

TRANSITIONING UNDER THE ONTARIO NOT-FOR-PROFIT CORPORATIONS ACT (ONCA)

Ontario Hockey Federation
October 26, 2023





AGENDA



- What is the *Not-for-Profit Corporations Act (Ontario)* (**ONCA**)?
- Requirement to Transition under ONCA
- Steps to Transition under ONCA
- Key Considerations – Good Governance
- Questions

WHAT IS ONCA?



WHAT IS ONCA?

- New corporate legislation – governs Ontario not-for-profit corporations (**NFPs**)
- Replaces Ontario *Corporations Act* (**OCA**) for NFPs
- Came into force October 19, 2021 – applied immediately
- Contains rules/requirements for how Ontario NFPs are to be structured/managed
 - Some different than OCA
- Modernized governance provisions
- New online system to make changes to documents filed with corporate ministry

REQUIREMENT TO TRANSITION UNDER ONCA



TRANSITIONING UNDER ONCA

- Current governing documents still valid/effective if complied with OCA
- Ontario NFPs have 3 years to transition under ONCA – **October 18, 2024** deadline
- Transition involves reviewing/updating governing documents to conform with ONCA
- If governing documents not updated by deadline, will be deemed to be amended
- **RECOMMENDATION:** All minor hockey associations incorporated as NFPs in Ontario (**Associations**) should review and update their governing documents to conform with ONCA by deadline

STEPS TO TRANSITION UNDER ONCA



STEPS TO TRANSITION UNDER ONCA

General Overview and Process

- **Locate Copies of Association's Governing Documents**
 - *Letters Patent*: Document that incorporated Association – contains name and purposes
 - *Supplementary Letters Patent*: Document that amended letters patent (may not be any)
 - *By-laws*: Document containing governance rules such as member qualifications, director elections, member/director meeting protocols
 - *Special Resolutions*: Resolutions passed by $\frac{2}{3}$ vote of members such as to change number of directors
- **What if Cannot Locate Governing Documents?**
 - Letters Patent/Supplementary Letters Patent can be ordered from corporate ministry for nominal fee
 - By-laws/Special Resolutions: Should prepare new ONCA compliant by-law and repeal all previous by-laws/special resolutions



STEPS TO TRANSITION UNDER ONCA

General Overview and Process

- **Determine if Association is Public Benefit Corporation (PBC)**
 - Ontario NFP that receives more than \$10,000 in financial year in donations/gifts from non-members/directors/officers/employees of Association, or grants/similar financial assistance from government
- **Review and Update Governing Documents**
 - Any outdated/inapplicable provisions?
 - Any provisions that do not comply with ONCA?



STEPS TO TRANSITION UNDER ONCA

Steps Following Review and Update of Governing Documents:

- **Step 1** – Directors approve ONCA-compliant Governing Documents
- **Step 2** – Members approve ONCA-compliant Governing Documents
- **Step 3** – Ensure have online access to Ontario Business Registry (**OBR**)
- **Step 4** – Ensure corporate filings up-to-date
- **Step 5** – File articles of amendment and restated articles with corporate ministry
- **Step 6** – Review and update other governance documents and policies

KEY CONSIDERATIONS — GOOD GOVERNANCE



GOVERNING DOCUMENTS

Letters Patent

- **Review:** Consider if provisions continue to be applicable, comply with ONCA
- **Filing:** Prepare/file articles with corporate ministry to update letters patent and bring them into compliance with ONCA
- **Articles of Amendment:** Only reflect changes made to letters patent
- **Restated Articles of Incorporation:** Consolidate into new document unamended provisions from letters patent and provisions added by articles of amendment



GOVERNING DOCUMENTS: LETTERS PATENT

ONCA Considerations: Articles of Amendment

- **Registered Office:** Ensure current address on record with ministry before filing articles
- **Number of Directors:** Consider use of range – provides flexibility without need for future amendments
- **Purposes:** Do they reflect current/ anticipated activities; consult legal counsel if considering changing purposes/activities
- **Powers Clauses:** Powers and privileges of natural person; consider restrictions
- **Membership Structure:** Classes of members; voting rights
- **Dissolution:** What will happen to assets upon dissolution?
- **Voting Thresholds:** Increased thresholds must be in articles
- **Special Provisions:** Borrowing; commercial purposes



GOVERNING DOCUMENTS: BY-LAWS

ONCA Considerations: Directors and Officers

- **Number of directors:** Minimum/maximum vs. fixed
- **Director qualifications:** Consider including vulnerable sector screening check; *ex officio*?
- **Election of directors:** Advance notice of nominations?
- **Consent to act as director:** Get signed consent
- **Removal of director:** Default is majority vote of members; cannot be increased
- **Term of office:** Term lengths; staggered terms; re-election
- **Director ceases to hold office:** Consider automatic cessation if fail to meet qualifications
- **Filling vacancy:** Who should fill?
- **Directors' meetings:** How and when should be called and held?; no substitutes
- **Electronic meetings:** Can be held partially/fully electronically
- **Officers:** Chair requirement
- **Conflicts of interest:** Disclosure of “material contract or transaction”; recusal; other rules
- **Indemnification and insurance:** Include clause?
- **Delegation of directors' duties:** Permitted with limits



