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Western Economic Diversification Canada - Newsletter

Legal Issues for the Year 2000 Problem - Reasons To be Concerned

* written by Kelly Palmer

A recent Statistics Canada survey of small, medium and large Canadian businesses noted that "although more than 90 per cent of businesses were aware of Y2K challenges, only about 50 per cent appear to have taken actions to address these challenges. Only one firm in ten had a formal action plan to deal with the issue; only 18 per cent of Canadian businesses expressed concern about the potential legal implications for not being prepared for the Year 2000; and only 13 per cent of the executives aware of the Y2K problem had endeavoured to find out what the state of preparedness their business partners had achieved."

What Could Happen To My Business?

The Y2K problem is not merely a computer problem, but a management problem. A range of events could arise. For example, if your firm uses older computers or software, you may not be able to manufacture or ship products, calculate payables or receivables, or produce invoices. A wide range of non-computer equipment such as boilers, elevators, vaults, security systems, sprinkler systems or other equipment containing a computer chip may cease to function or be damaged. As a result, the business of your company could be interrupted for an extended period, resulting in lost production time and revenue.

Won't My Insurance Cover This?

One of the greatest areas of concern is whether insurers will deny coverage for Y2K losses under existing insurance policies. For example, if a claim is later made under your business interruption or equipment general policies as a result of the above damage, your insurer could deny coverage by arguing that the Y2K event is excluded by the policies' general language. As well, if you are renewing any of your business insurance policies prior to the Year 2000, you may incorrectly describe your company's exposure to the Y2K problem on the renewal forms. The insurer may then deny coverage. Finally, should lawsuits arise against the directors of your company personally (see below), you may wish to claim under your firm's Directors and Officers (D&O) insurance. Again, the insurer may deny coverage on the wording of the existing policy.

Will My Bank Help?

Lines of credit or other loans with banks may be in danger of being called, and new credit facilities could be refused, should the lender believe that your firm's Y2K exposure actually or potentially places its security in jeopardy. Should a lender be convinced to continue providing credit in the face of a Y2K problem, they may require additional security above what is already placed, or may wish to reduce their exposure by tightening credit lines and amounts outstanding in current loans.

What Lawsuits Could Arise?

Should your business be interrupted, your company could fail to fulfill a number of contracts with its customers and suppliers. These outside firms could commence action for breach of contract, and could also sue for their own lost or consequential damage arising from your firm's Y2K damages.

As noted above, directors of companies (both public and private) could be personally named in a lawsuit arising from a Y2K problem. Such claims could arise from shareholders claiming that the directors either failed to act or took insufficient steps to protect their firm, even though the Y2K problem was well reported in local and national press; or from customers or suppliers stating that the damage they suffered due to your firm's Y2K problems should have been foreseen by the directors.

Should insurers deny coverage, your firm may also be forced to commence action against your insurer in order to obtain coverage under existing policies.

Finally, if your firm is damaged by the Y2K problems of other businesses, should you take legal action? When? What steps should you take now in case such litigation arises?

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Inside:

- New Y2K Web sites can help small businesses
- Tax-saving tips for small businesses?
- Assessing your products export potential
- Aboriginal Entrepreneurs - A growing economic force



Canada



A Message from Ron Dubamel

Secretary of State for Western Economic Diversification

Is a lack of international trade expertise keeping your small business from fully developing its export potential? Or is your company having difficulty keeping products at the leading edge of technology? Western Economic Diversification Canada may have the solution -- hiring programs to provide the advantage your company may need in export markets and technology development.

Special hiring programs are available to help small businesses interested in adopting new technologies or expanding into export markets, but lack the technical expertise or staff to do so. Through the **International Trade Personnel Program** and the **First Jobs in Science and Technology Program**, WD provides funding to eligible small businesses to hire recent post-secondary graduates having the knowledge and expertise to help a firm realize its export potential or develop and incorporate a technology into its operations.

