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## Intellectual Property (IP)

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Policy Number:	3304
Key Process Area:	Research, Innovation and Experimental Learning
Owner:	VP AR
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### POLICY STATEMENT

New Brunswick Community College (NBCC) seeks to encourage creativity, innovation and invention among its students and staff and supports applied research as part of its goal to provide quality education to its learners and to its business, industry, and community partners.

### PURPOSE

This policy establishes the ownership of intellectual property (IP) regarding the creation and development of works within the College, as identified in any agreements and supplementary documents.

It provides incentives that foster creative activity and assures that any Intellectual Property produced will be of benefit to the inventor and the College. It also increases the likelihood that ideas, innovations, inventions and creative works produced at the College are used to benefit the public.

### SCOPE AND LIMITATIONS

This policy applies to all College employees, students and to any third party that has entered into an agreement with the College. Intellectual Property developed by NBCC staff within the course of their employment (including staff employed by a researcher on funds administered by the College) remains the property of the College, unless a specific agreement is made to the contrary.

It does not apply to Intellectual Property developed prior to employment, enrolment or partnership with NBCC. It also does not apply to cases when the Intellectual Property was developed in the course of non-NBCC related activities that did not involve NBCC facilities, resources or funds.

## 1.0 DEFINITIONS

### College Resources

-employees (including students), college facilities, equipment, funds, grants, gifts, services, information and technology resources.

### Confidentiality Agreement

-a contract between two or more parties where the subject of the agreement is a promise that information conveyed will be maintained in secrecy.

### Copyright

-all creative works, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, and any other materials that may be copyrightable under Canadian law. (Copyrightable material shall include educational or research software, but shall not include software other than educational or research software).

### Intellectual Property

-creations of the mind including inventions, literary and artistic works; and symbols, names, images, and designs used in commerce.

**Inventor/Creator**

-a person who has had an original idea or otherwise contributed intellectual input to one of the claims of a patent. Inventorship is a legal matter, not a collegial matter. Collaborators not deemed to be co-inventors can however be recognized through some sharing of the net proceeds from the invention.

**Patents**

-include, without limitation, all inventions, discoveries, know-how or other material that is patentable under Canadian law, as well as all software that is excluded from "copyrightable material" (whether or not patentable under Canadian law).

## 2.0 IMPLEMENTATION

New Brunswick Community College is committed to using the College's expertise, equipment and facilities to help solve technical and business problems, take advantage of market opportunities, and develop new innovative technologies and processes that will enhance the way we live, work and do business. Our active involvement in applied research and innovation partnerships with industry may lead to the development of Intellectual Property that may have commercial value. The following procedure and associated policy governs the ownership and processes for the protection of Intellectual Property (IP), and identifies the rights and responsibilities of various stakeholders.

### 2.1 Disclosure

Developers or potential owners of Intellectual Property will be referred to hereafter as creators. Creators may be employees, students and /or third parties.

Disclosure of Intellectual Property rights by a College employee or student is intended to ensure clarity of activity and to encourage cooperation between an individual and the College in the development of creative works and Intellectual Property.

It is the obligation of employees and students to disclose any form of Intellectual Property to NBCC. Disclosure must be made when it is reasonably concluded that a protectable subject matter has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the Intellectual Property for the creator(s) and the College. Creators must also disclose to the College any financial and/or other relationship that may affect the protection of such Intellectual Property. All disclosures submitted to NBCC will be kept confidential. The Office of Applied Research and Innovation will provide all required IP Disclosure Forms along with IP Sharing Agreements.

When Intellectual Property is developed on the creator's own initiative, outside the scope of his or her College responsibilities or work, and without any reliance on College support or resources, the Intellectual Property resides with the individual. Where Intellectual Property bears a reasonable relationship to the creator's employment, responsibilities, study or work at the College, it will be the creator's responsibility to show that the Intellectual Property was developed entirely on their own initiative without use of College resources. In some cases, disclosure of prior of IP to the Applied Research and Innovation Office may be necessary for ownership protection.

## 2.2 Intellectual Property Ownership

### 2.2.1 Employee Ownership

**2.2.1.1** NBCC shall be the owner of all IP rights in a work created by the employee in the course of employment with the College. Where the College is the owner of the IP rights in a work that is worthy of commercial exploitation, the College may promote a revenue sharing relationship with the creator or creators of that work.

