



INTELLECTUAL PROPERTY

Approved by: Academic Coordinating Committee

Authorizer: Vice President, Applied Research

Reference Code: RES13 V3

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POLICY STATEMENT:

This policy outlines the governance, proprietary ownership of intellectual property developed by Conestoga College faculty, staff, students, or in conjunction with third-party agreements.

SCOPE:

This policy applies to students, Conestoga employees, and any relevant third-parties involved in activities which may result in the use or creation of intellectual property. All are required to engage Conestoga's Applied Research & Innovation (CARI) office or Academic Administration at their earliest opportunity to obtain the requisite documentation and guidance.

This policy is in keeping with the intellectual property provisions within applicable Conestoga collective agreements. Should any part of this policy conflict 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 any participating parties, then the provisions of the signed agreement will prevail.

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) and a company or a third-party.

DEFINITIONS:

- *Applied Research* means the practical application of research ideas and innovations. It can be original investigation to acquire new knowledge or, more often, it can be experimental development which draws on existing research knowledge or practical experience to produce innovative products or processes. Applied research focuses on activities with immediate industrial and commercial relevance for industry-identified problems. It is the area of greatest strength for research-intensive polytechnics, colleges, and institutes.

- *Creator* means any Conestoga employee (as defined below) and any Student (as defined below) who makes, develops or creates any Intellectual Property.
- *Conestoga* means Conestoga College Institute of Technology and Advanced Learning.
- *Conestoga Resources* means any funds administered by Conestoga, funds for employee compensation, materials, or facilities.
- *Conestoga employee* means any employee of Conestoga, whether employed full-time, part-time, or on contract basis, and includes, but is not limited to, faculty, researchers, support staff and administrators.
- *Institutional Research* means research pertaining to the management or operation of Conestoga, including research that informs campus decision-making and planning in areas such as admissions, financial aid, curriculum, program quality and evaluation, enrollment management, staffing, student life, finance and facilities.
- *Intellectual Property* means:
 - (a) trade-marks, design marks, logos, service marks, certification marks, official marks, trade names, business names, corporate names, trade dress, distinguishing guises, slogans, meta tags, keywords, adwords and other characters, brand elements or other distinguishing features used in association with wares or services, whether or not registered or the subject of an application for registration and whether or not registrable, and associated goodwill (*Trade-marks*);
 - (b) inventions, arts, processes, machines, articles of manufacture, compositions of matter, business methods, formulae, developments and improvements, whether or not patented or the subject of an application for patent and whether or not patentable, methods and processes for making any of them, and related documentation (whether in written or electronic form) and know-how (*Inventions*);
 - (c) software in source code or object code form, documentation, literary works, artistic works, pictorial works, graphic works, musical works, dramatic works, audio visual works, performances, sound recordings and signals, including their content, and any compilations of any of them, whether or not registered or the subject of an application for registration, or capable of being registered (*Works*);
 - (d) domain names, whether registered primary domain names or secondary or other higher level domain names (*Domain Names*);
 - (e) industrial designs and all variants of industrial designs, whether or not registered or the subject of an application for registration and whether or not registrable (*Designs*); and

- (f) trade secrets, technical expertise, and research data and other confidential information relating to goods and services.
- *Intellectual Property Rights* means:
 - (a) any common law principle or statutory provision which may provide a right in Intellectual Property, including all:
 - i. common law rights and registrations, pending applications for registration and rights to file applications for the Trade-marks, including all rights of priority;
 - ii. patents, pending patent applications and rights to file applications for the Inventions, including all rights of priority and rights in continuations, continuations-in-part, divisions, reissues, renewals, re-examinations, exclusions, and other derivative applications and patents;
 - iii. copyrights in Works and all registrations, pending applications for registration and rights to file applications for Works and all moral rights and benefits of waivers of moral rights in Works;
 - iv. registrations, pending applications for registration and rights to file applications for registration of Domain Names and all other common law and statutory rights in Domain Names; and
 - v. industrial design rights, design patents, design registrations, pending patent and design applications and rights to file applications for Designs, including all rights of priority and rights in continuations, continuations-in-part, divisions, re-examinations, reissues, and other derivative applications;
 - (b) all rights in licenses, sub-licenses, franchise agreements, waivers, and other contractual rights in any of the items listed in Section (a); and
 - (c) all rights to enforce the rights and obtain remedies for a violation of any of the rights listed in Sections (a) and (b).