GOVERNING DOCUMENTS: BY-LAWS

ONCA Considerations: Members

- **Member rights:** Enhanced rights, including protections
- **Types of membership:** Member qualifications; can corporations be members?
- **Members' meetings:** Annual vs. special; notice (special business); quorum
- **Electronic meetings/alternative voting methods:** fully/partially electronically; voting by proxy
- **Discipline and termination of membership:** Circumstances; use of policy
- **Fundamental changes:** Special resolution to approve



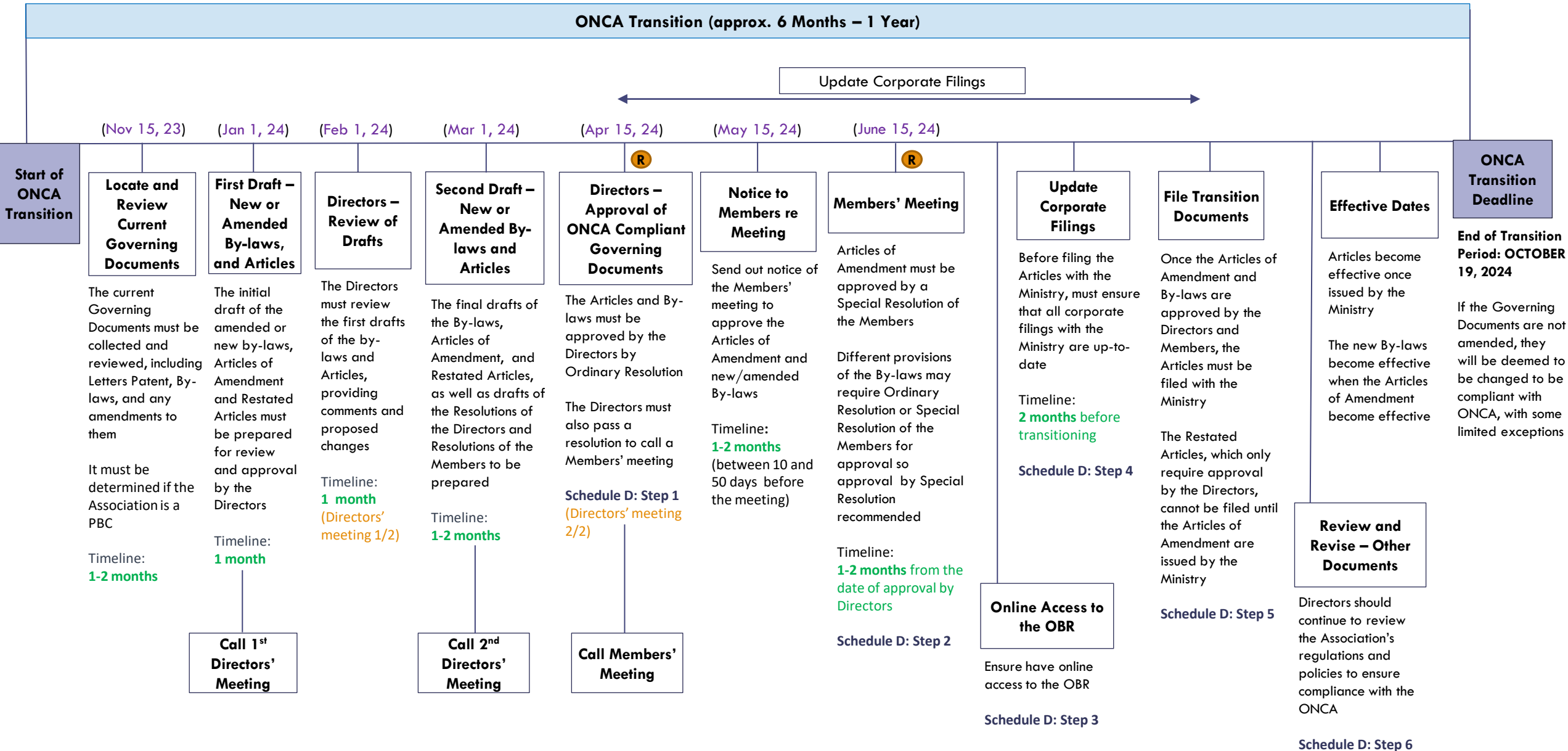
GOOD GOVERNANCE CONSIDERATIONS

General Comments

- Only minor adjustments to by-laws may be required
 - If not, may be more expedient/cost-effective to replace current by-laws with new ONCA-compliant by-laws
- Provide sufficient time to transition – estimated timeline to complete transition 6-12 months (transition deadline: October 18, 2024)

SAMPLE ONCA TRANSITION TIMELINE (WITH STEPS)

Timeline = Time Required
Hypothetical Dates = Sample dates
Reference Guide = Related Step in the Guide
R = Resolutions Required



QUESTIONS?