one will be allowed to use this information without consulting the CEO and the HRE.

1.10 Conclusion

This chapter provides a general background to the study. It outlines the general purpose of the study and documents the problem statement, methodology and the significance of the study.

CHAPTER 2: LITERATURE REVIEW

2.1. The Legal Aid Act

The Legal Aid Act (hereafter LAA) came into operation on 26 March 1969 with the main aim being to provide legal aid (and thereby also legal representation) for indigent persons, and for that purpose to establish a Legal Aid Board and to define its powers and functions. Under s 2 of the LAA the LAB is established as a corporate body with the objectives of rendering or making available legal aid to indigent persons and providing legal representation at state expense as contemplated in the Constitution, subject to the provisions of the LAA and in order to achieve its objectives (Legal Aid Act, Act 22 of 1969).

The first law centre was established in North Kensington, London, in 1969 by a solicitor assisted by a trainee solicitor. It offered a free service to its local community and where possible legal aid was claimed for clients. This was quickly followed by the establishment of Brent (in London) and Cardiff Law Centres (Hyne, 2008).

However, the Law Society was initially hostile to the development of law centres as solicitors in private practice felt threatened by the establishment of a "salaried legal service." An agreement was eventually struck with the Law Society, which allowed the continued existence of law centres on the understanding that they would specialise in areas of work, which did not impinge on the commercial interests of private practice. After this agreement Law Centres mainly offered services in welfare rights, immigration, employment, discrimination, housing and public law. These areas of law collectively became known as "social welfare law" and this equates to the internationally more recognised term of "poverty law" (Hyne, 2008).

Monster and Barendrecht (2012) stated that there seems to be common understanding between the organisations that an integrated approach of legal and psychological services to settle conflict is an effective way of helping clients. The practices show a rich picture of ways to deliver the service. It is important that the differences between the culture and societies involved are acknowledged. Yet, despite the cultural differences, it seems that there are common needs and approaches in dispute resolution.

They further stated that many indicated challenges, such as how to engage the other party to a dispute in the process, or how to organise an independent decision-maker are very similar in the different practitioners from different forms; one of which is the possibility to identify best practices of different organisations and develop ('tools') on those practices that can be shared, trailed and used by everyone (Monster and Barendrecht, 2012).

2.2. **Dispute resolution and mediation**

Hodges *et al.* (2009) studied the cost of civil litigation, stating that from the state's perspective, there needs to be a balance between making justice sufficiently accessible, in order to maintain the rule of law and a stable society and economy, whilst arranging that the public cost of providing the civil justice system is covered, from some combination of general public funds and/or of payments by individual litigants. The costs rules provide a number of incentives or barriers to litigating parties, in relation to bringing, defending, settling or fighting disputes (Hodges *et al.*, 2009)

They further stated that such rules also indicate priorities between different judicial or alternative dispute resolution pathways, or between the dispute resolution systems available in different jurisdictions. In this last respect, costs regimes are topical because they indicate the level of comparative efficiency between different court systems, and whether these systems involve procedures that are too costly or too slow. Lastly, from the perspective of lawyers or other intermediaries, such as experts, bailiffs or witnesses, the costs rules govern the amount of remuneration that can be earned, and this will affect the quality and quantum of supply of such services (Hodges *et al.*, 2009).

McLellan (2008) stated that finding alternatives to litigation is especially important for legal aid programmes, as the increased time and expense of litigation reduces the number of indigent clients that can be served. How do we provide indigent clients with quality legal representation and an alternative to waging their legal conflicts in the courtroom? How do we change the mindset that legal conflict must be fought in the adversarial posture of the courtroom?

Furthermore, he stated that legal aid programmes by their nature have limited resources, and the legal aid programme was no different. While the programme provided volunteer lawyers for one side of the dispute, it would not provide counsel for the other, since it is viewed as the first applicant for legal services as the programme's client. Under this view, a conflict of interest would be created if counsel were provided for the other side of the dispute. More importantly, the programme simply did not have enough volunteer lawyers to handle all the family law cases presented to it. For this reason, the programme regarded mediation as one method to handle the large number of cases (McLellan, 2008).

In conclusion he stated that at issue for the legal aid programme was how to obtain more volunteer lawyers so that those who asked for representation could get the assistance they needed to make informed choices in mediation (McLellan, 2008).

Kokke and Vuskovik (2010) studied mediation as a tool to reduce cost. Their study focused on Nicaragua – one of the poorest countries in the Western Hemisphere. They stated that a new type of intervention has been developed to facilitate access to justice for the rural poor. Facilitators Judicial are volunteers, selected by the community, who assist judges and other legal authorities in effecting the rule of law in their area. One of their tasks is to facilitate mediations. They work under the supervision of the local judge. This intervention offers a new way to integrate informal alternative dispute resolution operated by representatives of the local communities with the formal justice sector.

They further state that part of the task of the Facilitator is to educate the population of his community on legal matters. Thereto the facilitator organizes meetings regarding various topics on a regular basis. In addition, such legal empowerment efforts may also take place in a more informal way during various activities within the community, such as after church services (Kokke and Vuskovic, 2010).

In addition, an important task of the Facilitator is to mediate conflicts. Such extra-judicial mediations are within the mandate of the Facilitators in all civil cases if the parties agree (this is not yet regulated) and in those criminal cases specified in the Criminal Procedural Law, i.e. all misdemeanours and some felonies. The usual process is that the facilitator, upon receiving a case, first judges whether the case can be mediated or should be referred to the judge or another authority. In case mediation is permitted, but not successful, the case can also be referred to a formal authority at a later stage (Kokke and Vuskovic, 2010).

Caruana (2002) stated that as the American experience has shown, lawyer dependent justice systems are faced with three choices in dealing with the challenge posed by unrepresented litigants. One is to ensure greater subsidised access to lawyers; a second is to transform all litigants into lawyers; and a third involves changing the system so that lawyers are not essential. To these should be added the option of reducing legal fees to make them more affordable to more people. With legal aid levels unlikely to be increased to achieve the first outcome, at least in the short term, the second being impractical, and the reduction of fees highly unlikely, the only real option is to modify the system to make it more accessible to non-lawyers.

Macey (2007) focuses his study on opportunity cost of mediation stating that legal costs are not just nonlinear over time but actually rather lumpy This has the effect that the larger the gap to the next legal cost and the smaller those projected legal costs, the lower the opportunity cost and settlement occurring, particularly if they themselves are costly. Conversely the closer and larger the projected next legal costs, the greater the projected next legal costs, and the greater the incentive to negotiate and settle. This implies that settlement is likely to be negotiated and actually to occur within very specific windows, e.g. before major trial or investigation costs are incurred and on the court steps, before a lengthy scheduled trial.

He advocated the alternative dispute resolution fit: Firstly, the mediator/negotiator being perceived as more trustworthy by each side, that the opponent may be able to elicit better information about the expected payoff at trial and risk preferences per counterparty. When transmitted to the other side this can allow the other side to gain a more accurate understanding of the location of the Settlement Acceptance Frontier (SAF) and Settlement Offer Frontier (SOF) curves, the location of intersection point X and hence improve understanding of the space for prior settlement. Secondly, any underlying "grudge factor" in direct negotiations will effectively reduce net risk premier and have the effect of moving the Settlement Acceptance Frontier and Settlement Offer Frontier apart, thus reducing the feasible set of settlement agreement. The mediator by stepping in can reverse this particular process (Macey, 2007).

Thirdly, by establishing better communication with each side, the mediator has more opportunity to identify tradable items on each side and to get each side to revalue each of these items in a way conducive to settlement. By revaluing and then swapping different tradable items of each side, the mediator can reduce the costs of moving to settlement on both sides when seen from each side's own terms. Fourthly, the negotiator/mediator can focus the minds of participants on harsh realities, i.e. legal costs and the cost benefits of trial, once again bringing the SAF and SOF closer together by increasing perceived legal costs and perceived risk premier (Macey, 2007).

Breger (1982) stated that there are two conflicting approaches to the allocation of legal assistance. The first, a social utility model, uses the principles developed in welfare economics to maximise total benefits to the poor. The other may be called a theory of access rights. It focuses on an individual's right to a lawyer, as a state-sanctioned dispute resolution system. It is an attempt to allocate legal assistance on a formula of distributive justice.

He further argued for an alternative justification of legal aid based on a non-utilitarian approach. This justification derives from a theory of access rights, which requires the state to provide legal assistance to individuals wishing to make effective use of society's dispute resolution process. As members of society, individuals are entitled to effective access to the law. Legal aid is a means of providing such access to those who cannot otherwise afford it (Beger, 1982).

George (2006) stated in his study that alternative dispute resolution (ADR) schemes vary among jurisdictions, as do the requirement for people administering them. The most common, along with their qualifications, are arbitration, collaborative law, judicial settlement conferences, mediation, the mini-trial, the moderated settlement conference, negotiation, and private judging.

Furthermore, some states build arbitration schemes into statutory remedies, such as the new Texas law regarding warranty claims on new home construction. State may require mediation or negotiation as a pre-requisite to certain remedies. Where state law does not address ADR, courts may insist on some schemes including mediation, negotiation and the judicial settlement conference (George, 2006).

2.3. Funding of Litigation by third party investors

Puri's (1998) studies state that public sector initiatives, such as legal aid and litigation subsidy funds and private sector initiatives, such as contingent fee arrangements have developed over time to redress some of the cost barriers to litigation. A recent private sector development is the financing of litigation by third-party investors who provide the funds to litigate a claim in exchange for a share of the proceeds if the lawsuit is successful.

Puri (1998) also mentioned the funding of litigation by third-party investors by stating that legal aid models are akin to the financing of litigation by third-party investors in that the government, which has no direct stake in the lawsuit, funds the costs of the litigation. A key difference is that the third-party investor is motivated to provide the funds by an expectation of a positive return, while the government has no expectation of monetary return.

He further stated that public litigation subsidy funds are also similar in structure and operation to financing by third-party investors. Contingency fee arrangements are simply a form of investor financing where the class of investors is limited to lawyers. The difference is that the lawyer retained provides services, rather than the funds necessary to procure such services, in exchange for a share in the lawsuit (Puri, 1998).

