



Policy on Intellectual Property

Introduction

Conestoga College Institute of Technology and Advanced Learning is committed to provide a polytechnic environment conducive to the pursuit of scholarship, applied research and creative activity for its faculty, staff and students. Although perhaps not the original intent of these pursuits, the results may lead to the development of intellectual property that may have commercial value. This policy governs the ownership and procedures for the protection of intellectual property and identifies the rights and responsibilities of various stakeholders.

The Executive Director of Academic Administration (*or designate assigned by the President*) has responsibility for the interpretation and implementation of this policy.

Definitions

Intellectual Property includes technical information, knowhow, inventions, models, patents, drawings, designs, specifications, prototypes, computer software (source and object code), curriculum and teaching materials, and other creations that can be protected under patent, copyrights, or trademark laws.

Intellectual property may be *licensed* (giving someone permission to use the item which may be subject to a royalty) or *assigned* (transferring ownership to another person for compensation of some kind).

Applied Research includes any original investigation, undertaken to acquire new knowledge, or to apply existing knowledge in a novel way, directed primarily towards a specific practical aim or objective. Ideas are developed into operational form to produce new prototype products, devices, processes, systems, and services or to improve substantially those already produced or installed.

An *applied research project* shall include any project involving an external company, internal or external funding, and/or Conestoga facilities to conduct and complete the research. These can include student capstone (or final year) projects, class or curriculum based projects, or independent projects (projects done outside of normal curriculum and capstone activities).

Institutional Research is a special classification of research that involves the surveys and data analysis of information that is focused on program quality improvement and evaluation. Other

classifications of research are experimental, basic, discovery, survey and clinical to name a few. All research at Conestoga, not classified as institutional research, will be referred to as applied research.

The word *research*, reference by itself within this document, refers to both institutional and applied research. And, a *research project* refers either an institutional or applied research project.

A *partner* refers to the external company, institution, research hospital, or organization that is engaged in a research project with Conestoga. The partner may be providing full, partial, or no funding towards the research project. In most situations, there is normally a contractual agreement between Conestoga and the partner to stipulate the roles and responsibilities of the participants.

The phrase *Conestoga staff members* refers to all staff whether employed full-time, part-time, or on contract basis. The phrase *Conestoga students* refers to all students working with or without monetary compensation on any project under the direction and control of Conestoga.

Consulting Service activities are similar to the activities within an applied research project but are not normally viewed by Conestoga as applied research. There are two types of consulting services for research purposes; "*internal*", using College resources, and "*external*", not using College resources. For both types, an individual wanting to engage in consulting services with a company requires prior written approval from the College; consulting services are not allowed to conflict with the employee's responsibilities to the College, constitute economic competition with the College, or negatively impact the reputation of the College.

External consulting service activities are the sole responsibility of the individual. The individual cannot use College resources and does not represent Conestoga for the consulting service provided. Legal agreements between the individual, the company, or any other third-party are signed without the involvement, endorsement or warrantee of Conestoga. External consulting service activities by faculty members can be potentially viewed as scholarly activities.

Internal consulting service activities require review and approval by Conestoga prior to engagement. When a particular internal consulting service activity requires the use of Conestoga resources, the activity needs to be reviewed as to not interfere with Conestoga's academic processes and legal obligations (i.e. software license agreements, use of donated hardware, etc.). Upon approval, the individual is responsible for conducting the activities in adherence to all Conestoga policies and procedures. Legal agreements between the individual, the company, and Conestoga may need to be entered into and are to the discretion of Conestoga. Internal consulting service activities by faculty members, with prior approval of the Chair, can be viewed as scholarly activities.

If an internal consulting service requires both Conestoga resources and the participation of Conestoga students, then it will be classified as an applied research project and processed accordingly.

Exclusions

This policy is in keeping with the intellectual property provisions within the College collective agreements. However, if any part of this policy conflicts with a collective agreement, then the provisions of the collective agreement will prevail.

Similarly, if any part of this policy conflicts with a signed agreement between Conestoga and the creator of intellectual property, or between Conestoga and a partner, or between Conestoga staff member and a partner, or between Conestoga student and a partner, then the provisions of the signed agreement will prevail. For instance, this policy does not cover an *external consulting service* agreement between an individual (not acting in the role of his or her position at Conestoga), a company, or a third-party.

Policy Elaboration

Intellectual Property Developed by Conestoga Staff Members

With respect to intellectual property developed by Conestoga staff members within the scope of their employment, or employed as a researcher with funds administered by Conestoga, ownership rests with Conestoga, unless a specific agreement is made to the contrary.

When intellectual property is developed on the Conestoga staff member's own initiative or during professional development activities, outside the scope of his or her College responsibilities, without any College support (through release time, extra contracts, or other contractual agreements), and without any reliance on College resources, the intellectual property resides with the individual. Where the intellectual property bears a reasonable relationship to the Conestoga staff member's employment responsibilities at Conestoga, it will be the employee's responsibility to show that the intellectual property was developed entirely on his or her own initiative without use of College resources.

Conestoga can award a *Proof of Principle grant* to a Conestoga staff member who has submitted an award winning application for the grant. The award of the grant will allow a Conestoga staff member to develop his or her own intellectual property while utilizing College resources (defined in an agreement with the Conestoga staff member) for the eventual pursuit of a commercial product. If the Conestoga staff member eventually develops a commercially viable product, the Conestoga staff member is required to grant Conestoga a royalty-free license to use such intellectual property for internal uses only in the improvement of academic curriculum.

