ONCA

Ontario Not-for-profit Corporations Act

Valerie Johnston, Rotary Club of Gravenhurst

For the exclusive use of Rotary District 7010 Clubs only. Do not distribute further without the express consent of the author.
June 21/23.

Introductions

AGENDA

1. Introductions
2. Rotary Club Governance Structure
3. District 7010 Clubs – Corporate Structure
4. Introducing ONCA
5. Bylaw Development Process
6. Articles of Incorporation
7. Questions
8. Next Steps

THE USUAL DISCLAIMER …

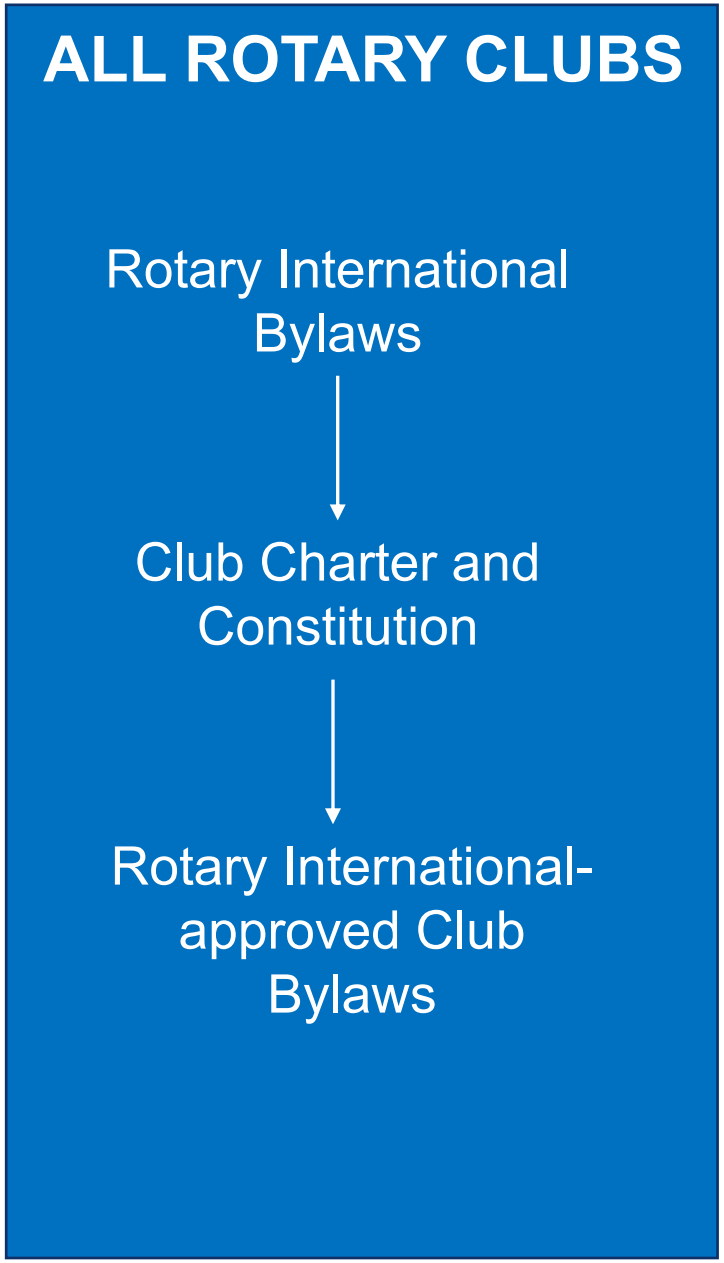
What follows is intended as general information only. It does not constitute legal advice.

Given the complexity of the legislation and the variations among our Clubs, no one solution will meet the needs of every Rotary Club.