Rivera (2010) stated that legal empowerment targets the poor and disadvantaged. It is a long-term process because it seeks to educate these groups concerning their rights from the ground-up and that demands patience. In addition, these groups face deeply engrained cultures and socio-economic barriers, making impact that more challenging. Thus, short-term tangible impact is hard to measure, thereby leaving funding of legal empowerment projects to receive only a small portion of developmental loans given. In practice, however, it is often more desirable because it seeks to empower the poor and engrain within them a sustainable notion of rights and justice.

He further stated that at the moment, legal empowerment initiatives are trapped in a vicious circle of funding logic. It is clear that these international aid agencies, specifically large multilateral banks, hold the key to the funding process. These banks find it hard to justify long-term projects, which are much larger in scale, when short-term ones show little to no tangible reform. At the same time, legal empowerment practitioners end up frustrated because the only way to demonstrate this impact is the need for long-term funding for their projects (Rivera, 2010).

Crust's (2007) study states that non-profit organisations had budgets that totalled over $10 million in 2002. These organisations receive funding from a variety of sources, including bar associations, corporate donations, private donations, and fund-raising activities, such as educational programmes, social programmes, and the charging of fees. Several of the services, including the New Orleans Legal Assistance Corporation, the Advocacy Centre and the Capital Post-Conviction Project of Louisiana, are government mandated and receive substantial government funding, as independent programmes that are not government-mandated also may.

2.4. Use of Paralegals to reduce cost

Puri (1998) conducted a study on the use of paralegals to reduce costs. He stated that reducing the costs of litigation should be distinguished from financing litigation. A large body of academic literature exists, and many initiatives are underway, that focus on attempting to reduce the costs of litigation by simplifying procedural and substantive laws; encouraging the use of paralegals; widening the jurisdiction of small claims courts; and even banning lawyers. He stated that the financing of litigation is similar to legal aid plans and contingency fees in that it takes the costs of litigation as a given, and redistributes the costs and risks of litigation away from the plaintiff to other stakeholders (Puri, 1998).

He stated that government-sponsored legal assistance plans, otherwise known as legal aid, are designed to assist those without adequate financial means in accessing the justice system. Legal aid plans shift the cost and risks of litigation away from the plaintiff to the founders of the plans. The Ontario Legal Aid Plan is financed by the provincial and federal governments, the Law Foundation of Ontario, and contributions from lawyers and legal aid clients (Puri, 1998).

Fines (2012) states that non-lawyer assistants are critical to a family law practice: whether secretaries, document managers, investigators, or bookkeepers. Attorneys who structure their practice to include extensive use of these non-lawyer assistants must remember three basic rules: keep control; set clear policies; and educate both your assistants and your clients about limits.

Brant (2011) stated, today's paralegals are no longer just witnesses of the signing of wills. They are actively involved in drafting standard's wills and health care documents for legal assistance attorneys to review, approve, and use to advise clients. Effective training is essential to ensuring success in attorney-paralegal teaming, especially in the area of legal assistance.

2.5. Civil legal aid

Douglas and Vand (1997) stated that although other countries have used similar programmes since the 1960s, the development of Interest on Lawyer Trust Accounts (IOLTAs) in the United States was only made possible by the passage of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). The Act authorised the creation of negotiable order of withdrawal (NOW) accounts, which operate as interest-bearing checking accounts. The Act allows individuals, and public entities to use these accounts.

They further stated that attorneys hold clients' funds in trust under a variety of circumstances, including situations in which money is required for filling fees, real estate closing costs, or personal injury settlement draft. Prior to the passage of DIDMCA, attorneys held trust money in non-interest free use of the funds. The legalisation of NOW accounts allowed attorneys to hold eligible clients' funds in interest-bearing checking accounts (Douglas and Vand, 1997).

They continued by stating that not all NOW-eligible clients are able to draw interest profit away. However, with the administrative expense of opening and maintaining interest accruing to these accounts, the developers of IOLTAs recognised that attorneys did not place the trust funds into interest-earning accounts, but instead placed the funds into a non-interest bearing pooled account held in the lawyer's name. The developers wanted to shift the benefits of the implicit interest generated from such pooled accounts from depository institutions to legal aid organisations (Douglas and Vand, 1997).

Furthermore, by state Supreme Court decree, in 1981, Florida became the first state to implement an IOLTA. Other states soon followed Florida's lead, and currently forty-nine states and the District of Columbia utilise IOLTAs to raise money for legal aid. A few states have adopted their IOLTA through legislative action, but most states, like Florida, have authorised their programme via judicial decision (Douglas and Vand, 1997).

In conclusion they stated that the IOLTA provisions typically require attorneys participating in the programme to make a good fair judgement regarding whether their clients' funds are so nominal in amount or will be held for such a short period of time that the money will be unable to draw interest profitably in an individual interest-bearing account. If a participating attorney decides that this condition is met, he/she is required to place the client's funds into an IOLTA-designated segregated interest-bearing NOW account. By eliminating and maintaining an individual NOW account for each client, an IOLTA account is able to draw interest properly when an account held individually for an IOLTA-eligible client could not. A designated non-profit organisation, often the state bar association, receives the interest generated from the IOLTA account and allocates it among chosen forms of legal aid (Douglas and Vand, 1997).

Abel and Vignola (2009) studied the model of using civil legal aid to fund the legal aid and they state that even when the cost of funding civil legal aid assistance is taken into account, civil legal aid attorneys can bring far more federal revenues into their communities than the state spends to fund them. For example, researchers found that although the Massachusetts-based Disability Benefit Project cost the state approximately $450000 in FY 2004, each dollar of state funding spent on the programme puts $15 to $30 in the economy and The Perryman Group found that while Texas state and local government spend approximately $4.8 million on civil legal aid annually, they receive approximately $30.5 million in revenues annually as a result of the work of legal aid lawyers.

Furthermore, when legal aid clients obtain wages or child support owed them, they are more likely to be economically self-sufficient, and less likely to need public assistance. In 2007, Legal Aid of Nebraska obtained more than $2 million in child support awards for its clients. Between 1 July 2005 and 30 October 2006, New Hampshire Legal Assistance obtained a total of $315571 in child support for its clients (Abel and Vignola, 2009).

Barton and Bibas (2011) in their study state that we live in a world of scarcity. In the past, the Supreme Court has repeatedly acknowledged funding constraints as a reason not to expand the right to counsel: lawyers and complex procedures cost time and money, meaning that the needy have less overall funding. Barton and Bibas (2011) then stated that legal aid societies and trial courts already triage their caseloads, selecting a fraction of civil cases as most deserving and most in need of limited resources.

Abel and Vignola (2010) state that civil legal aid programmes were established in the late nineteenth and early twentieth century by private charities. Many more were established in the late 1960s and early 1970s when the federal government began providing funding. For the past fifteen years, state legislatures and state-based "Interest on Lawyer Trust Account" programmes have played an increasingly large role in providing funding.

Furthermore, each of these funders has been motivated primarily by a desire to ensure that the justice system works for the poor, as well as for the rich. In their tripartite system of government, and in a society in which individual rights depend largely on enforcement by individuals, there can be no doubt about the importance of this goal. There is a body of empirical literature demonstrating that lawyer assistance of the sort provided by civil legal aid programmes furthers the goal of equal justice (Abel and Vignola, 2010).

McCool *et al.* (2005) also focused their study on funding from civil litigation. They stated that A&O say the move is in response to a recent letter from the South West London Law Centre to the Prime Minister, which urges the Government to boost civil legal aid funding. The letter reflected concerns expressed recently by the newly-formed access to justice alliance that the civil legal aid system was facing a crisis. The Alliance was formed to bring attention to the increasing problems of legal aid deserts springing up throughout the country (McCool *et al.*, 2005).

They also stated that there were concerns that if the City raised money in this way, it would let the government off the hook and it would reduce its contribution accordingly. They stated that this was not a way of enabling the government to reduce its obligation to provide a publicly funded legal aid system. It was instead a platform from which to ask the Government to meet that obligation and match this increase in funding (McCool *et al.*, 2005).

Furthermore, they stated that there is the benefit of clients' monies when firms place client monies on deposit and generate a return. The interest accruing exceeds the interest payable in respect of each tranche of client monies. Under the Solicitors' Accounts Rules, that excess is properly refined by the firms. It is that sum that A&O is donating (McCool *et al.*, 2005).

Palmer (2011) discusses three groups of proposed reforms: an increase in government funding, either directly to needy citizens or to programmes designed to address unmet access to the civil legal system, a self-stimulated increase in activity by the legal profession, and thirdly, a change in the way legal service provision is licensed in Ontario. These three reform proposals were chosen on criteria of cost efficiency, an ability to meet Ontario's goal of ensuring that all citizens have access to the civil justice system, and the pre-existence of an academic dialogue on the topic, so that past analysis guides this current examination.

He further stated that Texas showed that investment in legal aid services led to economic growth in the community by increasing jobs, reducing work days missed due to legal problems, creating more stable housing, resolving debt issues and stimulating business activity (Palmer, 2011).

Furthermore, he stated that for every direct dollar expended in the state for indigent civil legal services (legal services for low-income people), the overall annual gains to the economy are found to be $7.42 in total spending, $3.56 in output (gross product), and $2.20 in personal income. Civil legal aid saves money: "short-changing legal aid is a false economy since the costs of unresolved problems are shifted to other government departments in terms of more spending on social and health services, the cost of caring for children in state custody, and so on" (Palmer, 2011).

In conclusion, he stated that the false economy, however, allows the government to fund other, more politically viable options, and the false economy does not appear to have been successfully recognised, with the result that for many Canadians, legal services are unavailable. Legal aid is granted only in highly limited circumstances, both in terms of the nature of the legal problems, which it will fund and in terms of the low income needed to qualify (Palmer, 2011).