Eligible export trade projects may include: identifying international market needs and characteristics; planning and implementing export market strategies; preparing export promotional materials; modifying products in response to specific international market demands; and direct product promotion to export markets.

Eligible technology projects should enhance the firm's productivity or help to commercialize a new product for sale or export. The projects may include: identifying technologies appropriate to the firm; developing an implementation plan; implementing or modifying a technology; training staff to use new technology; or developing a new technology.

The approval process for both programs is remarkably streamlined. WD can confirm the eligibility of potential employees and approve project applications within three weeks. Immediately afterwards, the small business can hire the graduate and take advantage of the worldwide growth in international trade and technology opportunities.

For more information about these or other programs and services offered by Western Economic Diversification, call WD Toll-free at 1-888-338-WEST (9378), or visit our Web site at <http://www.wd.gc.ca>.

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My Company is Fine. Should I Worry?

No company operates in isolation. Even if your company is ready for the Year 2000, your business partners, subcontractors or suppliers may not be. Again, this could result in the company being unable to meet its obligations, with litigation resulting.

If you are considering making a purchase of other another business or some new equipment, what due diligence steps should you undertake to ensure that you do not inherit a Y2K problem? Does your business comply with any governmental agencies? If so, would failure to report or deal with its Y2K exposure cause revocation of licenses, approvals, or liability for directors?

Can't I Just Hire a Computer Firm to Fix It?

Certainly having computer professionals involved in your Y2K plan is essential. However, there are issues arising from actually having work done to resolve your businesses' Y2K concerns. These include the following:

1. If you hire someone to perform remedial work on licensed software, could your firm be liable for copyright infringement?
2. Once software solutions are made for your firm, who owns the results? Can the programmer that assists you later claim ownership over your amended software?
3. How do you protect your own trade secrets both during the remedial period and after the problem has been fixed?
4. Who should pay for remedial work on your software or equipment? Does this fall under your current software or hardware maintenance agreements?

What Can Be Done?

The Year 2000 is coming. Any company that ignores it, or flatly states without carefully reviewing its affairs that it has no concerns, may be subject to tremendous financial and business pressure and litigation, and its directors may be personally exposed to liability. Businesses can, however, take steps to ensure that the effects of Y2K are either overcome or minimized. While a review of your business' computer, software and other equipment by qualified technical experts is essential, the review should not stop there.

- Banking documents, insurance policies and contracts involving clients and suppliers should be reviewed for both potential exposure and for clues on how to minimize the dangers.
- Outside business partners should be contacted in a way that demonstrates the company's attempts to deal with its connections with the rest of the world.
- Any new acquisitions of businesses or equipment should ensure that Y2K problems are not also purchased.
- Equipment currently used should be examined and information sought from the manufacturer about what steps (if any) they are taking.

Finally, all of these steps should be coordinated and documented, so that the directors of your company can demonstrate that they took steps to protect the company in light of the upcoming difficulties. It will be these steps that will both protect the company and decrease director's personal exposure to potential lawsuits.

The best method is to have a coordinated plan where professional advice is obtained from computer professionals, accountants and lawyers to determine your business's current status, develop a plan that will meet this status and help to provide proper defences to any lawsuits that may arise. By moving now, a company can obtain a strong advantage over its competitors who wait until they come into the office on Monday, January 3, 2000 and discover that their telephone systems, computer systems and electrical systems refuse to function. Not surprisingly, the availability of technical and legal experts to assist at that time may be limited.

* Kelly Palmer is a lawyer practising in business law, with experience in matters such as computer law, software, banking, insurance and directors liabilities. The above is for general information only and should not be construed as legal advice. Please call (403) 432-7794, fax at (403) 431-1623 or e-mail kellypal@planet.eon.net for further information.

Speakers Corner

I am a small business owner and am always on the lookout for tax-saving tips. Do you have any basic strategies that could get me started in the right direction?

Taxation specialists take different approaches when they look at the Income Tax Act. Although each approach may take you in a different direction, the end result may be the same. But you may find some routes are more expensive than others. The following are just a few areas which could prove to be a shortcut to tax savings for your small business.

