

MEMORANDUM

Date: August 14, 2018

To: East Coast Music Association – Governance Committee and Executive Director

From: Christopher J. Marr

Re: Transition East Coast Music Association to Federal Jurisdiction

INTRODUCTION

I understand that the Board of Directors of the East Coast Music Association (the “ECMA”) wishes to take the actions necessary to have the ECMA exist and be governed under the *Canada Not-for-Profit Corporations Act* (Canada) (the “Federal Act”). I understand that the ECMA was incorporated pursuant to and is currently governed under the *Societies Act* (Nova Scotia) (the “Nova Scotia Act”).

The purpose of this memorandum is to provide a high level summary of the steps required to move the ECMA to existence under the Federal Act.

ISSUES

There are several issues in implementing a plan that need to be examined first.

My understanding is that the ECMA wants to keep its current name in light of the goodwill and brand recognition behind it. When preserving a name is an issue in moving jurisdictions we normally undertake the process known as continuance. This process allows an incorporated entity to move from one jurisdiction to another by the legislation of its current jurisdiction allowing an export of the entity and the legislation of the desired jurisdiction allowing an import. When this is done, everything about the entity, its name, its assets, its employees and liabilities all move with it. The issue is that the Nova Scotia Act does not allow for exports. Even though the Federal Act allows for imports, it will not accept the import of the ECMA when the Nova Scotia Act does not allow the export.

Since a continuance out of Nova Scotia is not possible, the best alternative is to incorporate a new entity in the desired jurisdiction and to transfer by contract all of the assets, liabilities, employees, names, memberships, etc. of the ECMA to that new entity, and to then surrender the charter of the empty Nova Scotia entity in order to dissolve it. The issue with this plan is that the Federal Act will not allow a newly incorporated entity to have the ECMA name until it has been out of use for at least two years. The problem this creates is that it would be illegal for the ECMA to use its established name for that two year period.

I asked an agent of the Federal Corporate Registry if they would be willing to give the ECMA special dispensation to use the name under the Federal Act without there being a two year period

of non-use. Unfortunately the agent was not helpful in this regard, and no dispensation was offered.

The plan suggested below is made in light of these various issues and should resolve them.

THE PLAN

Since the Nova Scotia Act will not allow an export of the ECMA to any other jurisdiction, it is inevitable that a new entity will have to be incorporated in another jurisdiction. In order to avoid the name prohibition period under the Federal Act, I recommend that three directors of the ECMA incorporate a not-for-profit company under the *Companies Act* (New Brunswick) (the “New Brunswick Act”). The New Brunswick Act allows the export of companies, so this new entity would, immediately after incorporation and its receipt of all of the assets and liabilities of the ECMA, be continued out of New Brunswick and under the Federal Act, keeping the ECMA name and otherwise ending up in the desired jurisdiction.

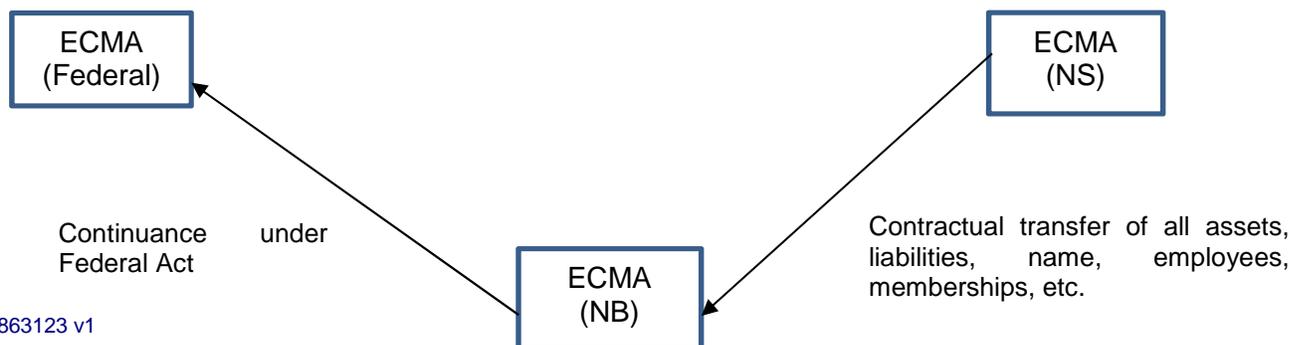
It must be noted that the New Brunswick Act also prohibits the use of the ECMA name by a new entity for a period of time, however, the personnel at the New Brunswick Corporate Registry have been cooperative and are willing to give the ECMA special dispensation to use its name without the prohibition period, if certain conditions are met.

The first step of the plan will be to incorporate a new entity under the New Brunswick Act with the same by-laws, board of directors and overall governance structure as the current ECMA. Part of the incorporation application will be a consent and undertaking from the Nova Scotia entity. It will consent to the New Brunswick entity using its name and will undertake to cease operations and surrender its charter affecting a dissolution immediate after the incorporation of the New Brunswick entity.

To accomplish this first step, the members of the ECMA will be asked to approve special resolutions at the 2018 annual general meeting, which provide for the transfer of all assets and liabilities, including the ECMA name, to the New Brunswick entity, that acknowledge that all members of the ECMA will become members of the New Brunswick entity unless they provide their objection, and which provide for the dissolution of the Nova Scotia entity, post transfer.

Once the New Brunswick entity has the ECMA name, all of the assets, liabilities, employees, members, etc., a special meeting of the members of the New Brunswick entity will be called. At this meeting the members will be asked to approve the continuance of the ECMA from the New Brunswick Act to the Federal Act. With this approval, the required documents will be filed with the Federal Corporate Registry so that the ECMA obtains articles of continuance and exists as a Federal entity.

The following is a visual representation of the above plan:



East Coast Music Association

August 14, 2018

Page 3

Along with not having export provisions, the Nova Scotia Act also does not provide any insight on whether or not memberships in the Nova Scotia entity can be transferred to the New Brunswick entity by way of members' resolution or contract, without members taking any further steps to confirm their membership in the New Brunswick entity. With the Nova Scotia Act being silent on this point, it seems to be a reasonable and practical conclusion that the membership of the Nova Scotia entity can and should be considered the membership of the New Brunswick entity if the Nova Scotia entity membership approves resolutions that acknowledge this transfer of their membership, providing an exception for any given member who provides notice that they object to this.

In any event, I would recommend that as members renew their membership in the regional music industry associations they should once again be asked to indicate that they wish to be members of the new ECMA entity (likely the Federal entity at that point). All directors should be asked to reconfirm their membership, as well as all members who are not members of their regional music industry association.

Please let me know if you wish to discuss this further.

/CM