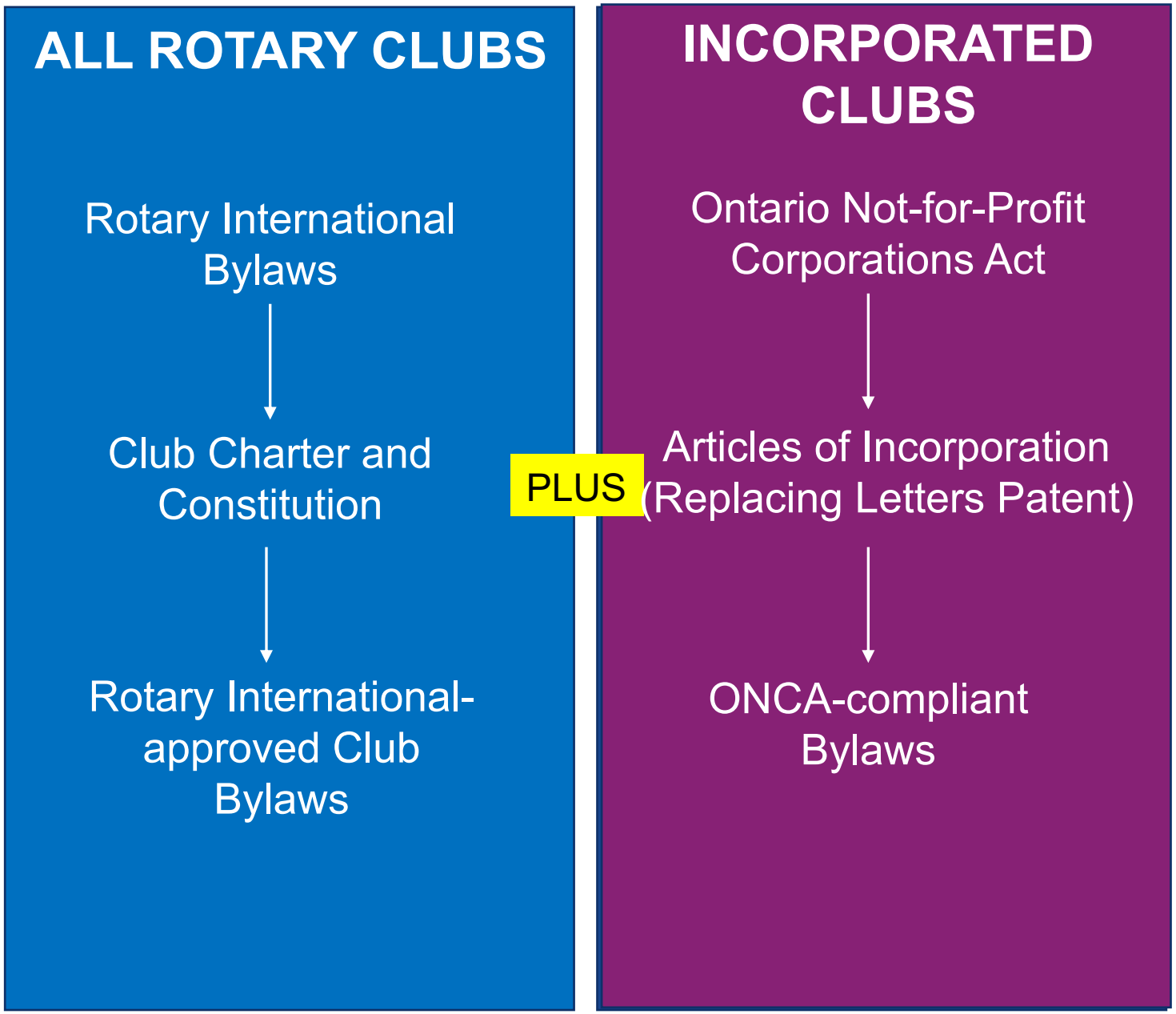
Clubs are advised to consult with legal counsel to ensure that the solution they identify complies with the legislation.

