

APPLICANTS THAT ARE NOT REGISTERED

The Survey

To assist the Joint Regulatory Table in understanding the work of the Charities Directorate and the possible demands on a restructured appeal system, applications for charitable registration received by the Charities Directorate were surveyed to determine:

1. why applicants do not obtain charitable registration; and
2. how many of these applicants would be likely to use an easier system of recourse if it were available.

Included in the survey were the 2,041 files, which the Directorate opened for applications received in the six-month period between January 4, 1999, and June 30, 1999. Of this total, 69 files were not examined for various reasons. Some turned out to be duplicates or not applications at all; and some could not be located despite at least two attempts to find them. In addition, applications for re-registration from previously registered groups were excluded from the survey because it was considered that these would likely be disproportionately successful in gaining registration.

This left a total of 1,972 applications for analysis. In 29% of the cases, the organization did not succeed in gaining registration. The files of the 579 unsuccessful applicants were examined to determine:

1. the point at which communications broke off between the organization and the Charities Directorate;
2. whether the organization employed legal counsel to represent it, and if so, at what point in the process legal representation began;
3. on the basis of the information available, the likelihood that the organization could have been registered;
4. whether the organization was seeking registration as a charity, an RCAA, or an RNASO;
5. whether the basis of disagreement between the organization and the Charities Directorate was a question of law or fact;
6. if the basis of disagreement was a question of law, what were the legal issues involved;
7. whether the organization would be a potential user of a more accessible recourse system if one were available; and
8. the type of organization.

Using a subset of these variables, the files of the 1,393 organizations that succeeded in obtaining registration were also examined to determine whether these organizations differed in some way from the unsuccessful applicants.

The data gathering and analysis were conducted by the Table's secretariat. Several people worked on the project at various times.¹ Because of differences in the way a few of the variables were coded, some results are less persuasive than others. These are noted in the text below.

1. When Communication Ceased

(A) At the Review Stage

(i) Following a request for a complete application

The first step in handling an application is to review it for completeness. If documents are missing, a screening team sends a form ("CN-8") to the applicant identifying what is needed. An appendix is usually attached to the form providing detailed explanations of what is required. (For example: a description of the pages missing from a governing document, or, if the applicant appears not to be incorporated, the minimum requirements for a constitution). In very simple cases, the screening officer telephones the applicant to request this or other information, rather than sending out the form.

Many of the applications were seriously inadequate. A number of applicants provided so little information that it could not be determined who the actual applicant was. In several cases the application form itself was missing or incomplete, with none of the required attachments present.

(ii) Following a request for more information

When the screening officer determines that it may be possible to register an applicant, but information essential to the consideration of the application is missing, the officer will request more information from the applicant. The officer, for example, may ask for details about training programs, an explanation of a particular item that appears on the financial statement, or the criteria the applicant is using to award scholarships or bursaries. The officer may list the information requested in a letter, use form CN-8, or call the organization.

Among the unsuccessful applicants, 55% broke off communications with the Charities Directorate by this stage. In total, 166 applicants did not respond to a CN-8, and 154 did not provide the information requested by letter or phone call

¹ The principal researchers were Hilda Saunders, Patricia Boudreault, and Judy Torrance.

(B) At the Determination Level**(i) Following an AFL**

When the screening officer determines that an applicant's file will require a detailed letter to address a number of areas of concern or that the applicant has probably not met the requirements for registration, the file is passed to a determination officer, who sends the applicant an "AFL" (Administrative Fairness Letter). There are two kinds of AFLs:

- "soft" AFLs, which may point out steps the organization can take to become eligible (such as amending its constitution), and which probe for clarification where it is unclear what the organization is attempting to do; and
- "hard" AFLs, which typically do no more than list the reasons why it appears the organization cannot be registered. An example of a hard AFL would be a letter to an organization that had as its sole purpose the promotion of a particular sport.

Following an AFL, a further 41% of the unsuccessful applicants were not heard from again. (65 did not reply to a "soft" AFL, and 171 did not reply to a "hard" AFL.)

(ii) Following a FTD

During the six-month survey period, 11 (or 2% of the unsuccessful applicants) received a "FTD" (Final Turndown Letter). These letters give the final decision of the Charities Directorate, after which the only existing recourse for an organization is to launch an appeal to the Federal Court of Appeal. No appeals were initiated during this period.

Table 1 summarizes the preceding information, by looking at the outcome of all 1,972 applications.

