ONCA

Ontario Not-for-profit Corporations Act

Valerie Johnston, Rotary Club of Gravenhurst

Rotary

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.

ONTARIO NOT-FOR-PROFIT CORPORATIONS ACT, 2010, S.O. 2010, c.15

1. What is it?
2. Why does it matter to our Rotary Club?
3. **What do we need to do?**
4. What happens if we do nothing?
5. **Where can we go for help?**

WHAT DO WE NEED TO DO?

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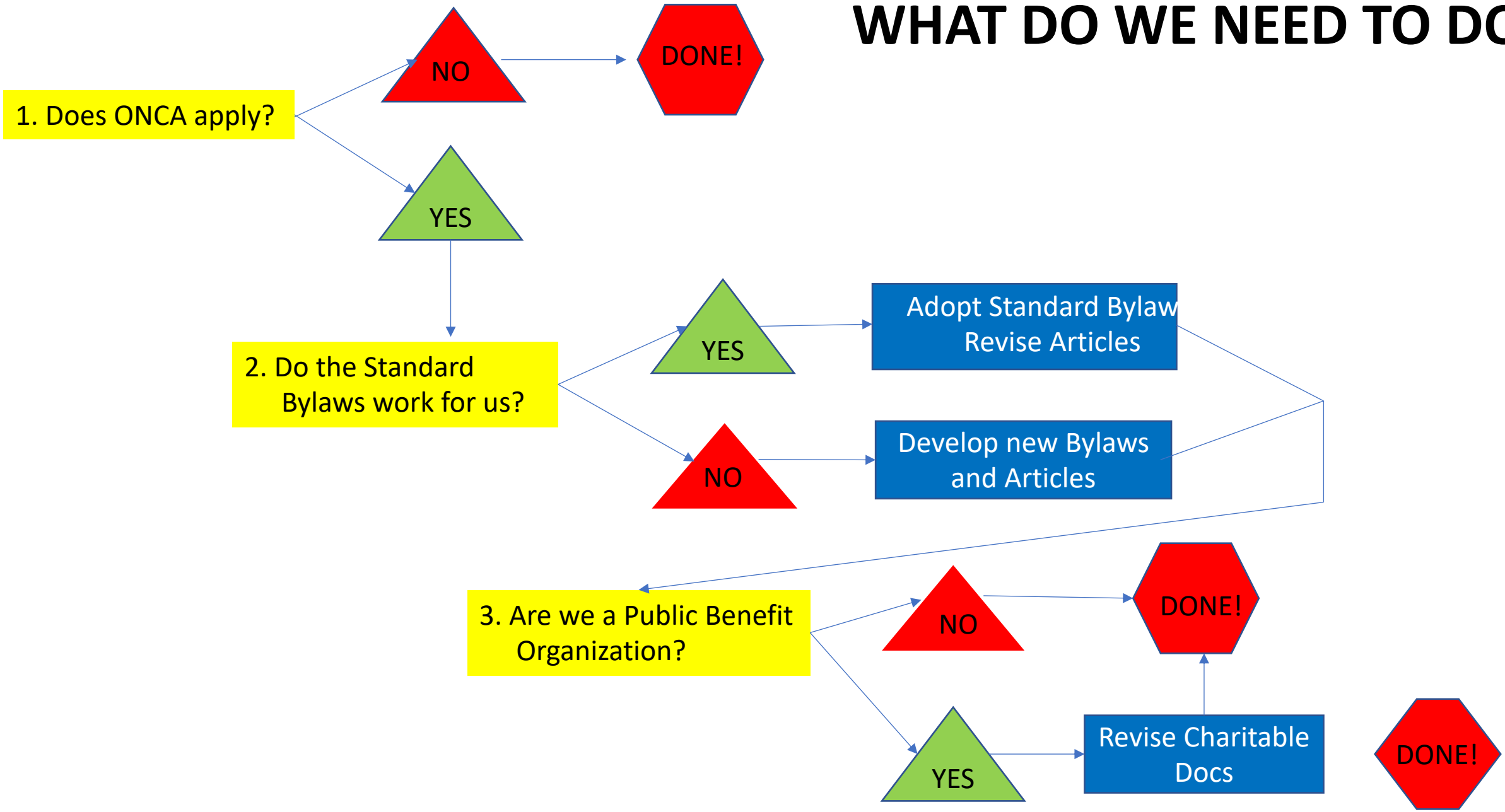
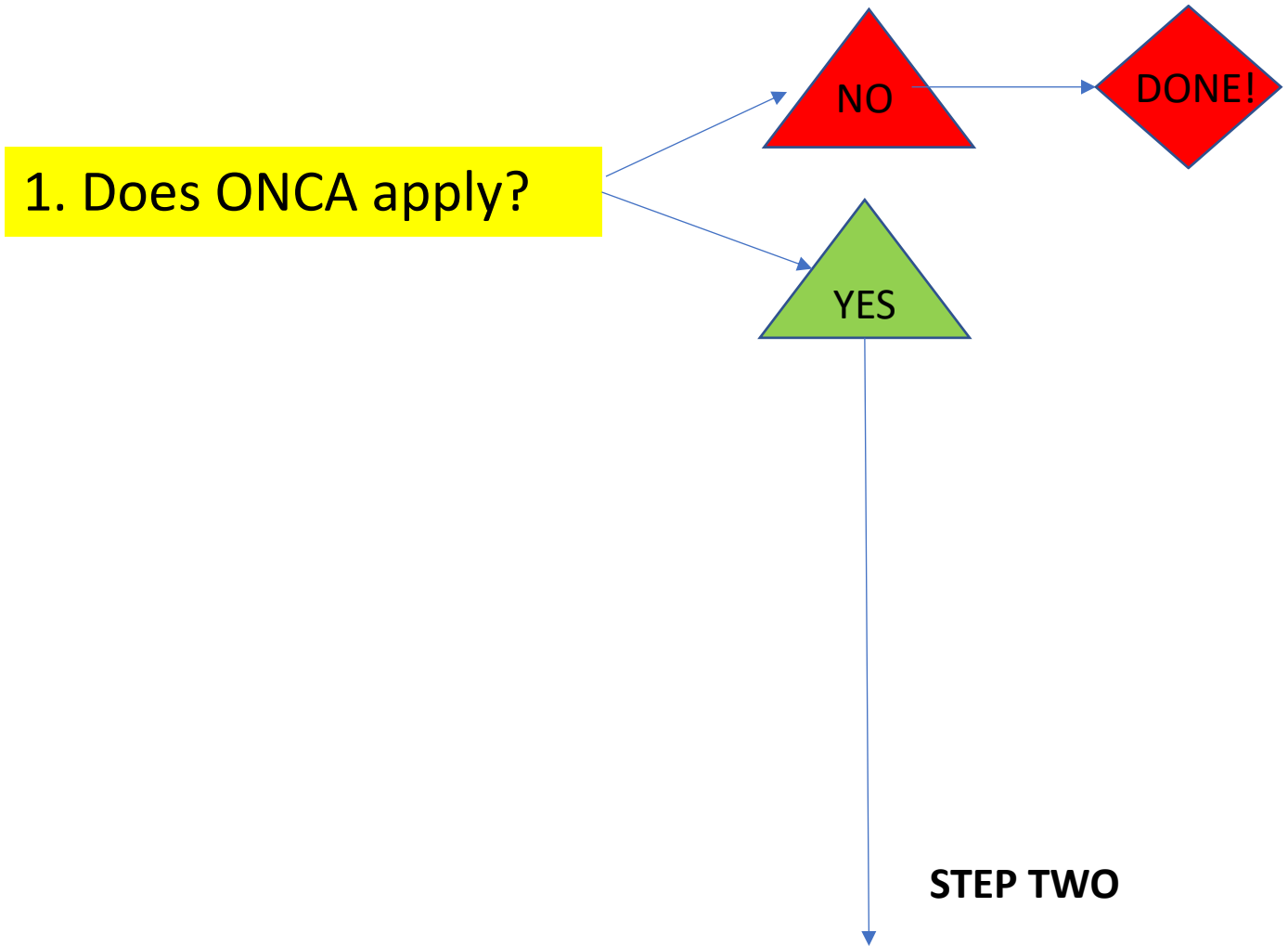


STEP ONE



- Is your Club incorporated?
- If so, are you incorporated in Ontario?