Rotary Club Governance Structure

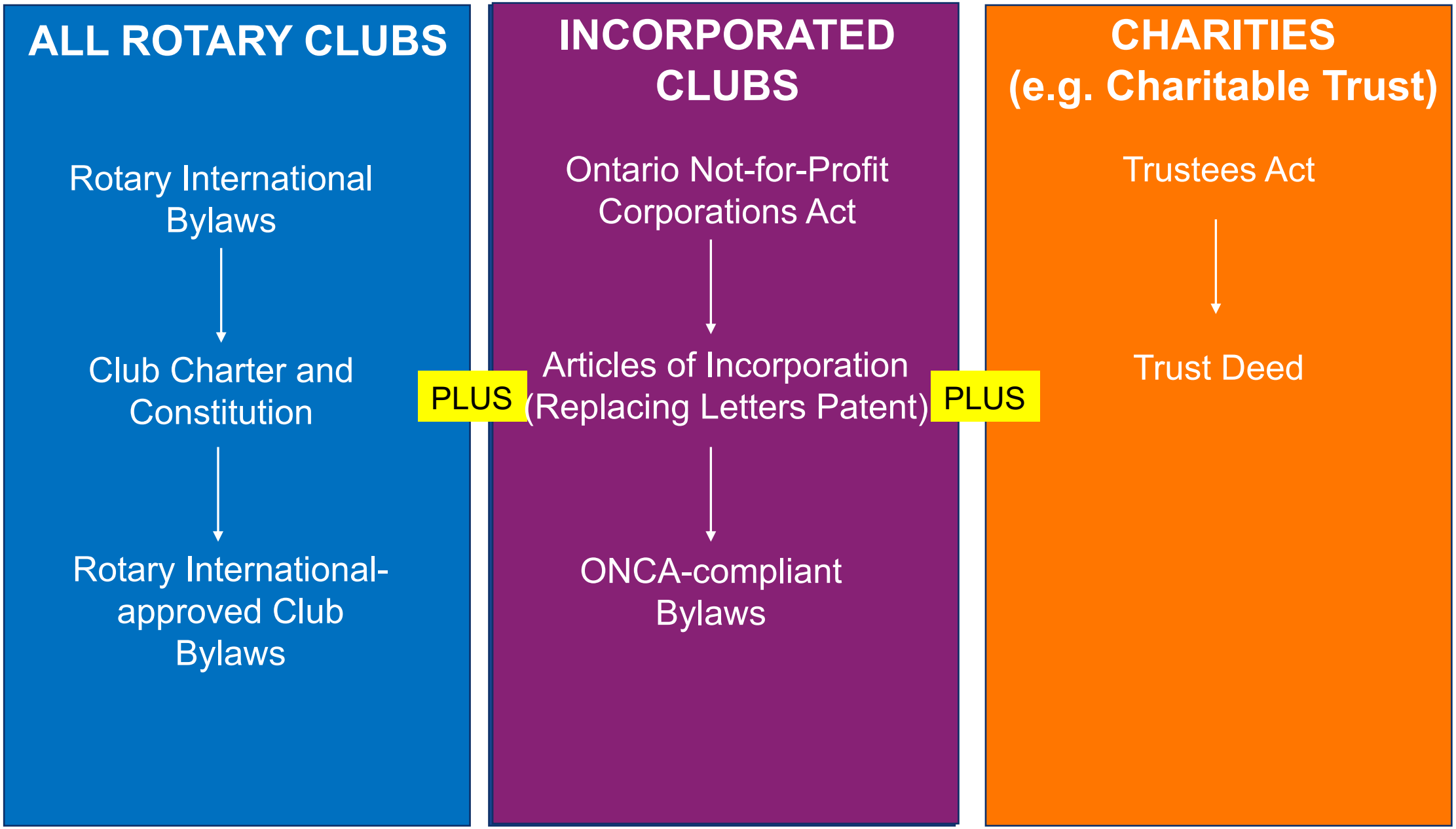
ROTARY CLUB GOVERNANCE STRUCTURE



ROTARY CLUB GOVERNANCE STRUCTURE



ROTARY CLUB GOVERNANCE STRUCTURE



ACCORDING TO THE ONTARIO BUSINESS REGISTRY …

There are 43 Rotary *corporations* in District 7010

- 34 Clubs are listed as ‘active’
- 6 Clubs are listed as ‘inactive’
- 2 clubs have separately incorporated foundations
- 1 club has separately incorporated Charitable Trust

In addition, there are:

- 4 unincorporated Rotary clubs
- 6 unincorporated Rotaract clubs

Ontario Not-for Profit Corporations Act, 2010

WHAT IS THIS THING CALLED ‘ONCA’, ANYWAY?