Table 1
Outcome of Applications

Outcome	Number	%
Registered	1,393	70.6
Not-registered: no reply to CN-8	166	8.4
Not-registered: no reply to information request	154	7.8
Not-registered: no reply to "soft" AFL	65	3.3
Not-registered: no reply to "hard" AFL	171	8.7
Not-registered: FTD	11	0.6
Not-registered: no information	12	0.6
Total	1,972	100.0

The unsuccessful applicants were not markedly atypical in sending in incomplete applications. Some 37% of the successful applicants were also sent CN-8 forms, asking them to supply missing documents, and 28% were asked to provide more information before they were registered.

The dataset for the unsuccessful applicants concentrated on determining the point at which communications with the Charities Directorate ceased. It thus does not convey any information about the extent of the communications between the applicant and the Directorate before that point was reached. However, the dataset for the successful applicants did track the extent of the communications that took place prior to registration. A third of the successful applicants received no communication from the Directorate; they were simply registered without any question. For the remaining successful applicants, 1,693 communications were recorded, for an average per applicant of 1.8 communications. In the opinion of the researchers, it is unlikely that unsuccessful candidates were contacted less often than successful ones.

2. Legal Representation

As Table 2 below indicates, relatively few organizations use lawyers to pursue their application. Equally interesting is the lack of difference in this area between the successful and unsuccessful organizations. It would have been easier to suggest explanations if a difference had emerged. For example, had lawyers been disproportionately present among the unsuccessful applications, we could suggest that applicants had sought out professional assistance either because they knew their case to be borderline from the start or because they found the application running into trouble during the registration process. Or had lawyers been disproportionately present among the successful applications, one explanation would be that the process is legally complex and consequently those who secure professional advice are more likely to succeed. None of these hypotheses is supported by the data.

Table 2

Use of Legal Representation

Point at which applicant obtained legal representation	Unsuccessful applicants	Successful applicants
With original application	48 (8%)	143 (10%)
Post CN-8	2	7
Post request for information	3	4
Post “soft” AFL	2	3
Post “hard” AFL	4	2
Never	520 (90%)	1,234 (89%)
Total	579 (100%)	1,393 (100%)

3. Registerability Scale

The unsuccessful applications were rated from 1-5 according to whether they came from organizations that were highly unlikely (“1”) or highly likely (“5”) to obtain registration. This variable reflects the personal opinion of the experienced employees of the Charities Directorate, who carried out the coding.² Their judgment calls were often difficult to make because of a lack of information on the file. More detailed information could have either enhanced or decreased the applicant’s likelihood of obtaining registration.

The applicants that received a “1” on the scale were those whose objects and activities were clearly non-charitable, as well as those who simply didn’t provide enough information in order to make a determination.

Applicants rated “5” had enough information on file to determine that the organization’s objects and activities were likely or potentially charitable. An example would be an organization with five objects, four of which were charitable. A request that the non-charitable object (usually a political object) be removed received no response. Another example would be an organization whose objects stated that the organization was advancing education. The educational programs had been listed, but a request for more details about these programs had gone unanswered.

Based on these judgment calls, of the 551 unsuccessful applications that could be rated,

- 300 were at a level of “1” on the scale,
- 71 were at a level of “2”,
- 55 were at a level of “3”,
- 62 were at a level of “4”, and
- 63 were at a level of “5”.

It is useful to single out the 182 unsuccessful applications where the Directorate was no longer attempting to gather more information from the applicant organization, i.e., those where the Directorate’s last point of contact was either a hard administrative fairness letter or a final turndown letter. The “registerability scale” provides a rough guide as to the correctness of the Directorate’s evaluation. The tentative conclusion from Table 3 below is that, even if all 182 applicants were to avail themselves of an easier recourse system, it is doubtful whether there are more than a handful of cases where the Directorate’s decision would have been reversed.

² No check was made to determine the degree of consistency in the ratings given by those coding this variable. The results should accordingly be treated with some reserve.

Table 3**“Registerability”**

Point at which communication ceased	Registerability Scale					Total
	“1” (Low)	“2”	“3”	“4”	“5” (High)	
Hard AFL	132	18	6	8	7	171
FTD	10	-	1	-	-	11
Total	142	18	7	8	7	182

4. Type Of Application

As indicated in Table 4 below, virtually all the applicants, successful as well as unsuccessful, applied for registration as charities. The relatively large number of unsuccessful applicants from Canadian amateur athletic associations came from sports clubs unable to meet the legislative requirements to qualify as a Registered Canadian Amateur Athletic Association (“RCAA”). RCAAs along with Registered National Arts Service Organizations have much the same tax status as registered charities, but are not considered to be charities.