The home office

Setting up your own home business enables you to deduct reasonable expenses. Your office should be in an area dedicated to your business to claim mortgage interest and home operating expenses in proportion to your office space. Revenue Canada will need to see a clear indication of profit and not years of unreasonable losses. Be cautious if you are thinking of claiming depreciation on the home office portion of your principal residence. Although this claim would give you a capital cost allowance (CCA) deduction, you would also have to claim a capital gain should the home appreciate or be sold for a profit.

Family on the payroll

Spread the income around your family members who are earners in lower tax brackets by employing your spouse or children in your business. They must actually do work for your business and their wages should be appropriate for the type of work they perform. Income splitting can also provide savings and its purpose is simple – it shifts income from an individual in a high tax bracket to one in a lower tax bracket. It is attractive to couples who find themselves in different tax brackets.

Give yourself a bonus

Use bonuses to reduce corporate tax. The bonus can help reduce the corporate income to the small business limit of \$200,000. If, down the road, the company needs a cash injection, the bonus (less the personal income tax) can be loaned back to the business. An important tip to remember is that a bonus must be paid within 179 days of the company's year end or the company deduction is deferred until the bonus is paid.

Make sure you have some company benefits

Deductions for health and insurance premiums are now permitted by the federal government for self-employment individuals. For example, a person

with a home-based business could use the business to receive at least a partial tax deduction for disability insurance rather than treating it entirely as a personal expense. But you should check on the best way to use these benefits to reduce your taxes.

You can afford to be generous

Through charitable donations, your business can take advantage of a tax break. There are two tiers of tax credits for charitable donations: a low credit of 17 per cent which applies to the first \$200 donated and a 29 per cent credit on amounts over \$200. Tax specialists suggest that one spouse claim all charitable donations made by the family, but remember – donations are restricted to 75 per cent of your annual income.

Set up a management company

The Personal Tax Planner Guide, produced by the Canadian Institute of Chartered Accountants, suggests that you look into setting up a management service corporation to provide your business with services such as clerical assistance. The management company can be owned by family members with little or no income, and the dividends from that company can flow to them with less tax being paid. Business income is not attributable, so another option is to loan your spouse money to start their own business. Any income they earn in the business will be taxable in their hands.

Make a "will" for your company

As a family business owner, perhaps an "estate freeze" is what you should consider. Simply put, if you anticipate that the shares in your company will grow in the future, you can freeze the value of those assets today, estimate the taxes owing should you die today and then set aside sufficient funds or buy an insurance policy to cover the estimated tax. Shares in the operating company are actually transferred to a holding company owned by your family or in trust. In this way, any subsequent increase in share value accrues in the hands of the new shareholders or trust, and avoids a huge capital gains bill after you die. This means you don't give up ownership of your business since the operating company holds special fixed-value shares or debt in the holding company.

These are just a few areas a small business owners can look at when trying to find tax breaks, but always seek professional advice from a tax specialist, such as a lawyer, chartered accountant or financial advisor, who can provide additional guidance on tax sheltering techniques, more detailed guidelines and applicable tax rules.

ASSESSING A PRODUCT'S EXP



There are several ways to gauge the overseas market potential of products and services. (For ease of reading, products are mentioned more than services in this guide, but much of the discussion applies to both). One of the most important ways is to assess the product's success in domestic markets. If a company succeeds at selling in the Canadian market there is a good chance that it will also be successful in markets abroad, wherever similar needs and conditions exist. One strategy for export success may be a careful analysis of why it sells here, followed by a selection of similar markets abroad. In this way, little or no product modification is required.

If a product is unique or has important features that are hard to duplicate abroad, chances are good for finding an export market. For a unique product, competition may be nonexistent or very slight, while demand may be quite high. Also, low-cost market research may already be available to help assess its overseas market potential. In addition, international trade statistics (available in many local libraries) can give a preliminary indication of overseas markets for a particular product by showing where similar or related products are already being sold in significant quantities. One of the best sources for Canadian export-import statistics is Statistics Canada.