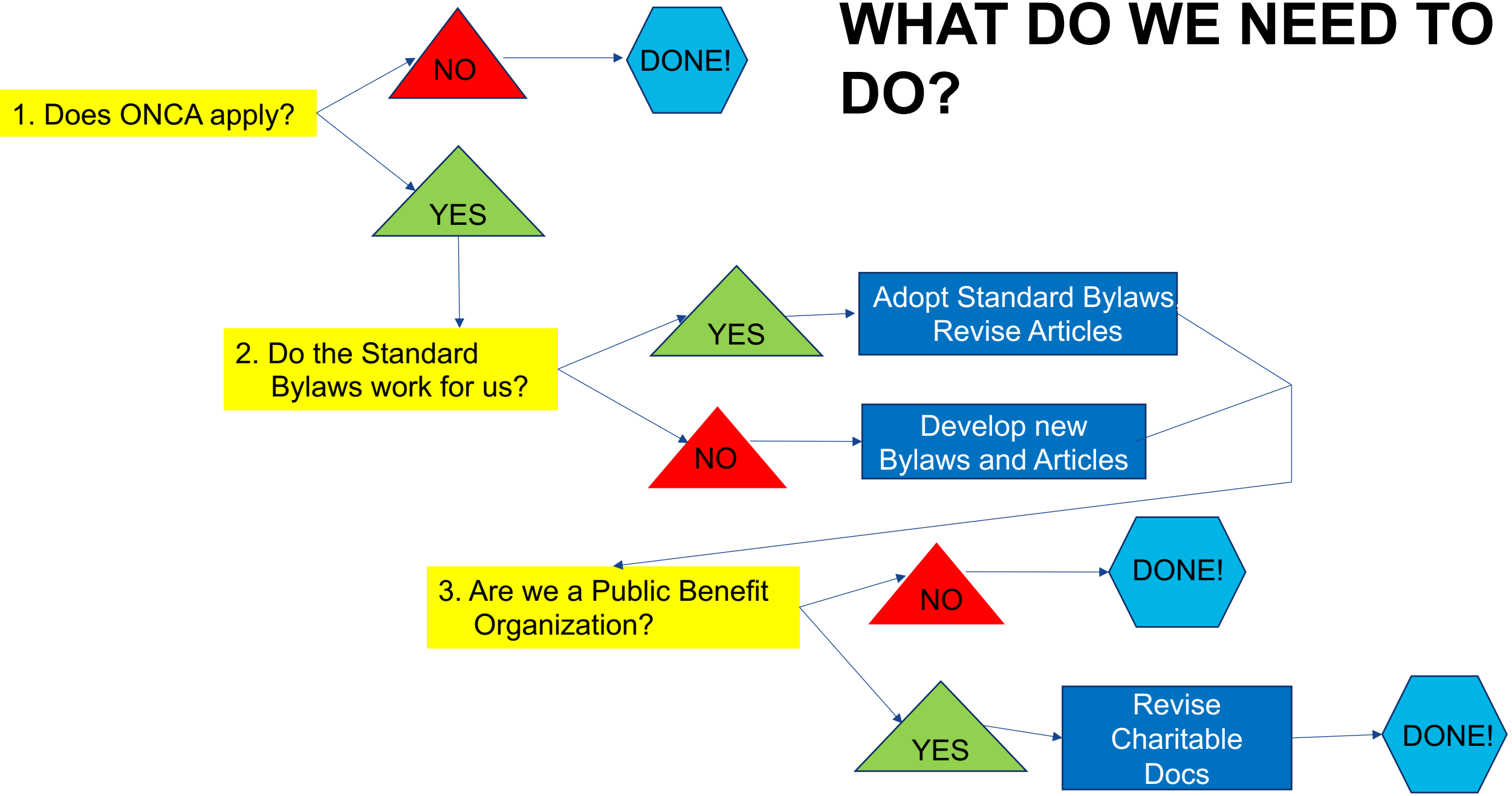
- Purpose-built legislation for Ontario’s not-for-profit sector
- Covers ALL not-for-profits (NFP) incorporated in Ontario (including Rotary Clubs)
- MAJOR changes from previous legislation:
  - Provides detailed rules for how not-for-profit corporations must operate
  - Moves some **mandatory provisions** from **Bylaws** to **Articles of Incorporation** (formerly ‘Letters Patent’)
  - Created new class of organization: **‘Public Benefit Corporation’**
  - Created **Ontario Business Registry**
  - Provides **Standard Organizational Bylaws**
  - Simplifies incorporation process