Intellectual Property Developed by Conestoga Students

When intellectual property developed by a Conestoga student while working on a research project (independent, curriculum bases, or final year project) with a partner, the ownership will be specified within the signed agreement between Conestoga and its partner. No signed agreement will limit Conestoga student's ability to complete his or her academic requirements.

When intellectual property developed by a Conestoga student through academic requirements (capstone, final year projects, or course related activities without third-party agreements), the ownership remains with the student. If the student has utilized College property or facilities to develop a commercially viable product, the student is required to grant Conestoga a royalty-free license to use such intellectual property for internal uses only in the improvement of academic curriculum while abiding by a confidentiality agreement with the student.

Intellectual Property by Third-Party Agreements

Intellectual property ownership by a third-party is specified in the signed agreement as to the nature of ownership, method of protection of intellectual property, payment of royalties or fees, etc.

Ownership of intellectual property developed jointly by both Conestoga and a partner in performance of a research project shall rest jointly with Conestoga and its partner. In the event of such joint ownership, Conestoga and its partner agree to sign a *Research Collaboration Agreement* recognizing the relative ownership of both parties and assigning the ownership of the jointly owned intellectual property between the two parties.

Intellectual property owned by the partner and made known to Conestoga for the purpose of conducting a research project (i.e. background intellectual property owned by the partner) remains the property of the partner provided no significant changes are made by Conestoga. In situations where companies own the intellectual property in funded projects, some academic benefit must accrue to Conestoga for the research project to proceed. If Conestoga adds value to the original work, and commercial revenue is generated from those modified works, the partner will fully retain the intellectual property rights to the modified works. In exchange for Conestoga relinquishing claim to any ownership of the intellectual property in the modified works, both parties agree to negotiate a fair and equitable compensation for Conestoga's contribution to the modified works (royalties, licensing fees, etc.).

Additional Requirements

1. All potential intellectual property should be disclosed by the creator to Conestoga in a timely manner. Creators must also disclose to Conestoga any financial and/or other relationship that may affect the protection of such intellectual property.
2. If a Conestoga staff member or student uses his or her own previously developed intellectual property (*i.e. background IP*) within a projects without disclosure to Conestoga or the partner when Conestoga is engaged with a partner in a Research Collaboration Agreement, the owner of the intellectual property will automatically

forego ownership of his or her intellectual property for the purpose for which it was applied to the project in order to observe the requirements of the Research Collaboration Agreement.

3. If Conestoga chooses not to pursue a patent, license or copyright, Conestoga may enter into an agreement with the creator of the intellectual property under which Conestoga staff member may apply for patent or copyright. For intellectual property owned by Conestoga, Conestoga may elect to transfer ownership to a third-party for appropriate compensation.
4. An agreement with the creator will specify the rights of Conestoga and the rights of the creator related to ownership, term of ownership, royalties and fees, and the responsibilities of each party to apply for copyright or patent, and to protect the intellectual property.
5. Occasionally, intellectual property that belongs to a Conestoga staff member or partner is made available to Conestoga during the course of a research project or other activity. In these cases, the Conestoga staff member or partner's intellectual property is returned at the conclusion of the research project.
6. Conestoga research projects that develop "*tools and techniques*" during the course of the research project for a specific partner are to be regarded as building blocks or components of the project. Such *tools and techniques* are the property of Conestoga and may be used by Conestoga in other research projects for other partners or for the improvement of academic curriculum.
7. Conestoga staff members may utilize their professional "*methods and processes*" to investigate, resolve, or conduct a research project. These *methods and processes* are considered paramount to the staff member's occupation and career at Conestoga and will not be defined as foreground (or resulting) intellectual property and transferred ownership to a third-party or to the partner under any circumstances. If the partner requires the *method or process* at the end of the project that was not previously agreed to at the beginning of the project, then the development of an agreement stating a *limited use license* for the *method or process* may be assessed.
8. Conestoga research projects that utilize *Open Source* software or designs are required to work within the policies, procedures, and legal requirements of the open source community that maintains the software or designs. Intellectual property requirements and limitations are based upon the type of open source material and its intended use. Therefore, this policy and related College policies are superseded by the policies of the specific open source community.
9. Any dispute arising under this policy will be submitted to the Executive Director of Academic Administration in writing. The Executive Director may elect to form a task group or committee to research the dispute and recommend a resolution to the Executive Director. The decision of the Executive Director is binding on all parties.

Related Documents

- Policy on Applied Research
- Policy on Conflict of Interest in Research
- Policy on Research Integrity
- Policy on Student Rights in Research
- Policy on Research Involving Animals
- Policy on Research Involving Chemical, Biological, or Radioactive Hazards
- Policy on Research in the Yukon, Northwest Territories, or Nunavut
- Policy on Confidentiality of Information in Research
- Policy on Financial Management of Research Projects
- Policy on the Protection of the Environment within Research
- Ethical Conduct in Research Involving Humans
- Procedure for Applied Research Activities
- Procedure for Reporting Concerns within Research

Revision Log

Version Number	Release Date	Notes
AR3 V1	March 2013	First release of a completely updated IP policy.
NA	November 2008	Previous version of the IP Policy; entitled " <i>Research Intellectual Property Rights</i> ".

Acknowledgements

This policy has been developed based upon policies and documentation from Niagara College, George Brown College, Polytechnics Canada, and previous Conestoga documents.