Mahoney (1998) stated that despite the obvious similarities in the United States and British legal systems, the approach taken by the United States and Great Britain to the provision of legal services in civil cases has been markedly different. The most pronounced difference is that in Britain, legal assistance is provided largely through private attorneys, whether solicitors or barristers, while in the United States, it is provided through government funding of offices established exclusively for that purpose.

Fenwick and Sachs (2010) stated that Staff argues that sufficient flexibility exists in civil litigation systems to include and encourage evolving forms of dispute resolution and effective judicial management and increased use of cooperative inquisitorial techniques for coping with difficulties.

Genn (2012) stated in his study that the civil courts contribute quietly and significantly to social and economic well-being. They play a part in the sense that we live in an ordinary society where there are rights and protections, and that these rights and protections can be made good.

Furthermore, the sense of urgency about a review of civil courts come less from any new problems in civil justice and more from concern about expenditure on legal aid, and, paradoxically, the rising cost of criminal justice. A central problem for the English government since the mid-1980s has been the rapid growth in the cost of legal aid. Since its establishment in 1949, the underlying purpose of civil legal aid has been to provide access to justice so that the weak and powerless are able to protect their rights in the same way as the strong and powerful (Genn, 2012).

Sandefur and Cham (2009) state that contemporary market democracies have established recognised legitimate, routine means through which members of the public may seek solutions for their civil justice problems. These are institutions of remedy. One component of a market democracy's institutions of remedy is authoritative: its staff and organisations can provide definitive resolutions to civil justice problems.

They further stated that law, in the form of courts, tribunals, lawsuits and litigation, falls into this category. But so, too, do many other kinds of organisations that are non-legal in a very specific sense: going to these organisations involves no explicit contact between the public and lawyers, legal organisations, or formal legal processes (Sanderfur and Cham, 2009).

Furthermore, they stated that these non-legal sources of authoritative resolution include: the complaint-handling offices of administrative agencies that regulate specific industries; those government ombudsmen who have authoritative powers; and, public compensation corporations that handle personal injury claims in some countries. Together, legal and non-legal sources of authoritative resolutions for civil justice problems make up a society's formal institutions of remedy (Sanderfur and Cham, 2009).

Houseman (2009-2010) stated that civil legal aid in the United States is provided by a large number of independent, staff-based service providers funded by a variety of sources. The current total funding for civil legal assistance in the United States is approximately $1.3 billion.

He further stated that the largest segment of the civil legal aid system is comprised of the 136 programmes that are funded and monitored by LSC. LSC is also the largest single funder of civil legal services, although considerable funds come from states, as well as Interest on Lawyer Trust Account (IOLTA) programmes. Additionally, there are a variety of other funding sources, including local governments, other federal government sources, the private bar, United Way, and private foundations (Houseman, 2009-2010).

Kushner (2012) stated in his study that the foundation commissioned this study to inform policymakers and other stakeholders about the tangible economic benefits of legal aid. He stated that this study quantifies some of the benefits to clients and other Illinoisans from cases closed by seven legal aid providers that are part of the larger network of 38 legal aid providers funded by The Chicago Bar Foundation and the Lawyers Trust Fund. Additionally, civil law cases other than those involving monetary awards and federal benefits, homelessness, and domestic violence may have outcomes with economic benefits for legal aid clients and other Illinoisans (Kushner, 2012).

Dillar and Savner (2009) stated that as the burgeoning economic crisis pushes homelessness, the need to revitalise the civil legal aid system is more urgent than ever. For low-income families, a civil legal lawyer can be a lifeline to preserve a home against foreclosure by a predatory lender, recover back wages from a cheating employer, or secure sufficient food for a sick child.

They further stated that notwithstanding the clear benefits, the overwhelming majority of low-income people who need legal aid cannot obtain it, due in large part to political attacks that have compromised the Legal Service Corporation (LSC), the cornerstone of the nation's institutional commitment to equal justice (Dillar and Savner, 2009).

Furthermore, the justice gap is not solely a product of funding shortages; it is also the result of extreme and ill-conceived funding restrictions imposed on legal aid programme by congress in 1996. In an effort to deprive the low-income clients of LSC-funded programmes of full legal representation, congress restricted the advocacy tools available to LSC clients (Dillar and Savner, 2009).

2.6. Legal aid cost and cost of Judicare

Gilbert (2002) stated in his study that legal aid uses external practitioners in litigation. This happens when there is a conflict of interest. Gilbert (2002) focused his studies on the strategy to reduce the 18 b who are extra lawyers that the New York City instated for Legal Aid. In his study he stated that over the years, Giuliani's administration cut Legal Aid's criminal defence budget by $25 million, forcing a reduction in trail staff from 620 in 1994 to 346 currently and leaving too few attorneys to represent all the indigent defendants.

He further stated, however, that as arrests have gone up, the courts have been giving cases that would have gone to Legal Aid to individual practitioners appointed as 18 b attorneys, paying them $80 million annually to handle 115 000 cases, a per case cost that is nearly double the amount it pays Legal Aid. Many of these attorneys are all unprepared and unsupervised, and people go to jail for lack of adequate representation (Gilbert, 2002).

Furthermore, he stated that despite the crippling funding cuts, Legal Aid continued to handle 200 000 criminal cases each year with fewer lawyers, social workers and investigators. Legal Aid officials warned that they were approaching the breaking point, and that point had now come. The Legal Aid Society could not employ enough attorneys to staff all the arraignment intake parts in New York City and, without a budget increase, would be forced to reduce its caseload by 51 000 in that fiscal year. Presumably, these cases would be handled by the more expensive 18 b attorneys (Gilbert, 2002).

Finally he stated that the city's preliminary budget continued the previous administration's reliance on expensive and poor-quality 18 b defence services and proposed to eliminate $5.6 million in City Council restoration funding for Legal Aid's criminal defence service. By restoring the proposed $5.4 million cut and reallocating $20 million earmarked for 18 b services, the city saved millions of dollars and substantially improved the quality of service (Gilbert, 2002).

Cole (1972) stated that Judicare has been criticised because of its decentralised and voluntaries focus. The experience in Meriden would seem to indicate that high costs will result when market forces are allowed free play. It may be possible to construct a judicare system in which a greater measure of control is exerted over practitioners, yet one wonders about the supply of attorneys and the quality of work, which might result.

Furthermore, students of professional competency are either non-existent or are in their infancy. Moreover, detailed standards for evaluating costs of legal services have never been promulgated by the federal government or the organised bar. The time has come for those concerned with the provisions of legal services to begin this difficult and arduous task (Cole, 1972).

Lee *et al.* (2007) had much to say on the strategy of bringing the relationship between financial, social, intellectual and human capital together in order to increase funds. They stated that the relationships between financial capital, social capital, intellectual capital, and human capital continuously overlap and have similar characteristics.

They further stated that in practice, the development of social capital cannot be achieved without group education, marketing preparation, and collaboration formation, i.e. intellectual and human capital. Developing intellectual capital often means the development of new educational and professional development programmes and services for board, staff, and volunteers, as well as the introduction of new philosophical strategies and ideologies to support fund development activities (Lee *et al.*, 2007).

Chikoto (2009) states that managerial autonomy comes in two forms, that is, with respect to: Financial management – making changes to budgets; Human resources – making employees selection decisions; and Operational or policy autonomy: the extent to which an organisation can take decisions about processes, procedures, policy instruments, target groups and societal objectives and outcomes.

Keith *et al.* (1999) studied cost reduction in organisations. In their study they maintained the steps used to achieve cost reductions are: develop a cost-conscious organisation, identify and use key metrics to facilitate cost reduction, then develop and use Bottomup Estimate (UUE) models to set target costs based on area specifications, then buy into aggressive cost reduction goals, identify the prioritisation of key improvement projects and lastly, monitor results to goals weekly.

They further stated that the first step towards cost reduction was the appointment of an overall Cost Programme Manager, and the establishment of a central cost-review body, driven by factory management. Appropriately named Cost Ops, this forum had the responsibility to review area team performance to goals on a weekly basis. Key to the programme's success was the routine attendance of factory, engineering, purchasing and finance management. They ensured accountability to cost reduction commitment, and helped to emphasise the importance of cost reduction activity (Keith *et al.*, 1999).

Hodge (2006) stated that to meet the growing needs of the social service community, non-profit organisations must learn to adapt to the pressures of their ever-changing environment. These non-profit organisations face greater competition for public funding and pressure to expand services and reduce costs, all while increasing funding opportunities for the organisation. The relationship between board effectiveness and the financial position of the non-profit organisation is important, as this is one indicator of sound fiscal oversight and long-term strategic planning.

He further stated the resource dependency theory posits that organisations respond to a resource dependent environment by formulating specific organisational structures and strategies; these measures either support the existing resource environment or seek to lessen the influences of a primary funding source through diversification. It is to these "predictable ways" referenced by Getz that the participants react in this relationship that allow for an understanding of how resource dependencies influence organisational structure, including board composition and behaviour (Hodge, 2006).

Furthermore, a non-profit organisation in a resource-dependent environment must organise all of its efforts in response to the needs and expectations of the primary resource providers. The literature indicates that privately funded non-profit organisations tend to rely more heavily on their boards of directors, establishing a strong basis for the inclusion of funding sources in this study. Through strategic planning, fiscal oversight, and resource management, the board of directors can provide specific guidance to the non-profit organisation designed to lessen the presence and potentially negative influences of resource dependency (Hodge, 2006).

Priloznik (1971) states that most legal aid programmes before or after the office of economic opportunity (OEO) have been staffed by full-time attorneys. Judicare is the exception. This policy of using full-time attorneys was deliberate by OEO. It was not founded on an erroneous belief that there would be a sufficient quality of full-time attorneys.

He further stated that they were really concerned that the antagonism of some members of the bar to this monstrous legal aid inflated by federal funds would produce applications designed to stifle the probability of having full-time attorneys devoted to problems of the poor (Priloznik, 1971).

Furthermore, the claim that the Wisconsin Judicare programme is more costly ought to receive more detailed scrutiny than it has. For this purpose, it is helpful to look at the funding level of the programme, as well as the geographic area it serves. The most common and sometimes the most unwarranted criticism of Judicare is the cost factor (Preloznik, 1971).