WHY DOES IT MATTER TO OUR CLUB?

- If your club is incorporated in Ontario, this is *the* legislation that governs the way you operate.
- NFP corporations have until **October 18, 2024** to bring their governing documents into compliance with ONCA.
- If your club meets the criteria to be a Public Benefit Corporation (PBC), it must fulfill additional requirements.
- If you're not already incorporated but decide to incorporate in the future, ONCA sets out the process for doing that.

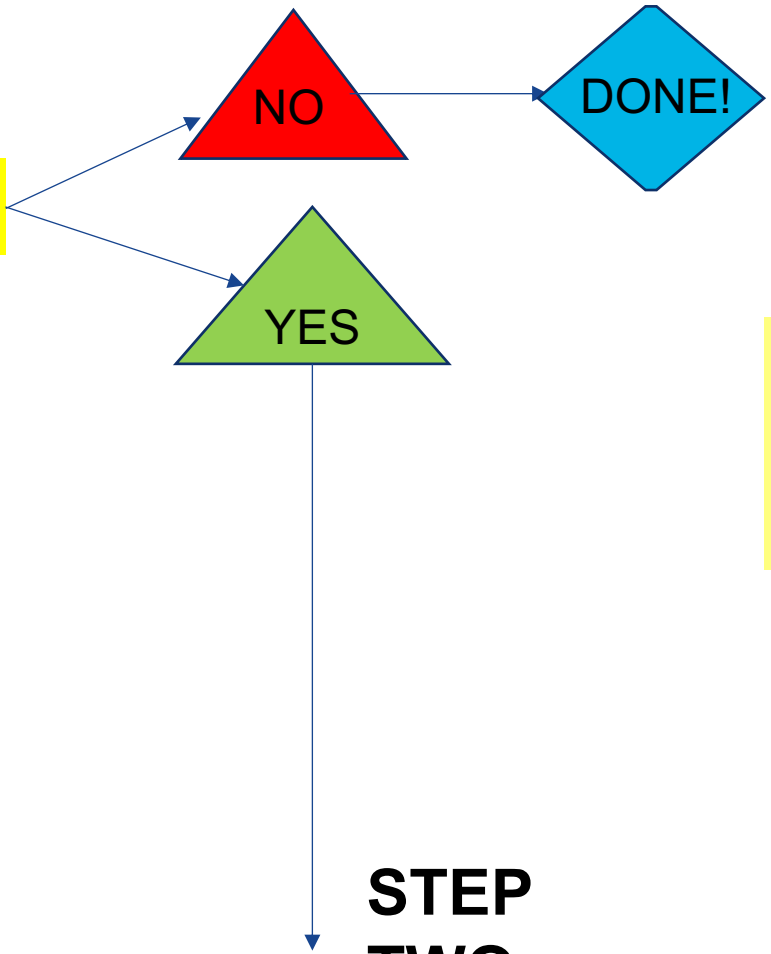
WHAT DO WE NEED TO DO?

WHAT DO WE NEED TO DO?