Finally, even if Canadian sales of a product are declining, sizeable export markets may exist, especially if the product once did well in the domestic market but is now losing market share to more technically advanced products. Countries that are less developed may not need state-of-the-art technology and may be unable to afford the most sophisticated and expensive products. Such markets may instead have a surprisingly healthy demand for Canadian products that are older or that are considered obsolete by Canadian market standards.

APPROACHES TO EXPORTING

The way a company chooses to export its products can have a significant effect on its export plan and specific marketing strategies. The basic distinction among approaches to exporting relates to a company's level of involvement in the export process. There are at least four approaches, which may be used alone or in combination:

1. **Passively filling orders from domestic buyers who then export the product.** These sales are indistinguishable from other domestic sales as far as the original seller is concerned. Someone else has decided that the product in question meets foreign demand. That party takes all the risk and handles all of the exporting details, in some cases without even the awareness of the original seller.
2. **Seeking out domestic buyers who represent foreign end users or customers.** Many Canadian and foreign corporations, general contractors, foreign trading companies, foreign government agencies, foreign distributors and retailers, purchase for export. These buyers are a large market for a wide variety of goods and services. In this case, a company may know its product is being exported, but it is still the buyer who assumes the risk and handles the details of exporting.
3. **Exporting indirectly through intermediaries.** With this approach, a company engages the services of an intermediary firm capable of finding foreign markets and buyers for its products. Export management companies (EMCs), export trading companies (ETCs), international trade consultants and other intermediaries, can give the exporter access to well-established expertise and trade contacts. Yet, the exporter can still retain considerable control over the process and can realize some of the other benefits of exporting, such as learning more about foreign competitors, new technologies and other market opportunities.
4. **Exporting directly.** This approach is the most ambitious and difficult, since the exporter personally handles every aspect of the exporting process from market research and planning to foreign distribution and collections. Consequently, a significant commitment of management time and attention is required to achieve good results. However, this approach may also be the best way to achieve maximum profits and long-term growth. With appropriate help and guidance from the Department of Commerce, state trade offices, freight forwarders, international banks and other service groups, small or medium-sized firms, can export directly if they are able to commit enough staff time to the effort. For those who cannot make that commitment, the services of an EMC, ETC, trade consultant or other qualified intermediary are indispensable.

If the nature of the company's goals and resources makes an indirect method of exporting the best choice, the main task is to find a suitable intermediary firm that can then handle most export details. Firms that are new to exporting or are unable to commit staff and funds to more complex export activities may find indirect methods of exporting more appropriate.

PORT POTENTIAL

Using an EMC or other intermediary, however, does not exclude all possibility of direct exporting for the firm. For example, a Canadian company may try exporting directly to nearby markets such as the U.S., Mexico or the Bahamas, while letting its EMC handle more ambitious sales to Egypt or Japan. An exporter may also choose to gradually increase its level of direct exporting, after experience has been gained and sales volume appears to justify added investment.

WD offers comprehensive export information and businesses services to entrepreneurs and small business owners interested in entering foreign markets. If you would like further information or would like to speak with a client service officers with export knowledge, call WD at 1-888-338-WEST (9378).

Editor's note

Going International is a series of articles designed to help small businesses prepare for international markets. The next issue of Access West will provide you with information on the value of planning, management issues involved with your export decision and a sample outline for an export plan.

What's New on the Web

Business owners are urged to develop a Year 2000 action plan if they have not done so already. **The Canadian Federation of Independent Business (CFIB)** Web site describes a Year 2000 action plan, as do the Year 2000 Task Force pages on Strategis, and the Government of Canada's Year 2000 Web site.