Legal aid binding has been the phrase on everyone's lips throughout the autumn, with barristers across the country laying down their wigs in protest at continued cuts. Lord Carter of Coles is hard at work examining the whole legal aid system, and has impressed the bar enough to persuade the militant Midland and Northern circuits to return to work (Harris, 2005).

Goodman and Fevillan (1972) stated that the legal services programme of the office of economic opportunity seeks to allocate its resources so as to maximise attorney's accessibility to low-income clients. This strategy has been implemented primarily by establishing law offices with salaried attorneys in both urban and rural areas. In 1966 the OEO also began funding a few experimental programmes that quickly became known as "Judicare" experiments after Wisconsin Judicare, the largest and the best known.

They further stated that in a generic sense, "judicare" now refers to all government-subsidised legal services programmes that rely on the voluntary participation of private practitioners and depend on the prevailing distribution of the private Bar rather than on deliberate geographic placement of staff attorneys (Goodman and Fevillan, 1972).

Furthermore, the private Bar means greater coverage in rural areas, better protects the attorney-client relationship, affords counsel of the same quality available to middle-class clients, gives the client a real choice of attorney and is more economical than the staff programme. Advocates of the staff office argue that Judicare is more costly and that the average lawyer is insufficiently versed in poverty law to be able to engage in effective law reform (Goodman and Fevillan, 1972).

Singleton (2012) stated that in addition to financial obstacles, the average person fails to realise when he/she is encountering a problem that requires legal assistance. Seldom does he/she turn to an attorney for counselling to prevent future problems. All too often, an attorney's first contact with his/her client takes place after a problem has reached proportions necessitating a costly lawsuit. Clearly, programmes designed to educate the public and to provide legal services at a moderate cost must be established. Prepaid and group legal service plans offer a means for accomplishing these objectives.

Hodges *et al.* (2009) stated that there are two differing architectural designs in the family of civil procedures in relation to the way in which expert evidence is obtained. The general civil law approach is that the court will appoint an expert (usually one). Persons appointed have somewhat of a judicial function through being independent of the parties and resolving technical issues by way of answering the court's questions on particular issues. Such experts may, in many but not all jurisdictions, be university professors or other civil servants. In general, the party who requests such an expert must put up funds that will be used to pay the expert.

They further stated that national systems of this type differ regarding whether such experts' fees are to be on an official scale, or are fixed through market forces or free negotiation with the court, but the amounts are almost always, in this system, approved by the court and the court transfers the money to the experts (Hodges *et al.*, 2009).

Furthermore, the costs of such court-appointed experts will usually be payable or reimbursable by a losing opponent at the end of the case. In addition to such court-appointed experts, it may be possible in some (not all) civil law jurisdictions for parties to appoint and pay their own private experts, whose evidence might, or might not, be admissible in court, or influential on the court-appointed expert. Such costs for private experts are rarely reimbursable (Hodges *et al.*, 2009).

In their study Kao *et al.* (2010) made a statement on expert evidence stating that the arbitration rules adopted by various US and international arbitration organisations vary in the amount of guidance they provide regarding the submission of presentation of expert evidence. Most of these arbitration rules provide minimal, if any, guidance regarding the procedures for the presentation of evidence from party-appointed experts. Several legal systems, however, have adopted procedural reforms intended to make the expert evidence process more streamlined, less adversarial, and more useful.

Furthermore, they stated that for those who have gone through expert discovery, preparation and testimony in American civil litigation, the procedures for expert testimony traditionally followed in the United States may leave a practitioner with the feeling of "two ships passing in the night". Intended as an avenue to assist the truth of fact, international observers have expressed concerns about the reliability of expert evidence, seeking to keep it from becoming no more than highly-paid advocacy from the credentialed witness (Kao *et al.*, 2010).

2.7. Public funding

Eckholm (2009) stated that legal aid groups have long benefited from little-known programmes that draw interest earned from short-term deposits that lawyers hold in trust for clients during, for example, real estate transactions or personal injury payouts. The interest is mainly donated to legal services for the poor. However, as the federal funds rate declined along with the number of real estate transactions, the pay-out has fallen precipitously. Beleaguered state governments are also curbing their aid.

Public funding, and government funding are terms that can usually be used interchangeably and all refer to the allocation of societal financial resources. Public funding is the utilization of government financial resources; public financing is the application of government funding to a given programme, and government funding is the legal establishment to collective financing (Erich, 2011).

Breger (1982) stated that historically, private practitioners provided legal assistance as a charity, and its provision was considered the responsibility of the profession, not the government. Not until 1945 in England and 1964 in the United States, did government recognise a responsibility to provide civil legal assistance to those in need. Providing legal aid in the context of mounting fiscal limitations requires complex trade-offs.

Furthermore, scarce resources and rising costs have compounded the already difficult choices inherent in distributing welfare goods among members of society, while some economists would withdraw government from many of these allocation determinations, few would allow the market to resolve them (Breger, 1982).

Bekink and Bekink (2009) stated that one of the fundamental objectives of any legal system is to ensure that the system is inherently fair and accessible. Many legal systems in the world today are criticised for their lack of fairness, accessibility and, ultimately, legitimacy. A legal system can only be legitimate when it is effective and when justice, fairness and the protection of fundamental rights are provided. Some commentators believe that this ideal legal environment can only be achieved through the provision of proper legal aid and legal representation.

They further stated that many modern states provide for legal aid and legal representation, even at state expense, in both criminal and civil legal matters. However, the extent of such legal aid and representation differs from country to country, and also in respect of the people and groups qualifying for such aid (Bekink and Bekink, 2009).

Furthermore, legal aid can be described as a system where assistance by legal experts or even financial aid is provided in court trials, with the aim of achieving equality and fairness. The purpose of legal aid is thus to use public funds in order to cover the legal costs and expenses of those people in a particular society who are unable to pay for such costs themselves. It is submitted that by providing legal aid, social equality is promoted and disparities that exist because of the lack of financial means, are removed (Bekink and Bekink, 2009).

In financially strapped times, few would question the desire to ensure that public expenditure is wisely spent. However, restricting access to legal aid will inevitably curb access to specialist legal services for some people who truly need this, and may even be a false economy (Symon, 2012).

In his study on fiscal deficit Kemal (1994) stated that the fiscal deficit may be reduced either by mobilizing additional resources or by containing public expenditure. A reduction in public expenditure may be effected by restricting either the acquisition of commodities or limiting the employment cost through a reduction.

The policy towards loss-making public sector units is also cautious. The Government has announced that budgetary support to finance losses will be phased out over three years and this has had a salutary effect in confronting public sector units with a hard budget constraint. This needs to be supplemented with a policy for active restructuring of these units wherever it is possible to make them economically viable, and with closure combined with adequate compensation for labour where it is not (Ahluwalia, 2011).

Policy makers have been searching for ways to decrease or eliminate the persistent budget deficits, and to bring them under control. Some measures taken to decrease budget deficits include raising taxes, cutting spending on numerous government programmes, and privatising various state-owned enterprises under the several International Monetary Fund (IMF)-backed stabilization programmes (Feride, 2004).

Goolby (2011) states that the President directs the Office of Management and Budget (OMB) to review guidance regarding cost principles and audits for state, local and tribal governments to eliminate unnecessary, unduly burdensome or low-priority record-keeping requirements and to tie requirements to achievement of outcomes. The OMB must also standardize and streamline reporting and planning requirements in accordance with the Paperwork Reduction Act to develop efficient, low-cost mechanisms for collecting and reporting data and preparing expenditure plans that can support multiple programmes and agencies, and must facilitate cost-efficient modernisation of state and tribal information systems.

Advocates of a minimal government role called for strict severance between government and non-profit organisations, thus championing the non-profit sector as the ideal mechanism for responding to social and economic needs. Proponents of a large government presence champion the role of the welfare state, while downplaying the significance of non-profit organisations. The government spending arena is one where its spending decisions indirectly affect non-profit organisations by affecting the need for non-profit services, and directly – since government is a significant source of non-profit revenue (Chikoto, 2009).

Moorhead (2004) states it is an essential part of public administration that the cost of public services is controlled and does not increase at unsustainable rates. There are other associated costs of contracting, such as the audit and quality assurance process, which also adds to the costs and would diminish profit margins reducing any benefit from an increase in overall legal aid bills.

2.8. Budgeting

Barendrecht and Biggelaar, (2009) stated that in 2008, the Dutch legal aid system had to cope with a €50 million cut in a budget of €400 million (which is around 0.8% of the Dutch GDP). The Dutch Ministry of Justice did not react to this with political infighting or cuts in the legal aid programmes, but started a project that should lead to a vision of a sustainable legal aid system and to an improvement in access to justice. Part of this project was an open, interactive consultation process. In this consultation process, the stakeholders offered their views and interacted with each other in order to identify suitable proposals and to improve them. These proposals formed the basis of a series of measures that were accepted by parliament.

They further stated that taking the justice problems of the poor as starting points, these strategies build on the options poor people have available to address these problems and to enforce their rights: spontaneous ordering mechanisms, informal, faith-based and customary justice, as well as the formal legal system. The common aim of these strategies is to lower costs that may be involved and to increase justness and fairness of the outcomes poor people may obtain (Barendrecht and Biggelaar, 2009).

Furthermore, these strategies have proven their value in practice, or seem particularly promising in the light of a theoretical framework that emphasizes a reduction of transaction costs and remedying market failure: Empowering the poor through improved dissemination of legal information and formation of peer groups (self-help strategies). This can be done by strengthening information-sharing networks across consumer groups and organisations, by using information technology, non-formal legal education and media campaigns tailored to the target population and their problems. Broadening the scope of legal services for the poor in several directions requires: a) an orientation towards empowerment, coaching and learning; b) lower cost delivery-models (through paralegals, or otherwise); c) bundling with other services (health care, banking, insurance) and introducing the concept of one-stop shop; d) use of the methods and skills of alternative dispute resolution, mediation and arbitration; e) and legal aid

services that are capable of assistance with the informal system as well as the state system (Barendrecht and Biggelaar, 2009).