- *Partner* means any third party organization (including, but not limited to, a corporation, another academic institution, a research institution, a hospital or government agency) that seeks to, or does, engage in a Research Project with Conestoga.
- *Research Project* means any research project that is not classified as an Institutional Research Project and includes, without limitation, (a) Applied Research; (b) any project involving a Partner, with or without funding from such Partner; (c) any project using Conestoga resources (e.g. people, equipment, space) to conduct the project activities; (d) student projects (such as capstone or final year project); (e) curriculum based projects (i.e. project occurring within certain courses for academic marks); (f) independent projects (i.e. projects done outside of normal academic activities with signed Research Collaboration Agreements); or (h) special event projects (i.e. projects undertaken outside of normal academic activities with specified focus for Students and/or faculty).
- *Student* means an individual enrolled as a Student in a course at Conestoga.

POLICY ELABORATION: (AS REQUIRED)

Intellectual property made (e.g., conceived or first reduced to practice) by any person, regardless of employment status, with the direct or indirect support of funds administered by Conestoga (regardless of the source of such funds) shall be the property of Conestoga, inclusive of all intellectual property rights, except as provided by this or other Conestoga policy.

Intellectual Property Developed by Students

When intellectual property is developed by a student through academic activities (student projects or curriculum based projects without third-party agreements), the ownership of the intellectual property remains with the student as long as that student is the original owner of the intellectual property.

If a student or student team working on a student or special event project has utilized Conestoga resources to develop a commercially viable product, then the student or student team is required to acknowledge Conestoga's contribution towards the product.

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

Each student on the student team owns an equal share to the results of the project. If the project results in a commercially viable product and one or more members of the student team wish to sell the results or develop a business based on the product, then each student team member must negotiate appropriate terms with the other team members in order for the product to be commercialized. Conestoga is not a party to any negotiated agreements between students.

Intellectual Property Developed by Conestoga Employees

With respect to intellectual property developed by Conestoga employees within the scope of their employment 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 employee's own initiative outside the scope of his or her responsibilities at Conestoga, without any Conestoga support (through release time, extra contracts, or other contractual agreements), and without any reliance on Conestoga resources, the intellectual property resides with the Conestoga employee. Where the intellectual property bears a reasonable relationship to the Conestoga employee'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 Conestoga resources.

Intellectual Property Pursuant to Third-Party Agreements

Ownership of intellectual property arising from collaborations with third-parties shall be governed by the terms of a research collaboration agreement, which will specify (but is not limited to) the nature of ownership, method of protection of intellectual property, and payment of royalties or fees, if applicable.

ADDITIONAL REQUIREMENTS

1. All potential intellectual property should be disclosed by the creator to Conestoga's Academic Administration or Applied Research & Innovation Office (CARI) 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. Additionally, if a Conestoga employee or student does not disclose the use of his or her previously developed intellectual property (*i.e. background IP*) within a project with the partner, then the individual may be in contradiction of a signed agreement with the partner. This could result in legal actions by the partner and potential liability by the employee or Student(s) involved.
2. If Conestoga chooses not to pursue a patent, license or copyright, in projects where it has intellectual property rights, Conestoga may enter into an agreement with the creator of the intellectual property under which Conestoga employee or student 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.
3. An agreement with the creator of the intellectual property will specify the rights of Conestoga and the rights of the creator related to ownership, term of ownership, royalties and fees, the responsibilities of each party to apply for intellectual property protection and to protect the intellectual property, and such agreement must be duly executed in writing.

4. Any dispute on the interpretation of this policy will be submitted to the VP of Academic Administration in writing. The VP may elect to form a committee to investigate the dispute and recommend a resolution. The decision of the VP is final and binding on all parties.
5. Conestoga employees may utilize their professional methods and processes (e.g. a spreadsheet that calculates parameters for an equation, a method to evaluate a clinical process' effectiveness) to investigate, resolve, or conduct a research project. These methods and processes are considered core knowledge and paramount to the Conestoga employee's work at Conestoga. Where the intellectual property of such methods and processes are demonstrably owned by Conestoga or by Conestoga employees, then such items will not be defined as foreground or resulting intellectual property from research projects.

REFERENCES:

Note related procedures, forms, legislation, Ministry or other directives that are pertinent and support the policy. If a procedure or a form is web based, a hyperlink should be provided.

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 the Protection of the Environment within Research
- Ethical Conduct in Research Involving Humans
- Research Project: Principal Investigator Checklist

REVISION LOG:

2/25/2013	Policy & Procedure Committee
4/10/2013	Academic Coordinating Committee
11/21/2018	Academic Forum
11/28/2018	Academic Coordinating Committee