According to the Ontario Business Registry – 91% of Rotary Clubs in District 7010 are incorporated

ACCORDING TO THE ONTARIO BUSINESS REGISTRY …

40 Clubs in District 7010 are incorporated:

- 34 are ‘active’
- 6 are ‘inactive’

PLUS:

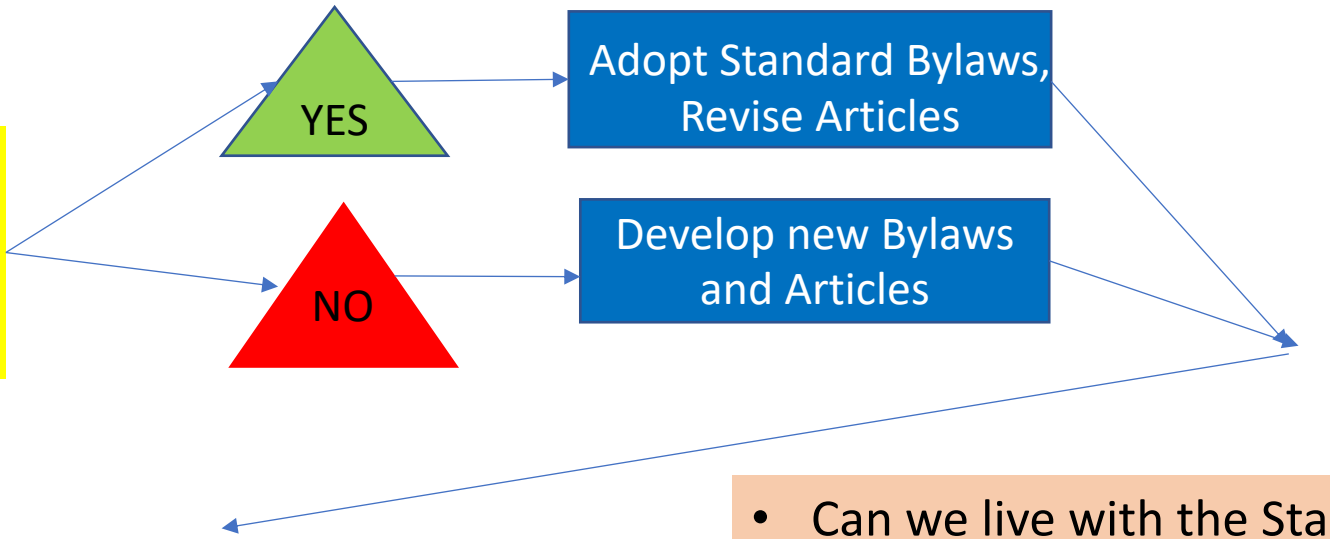
- 2 clubs have separately incorporated foundations
- 1 club has separately incorporated Charitable Trust *(to be confirmed)*

TOTAL:

- 43 Rotary Corporations, **PLUS:**
  - 4 non-incorporated clubs

STEP TWO

2. Do the Standard Bylaws work for us?



STEP THREE

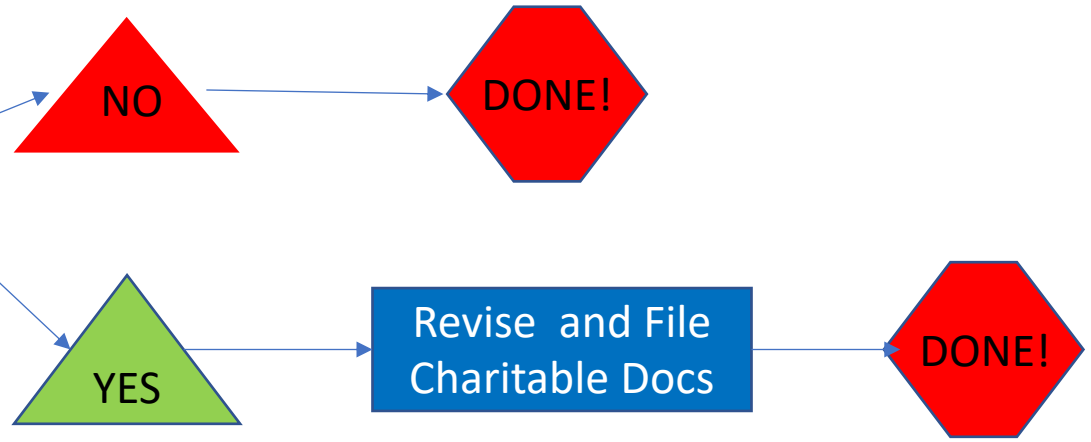
- Can we live with the Standard Bylaws?
- If not:
  - Identify mandatory, default and non-mandatory provisions
  - For default or non-mandatory provisions – What do we want our Bylaws to say instead?

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

STEP THREE

3. Are we a Public Benefit Corporation?



PBCs:

- Registered Charities, AND;
- Non-Charities that meet certain 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/

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.

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

OUR GOVERNING DOCUMENTS

GOVERNING DOCUMENTS

Level of Detail

Articles Of Incorporation*	Bylaws	Policies and Procedures

Difficult to Change

(formerly called “Letters Patent”)

GOVERNING DOCUMENTS - CONTENT

Articles Of Incorporation *	Bylaws	Policies and Procedures
• Organization's name, purpose and location of head office • **# of directors** • **Classes of membership**	• Conditions of membership • Members' roles and responsibilities • Election processes and terms of office • Officers' responsibilities • Meeting procedures • Notice requirements • Process for adoption and amendment of	• Describe how your club handles operational issues (e.g. Complaints. Confidentiality) • Not required under ONCA