Every company will have to address its unique circumstances with respect to its computers, systems, suppliers and dependencies, staffing, costs and priorities. The overall process to establish a framework is the same for everyone, however, a detailed description can be found on the CFIB Web site: <http://www.cfib.ca>

You can get more information on the Year 2000 problem and suggestions on how to start a Year 2000 action plan by contacting **SOS•2000** at 1-800-270-8220. The following Web sites also provide information as it relates to small business:

Government of Canada Year 2000 Site:

<http://www.info2000.gc.ca>

Task Force Year 2000:

<http://strategis.ic.gc.ca/sos2000>

Canadian Federation of Independent Business:

<http://www.cfib.ca/english/research/businfo/din0261.htm>

If you would like us to send you a listing of additional Internet sources and information on Y2K call WD at 1-888-338 WEST (9378) or E-mail at: access.west@wd.gc.ca

Women and Export

Women entrepreneurs are under-represented in the statistics for export markets and the federal government is seeking to change that with the launch of a Web site geared to women who want to tackle the export market. The site is an initiative of the Department of Foreign Affairs and International Trade and is located at www.inforexport.gc.ca/businesswomen/menue-e.asp. It offers comprehensive resources which guide business women through all the steps of exporting and offers them a network of other women who are engaged in similar enterprises.

The site has tips lists covering all the steps for entering the export market, including the following tips for identifying markets offering the most potential:

- consider products potential tariffs and non-tariff barriers, such as local standards and regulations;

- examine local distribution options;
- get information about the size of the markets for your product, who supplies them and key competitors;
- find out about significant cultural features and local business practices; and
- select the market or markets on which you want to focus.

It also provides links to government departments and agencies for help with everything from market research to financing and trade missions.

The services are the same for everyone in exporting but this site is one way of letting women know what is available. Women in business may not be aware of many of the services, particularly when it come to the export market.

Aboriginal Entrepreneurs - A Growing Force in the Western Canadian Economy

Aboriginal entrepreneurs face the same issues as those faced by anyone wanting to start or expand their business. However, due to the fact that 68 per cent of the Aboriginal population live outside metropolitan areas, they face special circumstances which make it difficult for them to access capital, markets, information and business services. Geographic distance from urban centres and basic services creates a challenge for Aboriginal peoples in these rural and remote communities to participate in the labour market.

A recent **Aboriginal Business Survey** conducted by Statistics Canada of 1000 Aboriginal businesses shared that 55 per cent of Aboriginal businesses reported inadequate access to capital, including equity and debt. This research clearly shows there is a need for additional capital for Aboriginal businesses and entrepreneurs.

Aboriginal Capital Corporations (ACCs) provide lending services to their small business clients, but do not offer much in the way of business advice or counselling. New partnerships between ACCs and Western Economic Diversification (WD) will ensure western aboriginal communities will be able to enjoy the benefits of membership in the Western Canada Business Service Network (WCBSN). The partnerships will help ACCs better meet the business information needs of their small businesses. Currently, the WCBSN partners include WD, Community Futures Development Corporations, Canada Business Service Centres and the offices of the Women's Enterprise Initiative as resources permit.

By entering into new relationships with Aboriginal peoples, the federal government is helping Aboriginal organizations operate more effectively, enhance their lending portfolio and make a positive contribution to the success of their organizations and communities. WD recently finalized agreements with two Alberta-based ACCs and intends to pursue agreements with most of the 17 centres in Western Canada as resources permit.

Currently, throughout the West there are seven "Aboriginally exclusive" Community Futures Development Corporations (CFDC) and many of

WD's network partners provide comprehensive business services to Aboriginal communities and clients located within their geographical boundaries.

Aboriginal firms are increasingly participating in high-knowledge sectors of the economy such as engineering and computer technology. A recent study by the **Trent Aboriginal Education Council (TAEC)** identified 138 Canadian Aboriginal businesses in high-knowledge sectors, with 80 of the firms located in Western Canada. Of the companies surveyed, 60 per cent indicated they are seeking Aboriginal employees with appropriate new economy skills.