STEP ONE

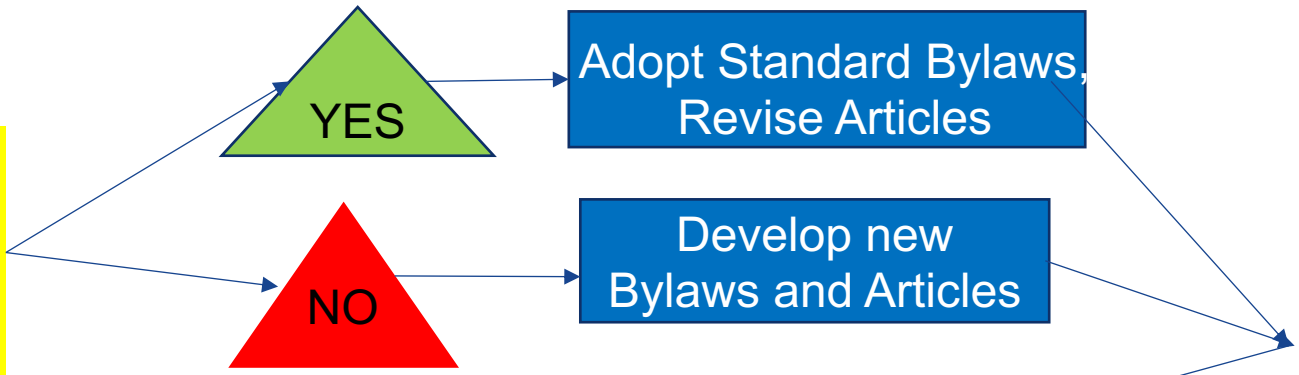
1. Does ONCA apply?



- Is our Club incorporated?
- If so, are we incorporated in Ontario?

STEP TWO

2. Do the Standard Bylaws work for us?



https://www.ontario.ca/page/not-profit-corporations-act-2010-standard-organizational-law

STEP THREE

- Can we live with the Standard Bylaws?
- If not:
  - Identify mandatory, default and non-mandatory provisions
  - For default or non-mandatory provisions – What do we want our Bylaws to say instead?

STANDARD BY-LAW PROVISIONS

TYPE	DEFINITION	EXAMPLE
MANDATORY	• As detailed in Standard Bylaw • Apply *whether or not* they're included in Corporation's governing documents • *Cannot be overridden* in Corporation's governing documents	Maximum length of term for Directors is four years
DEFAULT	• As detailed in Standard Bylaw • Will apply unless governing documents indicate otherwise	Directors do not need to be members of the Corporation
OPTIONAL	• Not detailed in Standard Bylaw • Corporation can define own provisions	Members can vote by mail, telephone or electronic means

Bylaw Development Process

BYLAW BUILDER – THE PROCESS

1. Assemble a team
2. Create an account at: **https://nonprofitlaw.cleo.on.ca/transition-to-onca/update-governing-documents/cleos-bylaw-builder/**
3. Work through the process, inputting answers to the questions as you GO
4. System produces draft version of Bylaws with questions included
5. Review draft to identify a) inconsistencies and b) unsuitable provisions c) missing provisions
6. Review list of “Mandatory and Default” provisions to identify options for change
7. Edit Draft to eliminate questions, address inconsistencies and include preferred options
8. Present to Board for approval
9. (Get Legal Review)
10. Once approved, present to membership for ratification.

WHAT IF WE DO NOTHING?

AND … IF WE CHOOSE TO DO NOTHING?

The government will do it for you. **Any NFP that hasn't amended its Bylaws to comply with ONCA by October 18, 2024 will be deemed to have adopted the "Standard Organizational By-law" developed by the Ministry of Government and Consumer Services.**