Moreover, the market for legal services should gradually be liberalised by reducing regulatory entry barriers (such as "unauthorised practice of law" restriction) for service providers, including non-lawyers, who are interested in offering legal services to the poor. Scarce legal aid resources should be targeted to cases where the legal claim produces public goods (such as general deterrence or legal reform) and to situations with very high stakes for the individual (Barendrecht and Biggelaar, 2009).

In conclusion they stated that reducing legal transaction costs and adapting to a combination of legal simplification and standardisation reforms, expanded opportunities for representative or aggregate legal claims, and improved the climate for fair settlements in the shadow of law by ensuring a credible threat of a neutral intervention. Combining formal or tacit recognition of the informal justice system with education and awareness campaigns that promote evolution of the informal state system, targeted constraints on the informal system (in particular limits on practices that perpetuate the subordination of women), and appropriately structuring the relationship between state and non-state systems so that the informal system can provide an efficient means of resolving private disputes, but people are able to use the formal system when crime and fundamental public values are implicated (Barendrecht and Biggelaar, 2009).

A budget is a tool to assist managers in managing resources in order to achieve the mission and goals of the service; it compasses an estimate of intended expenditure and should balance with the actual resources available. Budgets do not stand alone and should be closely linked with organisational strategic planning and governance structures (Lloyd *et al.*, 2009).

A budget is a financial plan that outlines how much money your business makes and how much you need to spend on essential expenses. It is an excellent way of balancing cash flow: making sure that you spend enough money on your operational needs, without overspending and putting yourself under pressure. It also provides a clear overview of where your money is going if you need to cut costs. The following is a tip for kicking off a company's budgeting process (Gareth, 2010).

After managers have done their budgets, it is important for the senior managers to validate the budget drafted to ensure accuracy and consistency. Blair (1986) states that budgets are one of the instruments used in almost every business organisation to evaluate performance and motivate personnel. Studies of budgets and managerial motivation have consistently shown that when significantly valued rewards, such as enhanced promotion prospects or salary bonuses are attached to the successful attainment of budgetary targets, it is more likely that many managers will report performance at or near the target level (Walker, 1986).

He further stated that the controversial aspect of using budgets arises from the manager possibly taking advantage of the opportunity to participate in the preparation of the budget, and thereby adjusting the target itself. The ability of managers to manipulate budgets is usually limited by the strength of the review process within the organisation's control structure. This strategy is more likely to be adopted when the degree of complexity and uncertainty in the task itself is such that senior management has limited ability to validate the estimates of subordinates (Walker, 1986).

Johnson *et al.* (2010) state that cuts to state services not only harm vulnerable residents but also worsen the recession - and dampen the recovery - by reducing overall economic activity. When states cut spending, they lay off employees, cancel contracts with vendors, reduce payments to businesses and non-profit organisations that provide services, and cut benefit payments to individuals.

Frowa *et al.* (2009) stated that continuous budgeting seeks to avoid the inherently restrictive nature of budgetary control by enabling managers, when confronted by unexpected events, such as problems with the preparation and launch of new products, to consider, and if necessary implement, a revision of plans and reallocation of resources in pursuit of strategic organisational objectives. At the same time "continuous budgeting" firmly directs managers' accountabilities over their use of discretion in operational matters towards the achievement of the organisation's financial targets.

They stated further that conflicts may also arise between senior and subordinate managers, or between managers at the same organisational level, as to which levers of control are the most appropriate to pull. If patterns of control are to be generalised throughout the organisation then the organisational processes by which these conflicts and ambiguities are to be understood and resolved need explicit identifying. Consequently it is important when analysing Astoria's control framework to examine both how the different management controls are expected to be formally coordinated, and to explore how they are actually combined in practice (Frowa *et al.*, 2009).

Furthermore, whatever the manager has been prescribed to do, he/she will be unable to cater for all the possible situations he/she may encounter. Rather the emphasis is directed towards understanding the dynamics of combining different uses of budgeting with a variety of other controls within a single framework, which seeks to be sufficiently disciplined to ensure financial targets are met, yet flexible enough to absorb the impact of the uncertainties inherent in highly competitive environments (Frowa *et al*, 2009).

The traditional line-item budget presents expenditures by inputs/resources purchased. The budget is classified by disaggregated objects of expenditure and by operating and capital expenditures. Operating expenses include cost objects for day-to-day operations such as salaries, retirement, and health insurance costs, office supplies, printing, and utility costs (Shah and Shen, 2007).

The capital outlays include purchase of long-lived assets, such as building, machinery, office equipment, furniture and vehicles. A prominent feature of a line-item budget system is to specify the line-item ceiling in the budget allocation process and to ensure that agencies do not spend in excess of their caps. Hence the budget facilitates tight fiscal grip over government operations. The strengths of such a system rest on its relative simplicity and potential control of public spending through the detailed specification of inputs (Shah and Shen, 2007).

Throughout much of the 20th century, central budget offices and finance ministries have been aggressive proponents of control of public resources, which explains why line-item budgeting has been so enduring in spite of relentless efforts in budgeting reforms. The line-item approach embodies several impediments to promoting efficient and effective public planning and management, as well as fostering results-oriented accountability in public sector institutions (Shah and Shen, 2007).

Line-item budgeting emphasizes inputs and provides information on how much is spent and how it is spent rather than what it is spent for. It does not link inputs with outputs, and hence says nothing about how efficiently resources are used. The line-item budget tends to focus decision making on details – whether the general office expenses (such as pencils used, printing paper consumed) are appropriate and how much they have gone up or down compared to last year's budget – rather than on the efficiency and effectiveness of the programme (Shah and Shen, 2007).

Public budgeting systems are intended to serve several important functions. These include setting of budget priorities consistent with the mandate of the government, planning expenditures to pursue a long-term vision for development, exercise of financial control over inputs to ensure fiscal discipline, management of operations to ensure efficiency of government operations and as tools for performance accountability of government to citizens (Shah and Shen, 2007).

Budget is seen not only as a tool of macro-economic policy, but also as playing a managerial role. It provides a key source of constraints and incentives to public servants demanding better public services at lower costs. Last but not least, the budget document can be a major tool of accountability to the legislative body or to the press and the public. It can help hold administrators accountable, not only for the funds they receive but also for a given level of performance with those resources. It can either give citizens a sense of ownership and control and respond to their interests, or alienate them as a result of difficulty in participating in the budgeting process or inaccessibility of budgetary information (Shah and Shen, 2007).

De Lancer (2009) found in his study that results-oriented agency budget practices are the activities, processes, and capacities that can help an agency to incorporate performance information into its internal budget deliberations and requests for funding and to identify opportunities to make better use of available resources to accomplish agency goals.

Mzini (2011) stated that globally, public participation is receiving increasing attention in the execution of public affairs, especially in developmental issues. African countries have put in place various arrangements to improve pro-poor spending discipline. Participation in public expenditure management is still a new frontier for policy making. The participation process plays a vital role in integrating functions of government, donors, civil society organisations, the private sector and ordinary individuals, to end mass poverty in developing countries.

Mzini (2011) further stated that the main concern of public financial management, which is how to utilise public resources efficiently and effectively, is to meet the needs of the community in an equitable manner. Participatory public expenditure management (PPEM) in this study focuses on efficient and effective delivery of social welfare services aimed at reducing poverty, a function of the Gauteng Department of Health and Social Development (GDHSD). The focus is on the role of citizen participation in public expenditure management and social accountability and it outlines the importance of PPEM in improving pro-poor spending in the GDHSD.

Shand (2010) advocates greater recognition now that good budget implementation does not just happen automatically, while a sound budget implementation system is needed. So we need to focus more on budget implementation issues; problems in budget implementation may reflect a poorly formulated budget, for example lack of credibility/realism. Formulation and implementation processes and reforms are interdependent – two sides of the same coin, for example both require reliable information on actual revenues and expenditure and the lack of a comprehensive budget may complicate implementation, for example separate timetable and rules for capital budget.

The question regarding extra-budgetary funds is whether spending ministries have been fully involved in their budget formulation so that they understand and own their budget and know how much budgetary devolution there is to spending ministries. The basis of accounting should follow the budget (cash, accrual, etc.). To properly diagnose and reform implementation requires some understanding of formulation, as one cannot effectively implement a poorly formulated budget. The whole budget process from preparation through implementation and review should ideally be seamless but in practice fragmented institutional arrangements prevent this – different institutions may prepare the budget, release funds, monitor implementation and prepare budget execution reports – perhaps using different classification and reporting systems (Shand, 2010).

Fourie (2011) stated that the budgetary system that prevailed in South Africa prior to the first democratic elections in 1994 was a secret and highly centralised activity. This meant that the system (Presidential Review Commission, 1998:157): was heavily centralized and did not allow for line managers with the necessary autonomy to make decisions within the broad policies. It did not integrate the strategic plans (if they existed) with operational plans and the financial aspects of the policy processes were heavily focused on inputs and outputs and neglected outcomes.

Fourie (2011) further stated that the criteria for the allocation of public funds were never articulated in an accountable and transparent format, thus reflecting the inequities in public spending. The budget allocations were determined by the former Department of State Expenditure and respective function committees. The allocations were based on the fiscal aggregates as determined by the Department of Finance within a short-term (single year) framework.

Fourie (2011) further stated that the committees of the Department of State Expenditure consisted of departmental officials, with the responsibility of coordinating budget proposals for each area of government's functional expenditure. Furthermore, the role of Parliament in reviewing the budget was a formality where Parliament merely rubber-stamped the budget as prepared and compiled by the executive authority.

Furthermore, the budget documents were highly inaccessible and were control-based over the public funds spent, but did not provide a meaningful explanation on how these funds were spent or whether the budget had been spent effectively and efficiently. Budgeting was an exercise to control government's inputs and it was expected of line managers to administer budgets (Fourie, 2011).

2.9. Conclusion

This chapter has examined how other legal aid systems in various countries have been funded in order for the organisation to continue to offer legal services to the poor, which includes both criminal and civil litigation. The following chapter outlines the methodology, which was used in the study. It explains how the data was collected and analysed to provide evidence of the possibility of improvement in funding the organisation.