Results from the Aboriginal Business Survey, conducted for Industry Canada by Statistics Canada, suggest that the 7,880 increase in western Canadian Aboriginal businesses since 1981 has resulted in approximately 20,330 new jobs. Of these, 16,595 were filled by Aboriginal people, including self-employed owners. This means that 24 per cent net new Aboriginal jobs can be attributed to the rise in self-employment.

Aboriginal businesses are growing in number, as is the number of self-employed aboriginal women and young entrepreneurs. The Aboriginal population is predominately young, about 10 years younger, on average, than the overall Canadian population. With 55 per cent of the Aboriginal population in Western Canada under the age of 25, entrepreneurship development is emerging as a key opportunity for this age group. Aboriginal youth under 30 make up 18 per cent of all Aboriginal self-employed persons, compared to 10 per cent for that age group among western Canadians. This is an indication that Aboriginal young adults are taking advantage of self-employment opportunities in business. As shown by the large number of young Aboriginal entrepreneurs, Aboriginal peoples are creating jobs for themselves and their community, which bodes well for the future.

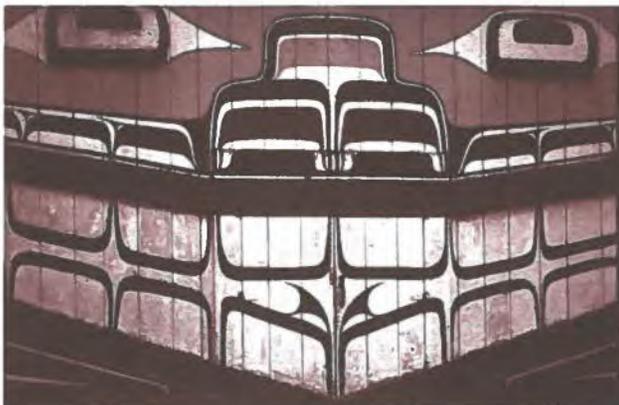
Editors note

WD would like to thank *Aboriginal Business Canada* for its contribution to this article.

For additional information on Aboriginal business, you may wish to consult additional sources produced by Industry Canada's Aboriginal Businesses: "Characteristics and Strategies for Growth," a working paper in Industry Canada's Research Publications Program. Industry Canada's Web site is <http://www.strategis.ic.gc.ca>.

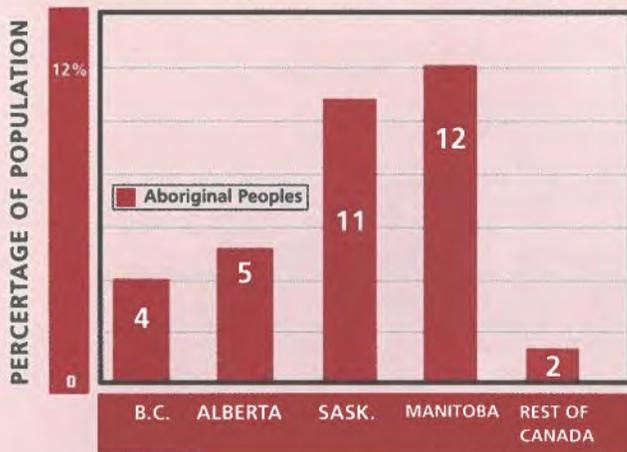
For more information on the Trent Aboriginal Education Council (TAEC) inventory on high knowledge, visit the Spirit of Aboriginal Enterprises Web site at <http://sae.ca/hk/abbi.htm>.

The Native Investment and Trade Association has also completed its own analysis of the Aboriginal Business Survey data. It is available at <http://sae.ca/research/nita/toc.htm>.