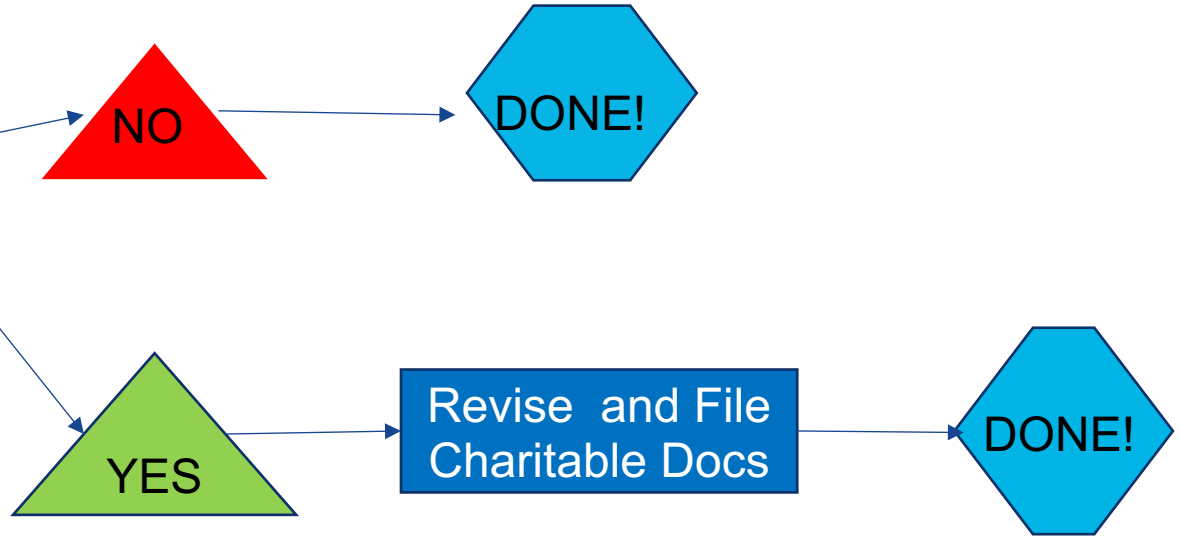
That Standard By-law may *or may not* reflect the way you want your Club to operate.

/

Public Benefit Corporations

STEP THREE

3. Are we a Public Benefit Corporation?



PBCs:

- Are we a Registered Charity?
- If not, do we meet the other PBC conditions?

PUBLIC BENEFIT CORPORATIONS – DEF'N

*"A public benefit corporation is **a charitable corporation** or a **non-charitable corporation that receives more than $10,000 per financial year in either donations or gifts** from people who are not members, directors, officers or employees of the corporation."*

- Are you a registered charity? If so, you are a PBC.
- Did you receive over $10,000 in donations or gifts in the previous year? If so, you are a PBC ***for that year.***

PUBLIC BENEFIT CORPORATIONS – REQ'MTS (1)

Public Benefit Corporations (PBCs) must meet more stringent requirements than Non-PBCs in two major categories:

1. Distribution of assets on dissolution of the corporation:
   - $ can only go to another charity with substantially similar goals, or to government, or to a government agency
2. Financial review and reporting:
   - Rules vary depending on a) whether the corporation is a charity and b) the amount of income generated. By default, PBCs should have an Audit or Review Engagement.

https://nonprofitlaw.cleo.on.ca/run-a-nonprofit/finances/

PUBLIC BENEFIT CORPORATIONS – REQ'MTS (2)

Annual Revenue	PBC	Not a PBC
$0-$99,999.99	You can pass an **extraordinary resolution** that says you don't need to do an audit or a review engagement	You can pass an extraordinary resolution that says you don't need to do an audit or a review engagement
$100,000-$499,999.99	You can pass an extraordinary resolution to have a review engagement (rather than an audit)	You can pass an extraordinary resolution that says you don't need to do an audit or a review engagement
$500,000+	You must have an audit	You can pass an extraordinary resolution to have a review engagement (rather than an audit)

https://nonprofitlaw.cleo.on.ca/run-a-nonprofit/finances/

Articles of Incorporation

ARTICLES OF INCORPORATION

- “Articles of Incorporation” refers to the document that creates a corporation.
- The previous version (“Letters Patent”) included minimal information, i.e:
  - Name
  - Location of Head Office
  - Purpose
  - Names of founding Directors (usually 3)

- ONCA requires that certain provisions move from Bylaws to Articles:
  - Number of Directors
  - Any restrictions on powers of Directors
  - Names and voting rights of each class of Member
  - Locations of meetings – if other than Ontario

- Revised Articles must be filed with the Ontario Business Registry

Questions?

Next Steps