CHAPTER 3: METHODOLOGY

3.1 Overview

This chapter outlines the research methodology that was used in this study. The problem is restated, the nature of the study is addressed, and the research design and rationale are presented. It then discusses the study setting, sample, participants, data collection, and instrumentation. Then the analytical techniques, including those for data reduction and analysis, are discussed.

3.2 Restatement of the problem

It has been said that government programmes usually do not earn proceeds; they only rely on the money that has been raised through tax collection and other revenue from government entities. This has made it a challenge to measure the funds allocated to the statutory bodies for service delivery, which is expected by the community and the tax payers. Since Legal Aid South Africa is a statutory body, which offers free legal service to the poor, Government has a mandate to fund legal aid in South Africa so that it is able to realise its objectives.

During times of economic crisis, the objective has been to fund legal aid and to increase the services that legal aid offers, especially in terms of civil legal aid. Public services cannot function without enough resources. For legal aid to function, to be sustainable and to expand its services, it needs resources. Resources in the form of money require adequate funding and cost effectiveness.

In this study the main problem is:

It is not known what the best funding model is for Legal Aid South Africa.

The challenge at hand is to develop a funding model, which will put Legal Aid SA in a competitive position, regardless of the economic crisis. Legal Aid SA should come up with a model to increase funds in order to increase service delivery.

The researcher will determine the best approach to use by calculating the cost of different approaches, using the relevant costing of differential approach and the make-or-buy decision. Thereafter the research will present a model that is best for Legal Aid SA to be competent, namely the use of internal staff and the elimination of Judicare.

The researcher designed a model by creating a separate unit in Legal Aid SA were practitioners will be appointed as internal special staff. These practitioners will be full-time employees of Legal Aid SA but they will work in a different unit than the normal staff who work in the centres. The researcher looked at the operation of internal audit, and came to the conclusion that the special staff should work in the same operation as the internal auditor.

The internal staff, however, will be doing the work that was supposed to be done by Judicare. The researcher believes that this is a way of saving money but still being able to address the problem of conflict of interest. When special staff work independently from the normal staff, there will therefore be competition between the two and by so doing, it will address the problem of conflict of interest.

3.3 Nature of the study

The study focused on finding a model to best fund legal aid. In times of economic crisis, public service departments still have to offer services to the poor in spite of economic frustrations and the impact of economic influences on related efforts at other institutions that offer free legal aid to the poor. This understanding helped explain what happens in the current economic climate, which has been a challenge for various systems to balance the objectives with economic factors to overcome budget constraints and provided inferences as to what they could do to build support and improve funding.

The study used differential costing to determine the cost between two alternative processes that can be used in legal aid (The cost of using alternative dispute resolution using more paralegals compared to the cost of using more legal professionals and litigation and administrative cost). The study also used make-or-buy costing for decisions that needed to be taken on whether to use internal staff and reduce the use of Judicare to the lowest possible percentage or to use Judicare more and reduce the staff complement. The study also determined the possible income from the trust account to determine if the account has the opportunity to raise funds for legal aid.

3.4 Research design and rationale

The method that was used to collect data is through secondary data drawn from the legal aid system in order to compare the cost between alternative systems. This was done to assist in finding the process that will best save costs in order to increase funds during times of economic crisis.

Differential costing and the make-or-buy decision-making process were used in this study. Differential cost is used by business and refers to the difference in costs for a business when choosing between two alternatives. In this study the focus is on cost of alternative dispute resolution and cost of litigation. Differential cost is a good method used in the decision-making process for businesses when they want to make feasible changes to a business model. Differential cost is part of relevant costing; the relevance of these costs is understandable when judged along with differential revenue to give businesses a perspective on the positives or negatives of a decision.

In this study differential costing is used by putting all the costs of the different processes possible between the two alternatives. The method assists in finding out were costs can be saved between the two processes, while the service delivery is not disturbed but enhanced to provide more legal access to the poor, so that the best process can be taken into practice.

In this study, differential approach is used to compare the cost of litigation and the cost of using paralegals on alternative dispute resolution in order to make a decision between alternative processes. The choices include costs and benefits that must be weighed in order to assess what decision to ultimately make. It will give clear differences in costs, either negative or positive, between two or more alternatives.

The use of Judicare and the use of internal staff are also assessed in this study to find out if legal aid can use Judicare more or more internal staff to save costs in order to assist in funding legal aid. The method of choosing between providing service in-house or purchasing it from an external supplier is a make-or-buy decision. In a make-or-buy decision, the two most important factors to consider are cost and availability of production capacity or service capacity.

The business may be influenced to make a decision to buy a part rather than to produce it internally due to lack of in-house expertise, desire for numerous sourcing, and less capacity. It will assist in providing a structured model to make use of Judicare, whether in part or in full or to what extent.

Literature has proved that civil legal and trust accounts can assist in funding legal aid. In this study the money in trust accounts was also assessed to find out how much the legal aid can be funded through this process. This will assist the legal aid systems in focusing more on this account in order to increase the funding.

The trust account in the civil department has also been looked at. Payments for the clients have been assessed to find out what the potential is for legal aid to get funds when earning 5% of the money. This has been looked at to find out if this account can give the legal aid an opportunity to focus on the account and make proper follow-up systems to encourage the use of this account by civil legal practitioners. This account only charges money for certain matters, such as divorce and pension monies and not for estates.

3.5 Sample

3.5.1 Descriptions of Sample

The study was conducted by drawing the sample from the administrative department. The sample has been focused on 30 legal professionals in the district court, and 30 legal practitioners in the regional court. 30 external practitioners (Judicare) were also assessed. Six vehicles were taken into account to assess the fuel and service costs.

Files for matters that need legal aid have been assessed for a period of a month to determine the average number of matters a practitioner is attending to in a period of a month. Judicare tariffs for payment of Judicare practitioners have been examined by drawing 30 files that have been given out for Judicare and that have already being paid in order to find the average money paid for Judicare in one matter and to compare this with the money paid per internal practitioner per file. Furthermore, 30 legal aid centres were looked at regarding the trust account in order to ascertain how much money legal aid could generate if the focus were on raising money through the civil trust account.

Then the cost of litigation versus alternative dispute resolution was compared to the day-to-day cost of litigation, which includes salaries of legal professionals, cost of daily transport to courts under the jurisdiction and court fees compared to the salaries of paralegals who are doing alternative dispute resolution.

The cost of Judicare (external legal professionals) as compared to using internal staff, under the secondary data was drawn from the organisation data of payments of Judicare tariffs versus the payments of internal staff. The civil legal aid trust account was also analysed regarding how much it could raise to increase the organisation's funds. The budget was also drawn to complement the results of the survey study.

3.6 Data collection

3.6.1 Procedures

The researcher estimated the different costing methods based on real expenditure provided by the administrative department. Firstly, alternative dispute resolution- the salaries for legal professionals were drawn from the system while salaries for paralegals were also drawn and the number of matters that need legal aid within the space of a month were counted to find out the number of matters that could be eligible for alternative dispute resolution and the ones that would specifically need to be litigated.

Not all matters are eligible for alternative dispute resolution; there are matters that need specific litigation. Matters that can be resolved by alternative dispute resolution are eviction, child matters and minor criminal charges. Matters that cannot be resolved in alternative dispute resolution are divorce, administration of estate and major criminal charges. Alternative dispute resolution is said to be handled in the office by paralegals while litigation is dealt with in different courts away from the legal aid offices. This costs the legal aid fuel charges, which include the motor vehicle charges, such as service costs.

Secondly, there is the Judicare data, which is the data used to compare Judicare expenditure and the use of internal staff. This data was collected from the administrative system, while Judicare tariffs were collected from the legal aid guide and 30 matters were collected from the district court and 30 matters from the regional court. The matters have been collected to find the average payment for a Judicare practitioner per matter in the district court and also in the regional court.

Salaries for internal practitioners have been collected and divided according to the nature of the court. The average salary for district court legal professionals and regional court legal practitioners has been determined. The total number of matters for a period of a month has been collected to determine the average number of matters per practitioner per month, which in turn assisted in determining the average cost per matter when using internal staff to compare with the cost of a Judicare practitioner.

3.7 Conclusion

In this chapter the researcher presented the methodology that was used to conduct this study. The problem was restated, and an overview of the quantitative study was presented. It was then followed by a specific outline of the study design, the means by which data were collected and analysed, and the ways in which the samples were engaged and managed. In the following chapter data is analysed and the findings of the study are presented.

CHAPTER 4: RESEARCH FINDINGS

4.1 Introduction

This chapter presents the data collected and the data analysis for this research study as described in Chapter 3. This study focused on finding the best model to funding legal aid in South Africa and cost management during times of economic crisis for the purpose of providing legal services to the poor. It is the objective of legal aid in South Africa to reduce the number of people who go through the judicial process un-represented due to the inability to afford legal services.

The findings of this research report are divided into different systems, which combine to create one model of funding legal aid in South Africa. Alternative dispute resolution, which is determined by the method of relevant costing focusing on deferential costing, uses Judicare practitioners, which is compared with the use of internal practitioners, using the make-or-buy method. The civil legal aid trust account has also been looked at and the percentage of the money from clients that could be used to finance legal aid has been calculated.

Table 4.1 presents the data that was collected for the cost of employees at the district court. The cost of 30 employees was assessed to determine the average cost per employee per annum, which amounted to R122 166.00 and the average cost per employee per month, which amounted to R10 180.00 and the average cost per employee per day, which amounted to R509.00.