Facts West

Aboriginal Canadians A Growing Force in Western Canada's Economy



Source: Statistics Canada, 1996 Census

- The above chart depicts Aboriginal peoples as a share of total population for western provinces and the rest of Canada. Aboriginal Canadians account for a relatively large share of the population in every western province.
- Two-thirds or 502,000 of Canada's self identified, Aboriginal peoples live in the West. The largest number lives in B.C. (139,000) followed, by Manitoba (129,000), Alberta (123,000) and Saskatchewan (111,000).
- About 155,000 of the West's Aboriginal peoples live in large cities. There are more Aboriginal people in Winnipeg (46,000) than in the Northwest Territories (40,000).
- Aboriginal children make up 20 per cent of the population under the age of 15 in Manitoba and Saskatchewan. As these children reach working age, Aboriginal people will account for a growing share of the work force.
- More than ever before, Aboriginal peoples are gaining skills through education. In 1996 13,400 had completed, and 78 percent of these people had jobs. A further 50,880 had completed high school and obtained a college diploma.
- On another front, there are 12,800 Aboriginal-owned and operated businesses in Western Canada. These businesses are active in all sectors of the economy.

Letters to the Editor

On occasion, I receive copies of letters from WD clients who have taken the time to express their thoughts on an experience while working with client service personnel within this federal department. So, I would like to share with you a letter from a export readiness client who has written about her experience in planning to enter export markets.

RE: Export Readiness Consultation on *Tes chansons, ta musique*

My thanks to Wendy Lickacz and Simon Sauvé for meeting to explore export readiness for the French language music education resources - **Tes chansons, ta musique**. I understand your office is considering a client service approach which might be useful for small and medium-sized enterprises. I am pleased to furnish a few comments on what I found helpful from our exchange.

Our meeting has given me cause for considerable reflection regarding the readiness and timing of an export initiative. That is, realizing we are best advised to have a well-developed expert business plan as an antecedent for exporting was extremely useful. The export business plan framework from The Business Link resources was helpful. Much of the early drafting of the export business plan has involved reflection and organizing existing background research.

As a result of our consultation, I also realized the need for some additional "foundation" building with our domestic partner prior to export. Our firm's partner is a non-market oriented, non-profit organization who has self-published the titles as part of their educational mission. As a result, we have a non-traditional commercial relationship. Your intervention helped reveal an existing lack of role clarity and a need for clearly articulated expectations between the partners.

I was very impressed with your ability to engage in a consulting intervention. It was very clear to me when you were changing your role in our exchange to that of consultant - you said so! It was a cue to me that I was about to receive "professional advice." I was impressed with your listening skills, consulting orientation, frank assessment and professionalism. I could see very clearly where your professional human services background was transferable to an export client service role. Drawing on my own consulting background, I could very clearly see you make the transitions from entry, to diagnosis, to action planning.

I will reiterate my comment that soft skills/relationship skills/interpersonal are foundational aspects of exporting which is often overlooked. No doubt, the time that you and Simon spent with me saved me considerable time/resources through early intervention. For that I am truly appreciative. I would appreciate input on the export business plan which I expect will be forthcoming in the next week or so. Thank you very much for your consideration.

Sincerely
Michael Aherne

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Autumn in the Rockies

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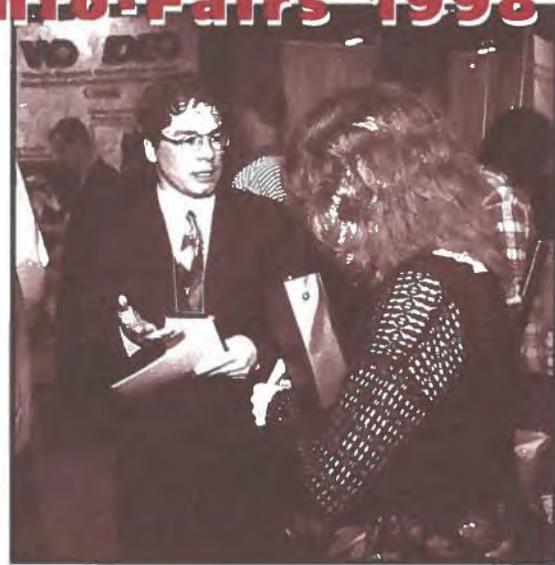


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