GOVERNING DOCUMENTS – PROCESS TO AMEND

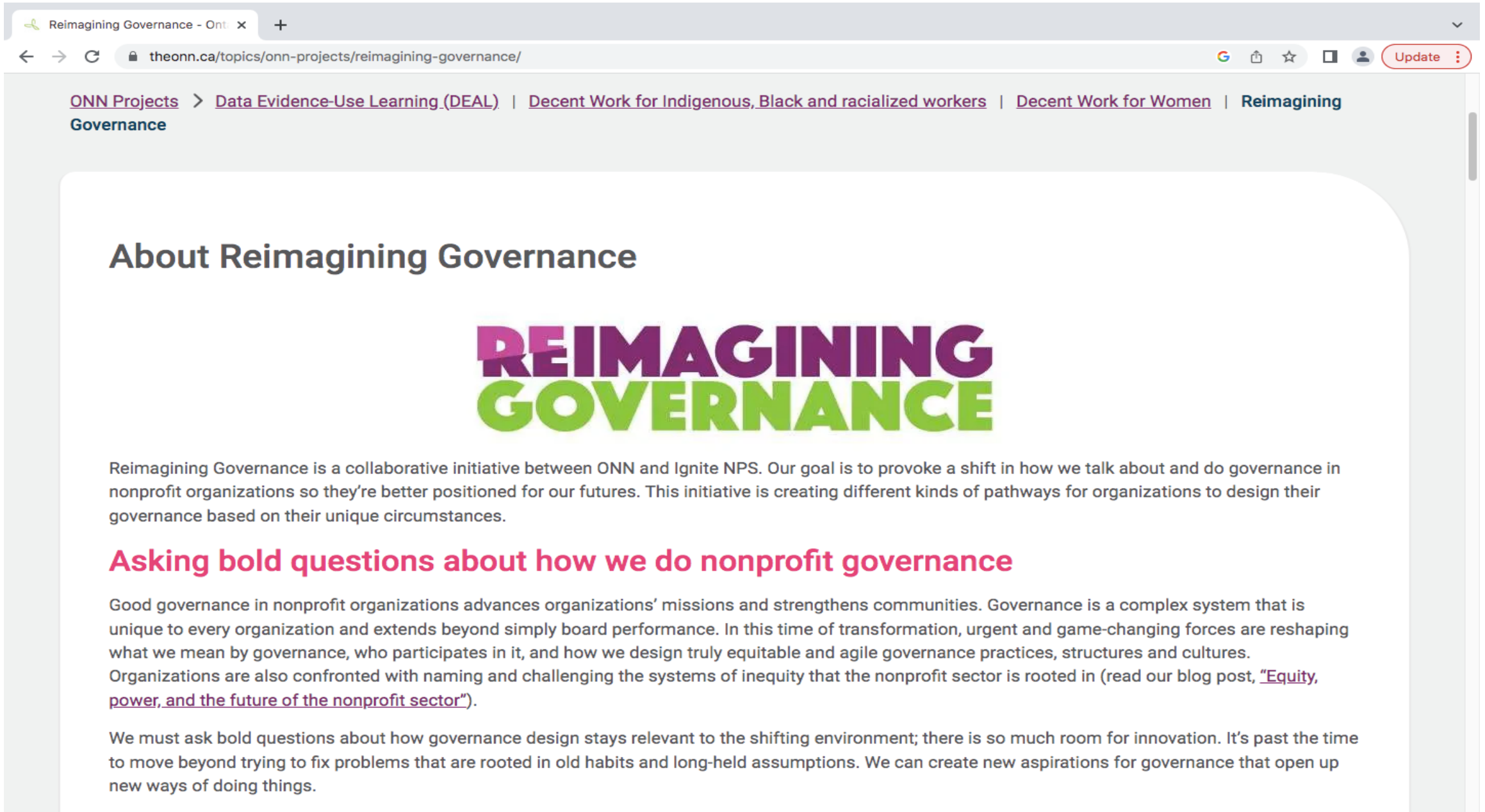
Articles	Bylaws	Policies and Procedures
• Requires approval of 2/3 of members • Must file changes with Service Ontario and pay fee • Charities must have changes approved by Ontario's Public Guardian and Trustee and Canada Revenue Agency	• Directors may change Bylaws and have changes ratified later by members • Requires approval of 50% of members • Government filing not required	Can be changed at sole discretion of the Board.

WHERE CAN WE GET HELP?

Where Can We Go for Help? (General)

- Ontario Nonprofit Network
  - https://theonn.ca/topics/policy-priorities/regulatory-environment/ontario-not-for-profit-corporations-act-onca/
- Ontario Not-for-profit Corporations Act
  - https://www.ontario.ca/laws/statute/10n15
- Carters Charity Webinars
  - https://www.carters.ca/pub/seminar/charity/2023/C&NFP/Spring-2023-C&NFP-webinar-handout.pdf