Table 4**Type of Registration Sought by Success/Failure of Application**

Applied for registration as a:	Unsuccessful applicants	Successful applicants
Charity	564	1391
Canadian amateur athletic association	12	1
National arts service organization		1
Uncertain	3	
Total	579	1,393

5. The Nature Of The Dispute

An attempt was made to determine the type of disagreement that existed between unsuccessful applicants and the Charities Directorate that resulted in the non-registration of the organization. Was the disagreement based on differing views as to the facts at issue, or was the dispute about whether the organization’s activities and purposes qualified as charitable at law? Did mutual misunderstanding play a role?

This variable proved difficult for the coders to handle. Coding instructions were not sufficiently clear. As well, often several factors appeared to be in play, while in other cases there was insufficient information to determine the nature of the dispute. The following figures are thus at best indicative.

Among the 424 unsuccessful applicants where an attempt was made to classify the nature of the dispute, 141 were seen as involving a disagreement over the state of the law and 31 as revolving around the facts of the case. Mutual misunderstanding was identified in a further 56 cases, but an inability of the Charities Directorate to convey what type of information it needed could well have been a factor in the large number of applicants, noted earlier, that did not respond to requests for further information.

6. Potential Users Of Recourse

Each file was examined in order to determine whether the applicant would be a potential user of an easier recourse mechanism if one were available. It was assumed that if an applicant did not reply to the simplest CN-8 request, it was unlikely that it would pursue the matter further. Many of the applications where no answer was forthcoming to a determination officer's questions were similarly classified.

There were some applications from the various disappearance levels that provided enough information that it seemed very likely that the organization could have been registered. (For example, there were a dozen or so applications in which a determination officer had approved draft objects, and the organization would have been registered upon receipt of the amended governing documents.) Nevertheless, we included such applicants among the potential users of an easier recourse system on the assumption that, if they had been denied charitable registration, they would have sought redress.

Based on these fairly generous assumptions, the survey suggests that at most 138 (24%) of the unsuccessful applicants in this six-month period could have been potential users of a new recourse mechanism. However, a more restrictive set of assumptions would start from the 182 organizations that received "hard" AFLs and FTDs—those that have or have virtually used up their pre-appeal rights within the existing system, and then apply some undetermined discount factor to cover the organizations that decide not to proceed further. Very tentatively, and depending on the assumptions made, the number of organizations resorting to a new recourse mechanism could lie somewhere between 150 and 250 a year.

7. Legal Issues Involved

Various legal issues stood in the way of registering these applicants. Many files had more than one problem. Very often, for example, an organization would have both non-charitable formal objects and be carrying on non-charitable activities. (On average, the

unsuccessful applicants had 1.2 issues each, compared to 0.4 among the successful applicants.) The distribution is shown in Table 5:

Table 5

Legal Issues in Unsuccessful/Successful Applications

Legal issue	Unsuccessful applicants (% of all unsuccessful applicants, N=579)	Successful applicants (% of all successful applicants N=1,393)
Gifts to non-qualified donees ³	35 (6%)	71 (5%)
Non-resident	12 (2%)	8 (1%)
Beneficiary class	41 (7%)	27 (2%)
Other private benefit	44 (7%)	16 (1%)
Non-charitable purpose	263 (45%)	151 (11%)
Unrelated business activities	33 (6%)	14 (1%)
Political activities	49 (8%)	22 (2%)
Other non-charitable activities	202 (35%)	160 (11%)
Other	39 (7%)	127 (9%)

Among the unsuccessful applicants, the major issue was having formal objects that were not charitable. However, equally significant was the presence of non-charitable activities, if all three of the “activities” categories (unrelated business, political, and other) are combined. This issue appeared roughly three times as often as the next most significant group: a combined “absence of public benefit” category (beneficiary class and other private benefit).

The successful applicants did not demonstrate a similar concentration of issues. However, the same issues did arise in these applications, if relatively less frequently. Thus the type of issue itself did not appear to determine the outcome of the application. The successful applicants presumably were able either to provide additional information that allayed an initial concern, or to adapt their governing documents or programs to bring themselves within current registration requirements.

8. Type of Organization

To give more background to the legal issues involved, Table 6 classifies the unsuccessful applicants by the type of organization, as defined by the nature of the clientele or the purpose served. In some cases, the organization appears more than once in the Table because it had objects which placed it under more than one of the four broad categories of charitable purposes (the “heads” of charity), such as an educational organization focusing

³ The *Income Tax Act* places restriction on which organizations a registered charity can fund. The recipients must be “qualified donees,” most of which are other registered charities.

on underprivileged children. However, 49 applicants are excluded from the Table because they did not provide enough information to determine the category into which they might fit.