4.2 Data analysis

4.1 Table

Regional court employee cost per matter

	R			
Emp 1	R 112 500.00			
Emp 2	R 112 500.00	**Average**	R 122 166.00	cost per employee per annum
Emp 3	R 112 500.00			
Emp 4	R 112 500.00	**Average**	R 10 180.00	cost per employee per month
Emp 5	R 112 500.00			
Emp 6	R 112 500.00	Average	R 509.00	cost per employee per day
Emp 7	R 112 500.00			
Emp 8	R 112 500.00			
Emp 9	R 112 500.00			
Emp 10	R 112 500.00			
Emp 11	R 112 500.00			
Emp 12	R 112 500.00			
Emp 13	R 112 500.00			
Emp 14	R 112 500.00			
Emp 15	R 112 500.00			
Emp 16	R 112 500.00			
Emp 17	R 112 500.00			
Emp 18	R 112 500.00			
Emp 19	R 143 271.00			
Emp 20	R 143 271.00			
Emp 21	R 143 271.00			
Emp 22	R 143 271.00			
Emp 23	R 143 271.00			

Emp 24	R 143 271.00
Emp 25	R 143 271.00
Emp 26	R 143 271.00
Emp 27	R 123 453.00
Emp 28	R 123 453.00
Emp 29	R 123 453.00
Emp 30	R 123 453.00

4.2 Table

Regional court employee cost per matter

Emp 1	R 491 172.00	1	:	
Emp 2	R 691 746.00	**Average**	R 353 606.90	per employee p/annum
Emp 3	R 347 580.00			
Emp 4	R 537 069.00	**Average**	R 29 467.00	per employee p/month
Emp 5	R 483 915.00			
Emp 6	R 491 172.00	Average	R 1 473.00	per employee p/day
Emp 7	R 320 598.00	1	:	
Emp 8	R 320 598.00	1	:	
Emp 9	R 320 598.00	1	:	
Emp 10	R 347 580.00	1	:	
Emp 11	R 347 580.00	1	:	
Emp 12	R 491 172.00	1	:	
Emp 13	R 320 598.00	1	:	
Emp 14	R 483 915.00	1	:	
Emp 15	R 491 172.00	1	:	

Emp 16	R 213 504.00	1.	:
Emp 17	R 372 679.00	1.	:
Emp 18	R 213 503.00	1.	:
Emp 19	R 213 504.00	1.	:
Emp 20	R 320 598.00	1.	:
Emp 21	R 213 504.00	1.	:
Emp 22	R 213 504.00	1.	:
Emp 23	R 213 504.00	1.	:
Emp 24	R 491 172.00	1.	:
Emp 25	R 347 580.00	1.	:
Emp 26	R 213 504.00	1.	:
Emp 27	R 213 504.00	1.	:
Emp 28	R 347 580.00	1.	:
Emp 29	R 320 598.00	1.	:
Emp 30	R 213 504.00		

4.3 Table

District court number of matters per employee

Emp 1	80
Emp 2	93
Emp 3	134
Emp 4	322
Emp 5	231
Emp 6	58
Emp 7	115
Emp 8	105
Emp 9	130
Emp 10	371
Emp 11	182
Emp 12	423
Emp 13	215
Emp 14	105
Emp 15	140
Emp 16	101
Emp 17	105
Emp 18	60
Emp 19	455
Emp 20	128
Emp 21	360
Emp 22	170
Emp 23	120

Average	204	Matters per employee per month

Emp 24	355
Emp 25	277
Emp 26	109
Emp 27	460
Emp 28	322
Emp 29	194
Emp 30	206

4.4 Table

Regional court number of matters per employee

Emp 1	202			
Emp 2	83	**Average**	212	Matters per employee per month
Emp 3	51			
Emp 4	229			
Emp 5	243			
Emp 6	162			
Emp 7	334			
Emp 8	128			
Emp 9	114			
Emp 10	59			
Emp 11	102			
Emp 12	460			
Emp 13	170			
Emp 14	267			
Emp 15	265			
Emp 16	209			
Emp 17	200			
Emp 18	303			
Emp 19	109			
Emp 20	250			
Emp 21	267			
Emp 22	98			
Emp 23	210			
Emp 24	199			

Emp 25	450	:
Emp 26	113	:
Emp 27	430	:
Emp 28	320	:
Emp 29	160	:
Emp 30	180	

4.2 Restatement of data

Judicare data has been extracted from the legal aid creditors department according to the tariffs per matter. The average payment for Judicare per district court matter is R2 679.60 while the average cost per regional court matter is R6 482.01. The make-or-buy decision method was used for Judicare calculations. Alternative dispute resolution has been compared with the cost of litigation using differential costing. The rate for salaries of employees has been extracted from the legal aid centre and has been calculated by average per employee in Tables 4.1 and 4.2.

4.3 Relevant costing

Only those costs and benefits that differ in total between alternatives are relevant in a decision. If the total amount of the cost will be the same regardless of the alternative selected, then the decision has no effect on the cost and it can be ignored. An avoidable cost is a cost that can be eliminated in whole or in part by choosing one alternative over another. The irrelevant costs are (a) sunk costs, and (b) future costs that do not differ between the alternatives (Garrison *et al.*, 2008).

In managerial accounting the terms avoidable cost, deferential cost, incremental cost, and relevant cost are often used interchangeably. To identify the costs that are avoidable in a particular decision situation and are therefore relevant, these steps should be followed: (a) Eliminate costs and benefits that do not differ between alternatives. These irrelevant costs consist of (i) sunk costs and (ii) future costs that do not differ between alternatives. (b) Use the remaining costs and benefits that do differ between alternatives in making the decision. The costs that remain are the differential or avoidable costs (Garrison *et al.*, 2008).

4.3.1 Alternative dispute resolution and litigation:

4.5 Table Calculations on differential approach

Alternative dispute resolution vs. Litigation cost			
	Dispute resolution	**Litigation**	**Differential cost benefits**
Salaries 5 practitioners district court		R 50 900.00	
Salaries 2 paralegals	R 22 957.50		
Total			R 27 942.50
Salaries 1 practitioner regional cost	R 0.00	R 29 467.00	R 29 467.00
Fuel cost	R 21 556.00	R 31 700.00	R 10 144.00
Vehicle Maintenance	R 8 020.00	R11 880.00	R3 860.00
Net cost and benefits	R 52 533.50	R 123 947.00	R 71 413.50

The differential cost and benefits between Alternative Dispute Resolution and Litigation have been solved by taking the percentage of matters that can be taken through to alternative dispute resolution against the ones that can be taken straight to litigation. The researcher looked at the number of practitioners in district court and the number amounted to 10, which reflects that if half the matters were to be taken to dispute resolution, then 5 practitioners would not be needed in the system. Their total salary was R50 900.00 per month. In dispute resolution 3 paralegals would be needed in the system due to the nature of the process and that it is faster to resolve than to litigate.

The salary of one paralegal is R11 478.75 per month and for two paralegals would then be R22 957.50 per month, which gives rise to a saving of R27 943.00 per month.

When using dispute resolution, legal aid could still save one practitioner at regional court, which would save R29 467.00 per month. Litigation requires movement of vehicles daily to various courts. Dispute resolution, however, can only be handled in the office, which would save money on vehicle maintenance and fuel costs. The researcher arrived at the percentage saving per annum by taking the total number of practitioners, which was 19 against the number of practitioners who have a potential saving, which was six in total, to get a percentage saving on the cost per annum, which amounted to fuel of R10 144.00 and vehicle maintenance of R3 860.00.

The total amount that legal aid can save is R71 413.50 per month and R856 962.00 per annum, therefore it is better to use the process of dispute resolution than litigation.

4.3.2 Judicare and internal staff:

4.6 Table Calculations for the make-or-buy decision:

Cost Description	**District Court**	**Regional Court**	**Judicare District**	**Judicare Regional**
Matter per employee per month	204	212	204	212
Judicare/ internal per matter	R 49.90	R 139.00	R 2 679.60	R 6 482.01
Salary per employee per month	R 10 180.00	R 29 467.00	R 0.00	R 0.00
Total cost per employee/ Judicare	**R 10 180.00**	**R 29 467.00**	**R 546 638.40**	**R 1 374 186.12**

The researcher has arrived at the findings of the make-or-buy decision by taking one internal practitioner who handles an average of 204 matters per period in a district court, while one internal regional practitioner is capable of handling 212 matters per period. This has been compared with the matters that were given out to Judicare, namely 204 for Judicare in district court and 212 for Judicare in regional court.

Judicare tariffs are given at an average of R2 679.60 per matter for district court, while regional court is R6 482.01. The average price per matter for internal staff in district court has been calculated at R49.90 while for regional court it is R139.00.These amounts have been calculated by dividing the average salary per month with the average number per head per period.

Total cost per employee and Judicare has evidenced that using Judicare is more expensive than using internal staff. An internal staff member in district court can be paid R10 180.00 per month but still handles 204 matters, and in regional court the practitioner is paid R29 467.00 per month but still handles 212 matters, whereas a Judicare practitioner in district court, if given 204 matters would cost R546 638.40 and in regional court R1 374 186.12 if handling 212 matters.

3.4 Civil litigation and the trust account as a source of income:

The trust account has been calculated according to acknowledgement and undertaking, which states the financial benefits of legal aid after the money has been paid to the clients after they have been represented by a legal aid practitioner. The money that was paid out to the client should be deposited into the legal aid account number and the client has to sign an undertaking.

An undertaking that needs to be signed by clients of legal aid states three conditions with regard to the money that should be taken by legal aid after the pay-out. It states: This is the percentage that is currently payable to the Board: (a) Benefits obtained-R0 to R20 000 = 0%, (b) Benefits obtained-R20 001 to R100 000 = 5% of the amount over R20 000, (c) Benefits obtained- Above R100 000 = R4 000 plus 10% of the amount over R100 000.

Table 4.7 shows the amount from the civil legal aid trust account calculated according to the percentages given on the acknowledgment and undertaking of legal aid. The trust account has been calculated according to the money that each centre has received for the client per period. The number of matters that have the benefits of clients has been looked at and the ratio is one matter per centre per 3 month period. The period that the researcher used to determine the benefits is 1 year.