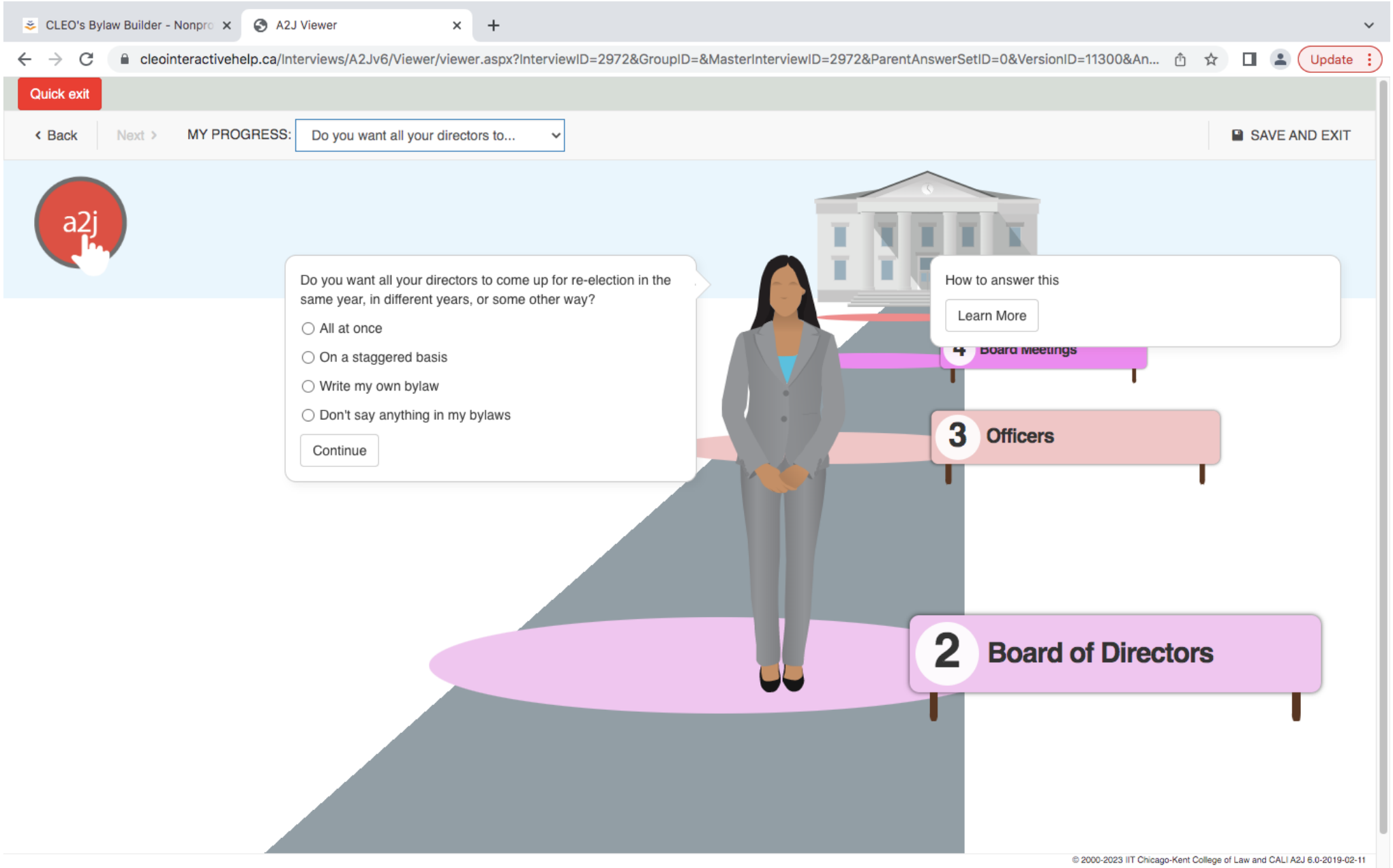
ONTARIO NONPROFIT NETWORK



Where Can We Go for Help? (Specific)

- Nonprofit Law Ontario (Community Legal Education Ontario):
  - General Information
    - https://nonprofitlaw.cleo.on.ca/transition-to-onca/
  - Bylaw Builder
    - https://www.cleointeractivehelp.ca/Login/Login.aspx?ReturnUrl=%2fDefault.aspx%3fOrganizationID%3d130%26InterviewID%3dINT-000874&OrganizationID=130&InterviewID=INT-000874
  - Sample Bylaw
    - https://nonprofitlaw.cleo.on.ca/wp-content/uploads/2022/05/6-May_ONCA_SampleBylaw_FINAL.pdf

BYLAW BUILDER - CLEO



Where Can We Go for Help? (Rotary)

District 7010 Project:

1. Develop inventory
   - Incorporated/non-incorporated Clubs
   - Active v inactive corporations
   - Public Benefit Corporations/non PBCs
2. Validate information
3. Determine current status re: ONCA-compliance
4. Conduct Zoom meetings
5. Develop resources to support Clubs in becoming ONCA-compliant

QUESTIONS?