As noted earlier, among the unsuccessful applicants, 55% dropped out early in the process by not responding to requests for further information or documents. These are the organizations that appeared either not to be fully committed to gaining registration or to be easily discouraged. Wide variation in the degree of commitment/discouragement existed among the various types of organizations, such that if some types of organizations were less successful than others, part of the explanation may lie in the tendency among the group to withdraw early in the registration process. The following types of unsuccessful organizations had high rates of early withdrawal:

- mainstream religious groups (79% of them withdrew after a CN-8 or information request);
- social clubs (65%);
- poverty relief (63%);
- and the diverse “other” category (71%).

On the other hand, some types of organization had a disproportionate number of applications that received an AFL or FTD. These included:

- facilitator/umbrella groups (only 22% of them dropped out of communication after a CN-8 or information request, with the remainder receiving either a hard or soft administrative fairness or a final turndown letter);
- educational groups (23%);
- professional associations (25%);
- non-mainstream religious or philosophical groups (25%);
- environmental groups (28%);
- conduits to foreign entities (29%); and
- sports groups (33%).

A number of reasons may account for the disproportionate number of applicants from these types of organizations that received an AFL or FTD. Some of them, for example, sports groups, may be clearly outside the existing parameters of charity law, and as such, receive a quick rejection from the Directorate. In other cases, we may be seeing the evolving boundaries of charity law in action, with the Directorate’s understanding of the law being challenged by groups that simply do not accept that they are non-charitable.

Table 6

**Unsuccessful Applicants: Type of Organization by
Point at Which Communication Ceased**

Type of organization	CN8	Info request	Soft AFL	Hard AFL	FTD	Total
Non-charitable purposes						111
Residents' associations	1	1	1	1		4
Sports groups	2	7		16	2	27
Fraternal organizations/ service clubs	2	2		5		9
Professional associations	1	1		5	1	8
Social clubs	9	4	2	4	1	20
Political advocacy groups	5	3	1	7	1	17
Conduits to foreign entities		5	3	9		17
Facilitator/umbrella groups ⁴		2	3	4		9
Potentially charitable purposes						
First head of charity						65
Poverty relief	5	10	3	4	2	24
Business development ⁵	5	9	8	19		41
Second head of charity						39
Promotion of education	2	3	4	13		22
Promotion of artists ⁶	2	5	4	5	1	17
Third head of charity						60
Mainstream religious groups	24	14	3	7		48
Other religious or philosophical groups	2	1		9		12
Fourth head of charity						325
Seniors' groups	4	2	3	2	1	12
Youth groups	4	6	8	6	1	25
Promotion of mutual understanding/tolerance	4	1	4	6		15
Protection of the environment	3	3	5	11		22
Women's groups	4	2	3	6	1	16
Cultural/ethnic groups	27	12	18	22	3	82
Other ⁷	50	58	11	33	1	153

This picture is amplified if we look at the success rates of the various types of organizations, i.e., the percentage of successful applications to all applications in the category. Among those with non-charitable purposes (such as residents' associations),

⁴ These organizations exist to help other organizations. In some circumstances, they can have difficulty meeting the requirement in the *Income Tax Act* for a registered charity to carry on charitable activities itself.

⁵ This category covered a variety of organizations, including those that did not meet the requirements for registration under the fourth-head purpose of the promotion of industry, trade and commerce, as well as those seeking to foster economic activity without a clear enough link to the relief of poverty.

⁶ While the promotion of the arts is a second-head charitable purpose, promoting the careers of individual artists is not considered charitable.

⁷ This is an extremely diverse group, covering applicants such as animal welfare groups, volunteer fire brigades, and foundations established to fund charities in general.

the “success rate” was zero: none were registered. However, among the types of organizations with potentially charitable purposes, Table 7 shows some types of organizations were disproportionately successful, particularly the educational and mainstream religious group, whose rate was considerably above the average success rate for the sample as a whole of 71%.

By contrast, the following types of organization had a disproportionately low success rate:

- promote mutual understanding or tolerance (12% successful);
- cultural/ethnic groups (15% successful); and
- business development vs. community economic development or promotion of industry, trade and commerce (18% successful).

Table 7

Selected Types of Applicants by Success Rate

Type of applicant	Unsuccessful applicants	Successful applicants	“Success rate” (registered as % of those that applied)
Poverty relief	24	108	82%
Business development vs. community economic development or promotion of industry, trade and commerce	41	9	18%
Provide information vs. education	22	329	94%
Promote artists vs. the arts	17	99	85%
Mainstream religious groups	48	308	87%
Other religious or philosophical groups	12	24	67%
Seniors	12	40	77%
Youth	25	62	71%
Promote mutual understanding or tolerance	15	2	12%
Environment	22	37	63%
Women	16	13	45%
Cultural/ethnic	82	14	15%