Table 4.7: Trust account per legal aid centre:

Trust Account per Justice Centre	
Justice Centre	**Income**
JC1	R 6 203.07
JC2	R 0.00
JC3	R 0.00
JC4	R 1 307.97
JC5	R 0.00
JC6	R 1 501.55
JC7	R 0.00
JC8	R 0.00
JC9	R 1 515.41
JC10	R 2 250.00
JC11	R 1 301.97
JC12	R 2 227.03
JC13	R 4 446.87
JC14	R 11 250.00
JC15	R 34 000.00
JC16	R 1 515.41
JC17	R 23 932.85
JC18	R 0.00
JC19	R 0.00
JC20	R 0.00
JC21	R 0.00
JC22	R 0.00
JC23	R 0.00
JC24	R 0.00
JC25	R 0.00
JC26	R 0.00
JC27	R 0.00
JC28	R 0.00
JC29	R 0.00
JC30	R 0.00
Total	R 91 452.13

It is evident that civil legal aid is able to generate money that could fund legal aid through the trust account. Managing income is as important as managing cost. By encouraging practitioners to take the management of the trust account as an opportunity for bringing more income to legal aid could increase income that could assist in financing the operating costs.

4.4 Conclusion

Using salaried practitioners and eliminating Judicare practitioners is the best model because it solves the problem of cost constraints. Legal aid is cost effective and efficient when using this model. The researcher has come to the conclusion of opening a new centre for internal staff who would be handling matters that were supposed to be handled by Judicare practitioners so that they could be handled by internal staff. The researcher decided on this model to address the problem of conflict of interest. Since Judicare staff are used to address the problem of conflict of interest where more than one accused is represented by legal aid and they are implicating each other, the new model would solve this problem through the use of internal special staff who would be working for legal aid and be paid a salary by legal aid to handle such matters.

The researcher is of the opinion that this model is the best on the basis of opening a centre where the salaried special practitioners who handle Judicare should be based. The researcher believes that these special practitioners should not be based in one office with the normal salaried staff in order to avoid conflict of interest.

The researcher claims that using special salaried staff would make legal aid more effective since internal staff members are more cooperative than external staff. The internal staff members are performance-managed internally, while it is difficult to manage the processes of external practitioners.

Judicare staff members receive instructions from legal aid and handle the matters of legal aid themselves. This becomes a problem because they have to bring a progress report on the matters that they are handling but they do not cooperate and this makes it difficult for legal aid to trace the matters. By using internal staff, legal aid would be able to follow up on the matters that are outstanding and have would have exceeded turn-around time.

Judicare practitioners may sometimes, after having taken matters from legal aid, decide to withdraw from the matters without informing legal aid about it or their external businesses may close down, which leaves legal aid in the predicament of having to restart the process of re-issuing the matters to other external practitioners, which is sometimes difficult when the practitioners are fully booked. Using internal staff would go a long way towards solving such problems.

Judicare is also used on the grounds that legal aid has no experienced, competent and expert individual legal practitioners. The researcher has proved that not to be true because the hiring process of legal aid is competent and positions are rated according to experience, which makes it impossible for newly admitted practitioners to appear in other courts, such as regional courts and high courts. However, Judicare practitioners may be used as such, even after they have been recently appointed. The researcher believes that legal aid practitioners are highly skilled and competent to handle the tasks that are handled by Judicare practitioners.

The researcher has come to the conclusion that using internal staff would also improve the image of legal aid, as it has confidence in the internal staff and does not believe that experienced, competent and expert individual legal practitioners are found outside. The researcher has concluded that the nature and complexity of legal aid required by clients can be solved more efficiently internally by salaried staff than by Judicare staff. Clients would have confidence in legal aid and would not perceive it to be a low-quality free legal service to the poor.

Judicare practitioners bring accounts to legal aid for payment after the matters are closed. However, legal aid is experiencing problems with Judicare practitioners who do not submit their accounts on time for claims, which complicates the financial flow of legal aid. Moreover, other Judicare practitioners submit incorrect accounts with wrong tariffs, which creates extra work for internal staff having to solve the problems. If legal aid no longer relied on Judicare practitioners, such problems would be eliminated for good.

The researcher has attempted to solve the problem of effectiveness and efficiency during times of economic stress by the model of creating internal salaried special staff who would have a mandate designed like that of the internal auditor department. They could work for legal aid but still do legal aid matters that have conflict of interest. By doing so, the researcher would have solved the problem since it has been evident that using Judicare practitioners is much more expensive than using internal staff.

This chapter has attempted to solve the problem of funding legal aid during times of economic crisis. Alternative dispute resolution has evidenced to be the best model to save the cost of litigation, the use of internal staff has proved to be the best process to avoid making use of Judicare practitioners and the trust account has proved to have the capacity of financing legal aid. The following chapter will put forward the recommendations and conclusion of the study.

CHAPTER 5: RECOMMENDATION AND CONCLUSIONS

5.1 Alternative dispute resolution

It is recommended that legal aid use alternative dispute resolution in the centres of operations to avoid the cost of litigation. When using alternative dispute resolution legal aid would be able to save a huge amount of money, which would be rolled out to expand the services to the poor, especially in civil litigation.

Each centre should eliminate three legal practitioners by changing the positions to that of three paralegal positions. Whenever there is the opportunity of a vacant position, the paralegals should be appointed on the basis of superior qualifications and they should be thoroughly trained in order to be able to handle the process of dispute resolution.

All matters that qualify to go through the process of alternative dispute resolution, which includes eviction, child matters, contractual dispute and minor criminal offences (assault, intimidation) should be taken to that section while matters that do not qualify for alternative dispute resolution, which include divorce, administration of estate and major criminal offences (murder, rape) should be taken straight to litigation. If the matter fails on alternative dispute resolution due to parties not willing to compromise or when the matter later returns due to failure of the resolutions, then the matter could be taken to litigation.

5.2 Judicare

Judicare practitioners have been proved to be more expensive than using internal staff. Legal aid should therefore do away with using external legal practitioners. It may seem impossible to do away with the use of external practitioners at legal aid because there is a need to use them during times of a conflict interest when more than one client has been arrested and represented by legal aid, and they turn to incriminate each other. In that situation legal aid would continue to represent one client and give another client to a Judicare practitioner or give both clients to Judicare practitioners.

It is recommended that legal aid should open a unit were internal staff would be appointed to act as independents in order to take the cases that were supposed to be sent to Judicare. As in internal audit department, they would work for legal aid and would be paid by legal aid but they would still work independently from legal aid centres. Practitioners could be pulled from the centres or even appointed and trained to work independently so that they would continue to represent clients when a conflict has been realised. To avoid further conflict, the goal of independent staff should not clash with the goal of normal internal staff who by their performance should be rated on the number of cases they win on their defence against the clients represented by normal staff.

When the Judicare system has been changed and matters have been taken to internal independent practitioners it would reduce the administration costs. Judicare practitioners have to be captured on the legal aid data base as suppliers and the process of capturing those suppliers is time consuming and requires more support staff.

When Judicare practitioners have been issued with a matter, the administration staff has to file the paperwork and follow up on the practitioners to give progress reports, which in most instances is hampered by a lack of cooperation. After the matter has been closed the invoice is sent to the centres for payment and this process has to be done by creditors who have extra work.

5.3 Trust account

The findings have shown that there are matters that are paid out to clients but practitioners are not letting the clients sign the acknowledgement and undertaking, which gives legal aid the right to deduct percentages from clients' benefits. It is recommended that the trust account should be taken seriously by legal aid. It should be taken as a source of income and it should be administered as in a normal business. Legal aid should make sure that practitioners dealing with civil litigation should take this seriously by making sure that they do not forget to let the client sign.

5.4 Funding of Legal Aid by third-party investors

It is recommended that legal aid should not depend on the state for funding but should also work hard at finding third-party investors who are interested in justice for all and who would like to take part in funding legal aid. The state should not withdraw the funding to legal aid if it is able to raise money from third-party investors. The state should see it as complementary to expand the services of legal aid to reduce the number of people who go through the judiciary process unrepresented.

5.5 Conclusions

Legal aid in South Africa should consider changing the process of litigation by apportioning 50% of the matters to Alternative Dispute Resolution. Highly skilled paralegals should be appointed and trained further to be able to handle processes of this nature. This would bring down the cost by R71 413.50 per annum, which could be rolled out to cover other costs and to improve the footprint of legal aid.

Using external practitioners (Judicare) is more expensive, which makes legal aid less cost efficient. By using internal staff and creating a process of independent practitioners

who would still be paid from the salary pool would save money for legal aid. It is evident that using only internal staff saves legal aid R1 374 186.00. Legal aid should do away with the use of Judicare practitioners.

The trust account is an opportunity for legal aid to generate income. Legal aid should be looked at as a business since it generates revenue. It should be focused and executives and managers should encourage staff so that practitioners are able to view it as an opportunity to increase income rather that forgetting about it. It is possible for legal aid to generate cash through third-party investors who are willing to finance the legal aid system.

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ASSESSMENT OF A MASTER'S DISSERTATION NORTH-WEST UNIVERSITY MAFIKENG CAMPUS

Student: Mafokwane M.I

Student Number: 23231343

Subject Discipline: MBA

Title of Dissertation: **"FUNDING LEGAL AID IN SOUTH AFRICA"**

Assessor's Name: Dr Jan Kruger

Assessor's report

COMMENTS	CORRECTIONS
1.2 (A) All references in the text should consistently be presented in the reference list at the end page. IMF 2001 (p.1), for example is missing in the reference list.	All references have been listed in the reference list. IMF 2001 has been corrected and listed at the end page accordingly.
1.2 (b) Three or more authors should be represented by *et al* in the text;	Authors who are three or more have been represented by *et al* and while authors who are less than three have been represented by their surnames.
1.2 (c) Consistency of names should be maintained; not, for instance, Barendrecht 2009 (p.37) but Barendrecht and Biggerlaar 2009 (p.72).	Consistency have been maintained, Barendrecht 2009 (p.37) has been changed to Barendrecht and Biggerlaar.
1.6 This dissertation needs (further) editorial work to focus on grammar and language problems. It would be better if the title FUNDING LEGAL AID would indicate the location/place related to this title.	ThIS report has been edited on grammar and language on the 31/01/2013 a confirmation letter from editor has been attached. And the title has been changed to FUNDING LEGAL AID IN SOUTH AFRICA

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