In determining whether a work has been created by an employee in the course of employment, the College will consider the following factors, which are not exhaustive:

- a) whether the employee created the work during prescribed working hours for the College
- b) whether the employee created the work on College premises, or using College resources and property to do so
- c) whether the College has remunerated or compensated the employee for the work

**2.2.1.2** Where the College owns the IP rights in a work, either by agreement with its creator or the provisions above, the creator, shall have a non-exclusive right to use the work, provided the creator exploits the work only in the course of employment with the College, where the creator is a College employee, and only in the course of contractual relationship with the College, where the creator is an associate of the College and not an employee.

**2.2.1.3** Where an employee creates a work outside the course of employment with the College or during a prepaid leave program, without using the College's resources, the employee shall be the owner of the IP rights in the work.

**2.2.1.4** Where an employee wishes to use College resources to create a work outside the course of employment, the employee shall first inform the College of the creation of the work, so that a mutually satisfactory written agreement covering, among other things, ownership, use and revenue sharing, can be negotiated before the work is developed. In the absence of such a written agreement, the College shall own the IP rights in the work created.

### 2.2.2 Non-Employee Ownership

Any agreement between the College and a person who is not an employee of the College, to develop or create a work using College facilities will be written in a contract. The agreement will state that the College will be the owner of the IP in any work developed or created by the person. This may be adapted by written contract between the parties.

### 2.2.3 Joint Ownership

In the case when the Intellectual Property is jointly owned by the College and one or more partners, the parties will enter into an agreement prior to the commencement of commercialization that will govern the commercialization of jointly owned Intellectual Property.

When the College enters into an agreement with an outside party (person(s), institution(s), or business(s)) that may result in the generation of Intellectual Property, the parties will ensure that a written agreement sets out their respective rights to the Intellectual Property and any terms relating to the sharing of risk and revenue from the exploitation of the work. A license agreement may be agreed to for the purpose of granting the licensee the right to use, make and sell products based on the Intellectual Property and in return the licensee pays royalties to the owner(s) of Intellectual Property.

## 2.3 Licensing Agreements

### 2.3.1 Product Licenses

Where the College acquires a license to use a supplier's product, ownership of the IP in the product being licensed shall be determined according to the provisions of the license. Where the license does not contain any provisions to IP ownership, it shall be presumed that the supplier is the owner.

### 2.3.2 Licensing Agreements

Where the College acquires a license to use a supplier's product, ownership of the IP in the product being licensed shall be determined according to the provisions of the license. Where the license does not contain any provisions to IP ownership, it shall be presumed that the supplier is the owner.

## 2.4 Student Work

Students will be the owners of the IP rights in the works they create except in the following situations:

- a) where the College pays the students for the works they create, in which case the College shall own the IP rights
- b) where the students use College resources and facilities to create the works, outside of their course requirements, in which case students are required to obtain consent from the College for the use of its resource and facilities; consent must be obtained by the College Director of Applied Research and Innovation and/or selected delegate
- c) where the students use College resources and facilities to create the works within their course requirements, in collaboration with a College or non-College Client.

## 2.5 Collaborative Research Agreements

The College will sign a Collaborative Research Agreement (CRA) with each client that conducts a research project with the College. The College has an approved CRA template Agreement that can be signed on behalf of the College. Where the third parties wish to amend the template or have the College sign a different CRA, these documents will be reviewed by the College Director of Applied Research and Innovation and/or selected delegate.

## 2.6 Confidentiality Agreements

The College may sign Confidentiality Agreements with third parties seeking to conduct research or business using the College's resources. The College has an approved Confidentiality Agreement template that can be signed on behalf of the College. Where the third parties wish

to amend the template or have the College sign a different Confidentiality Agreement, these documents will be reviewed by the College Director of Applied Research and Innovation and/or selected delegate. These Confidentiality Agreements are not applicable to students working on research projects.

In instances where students are working with third parties on research projects as part of their course requirements or as volunteers and they are not being paid by the College for their work, the College will not be held responsible for breaches of confidentiality. In the cases where third parties require a Confidentiality Agreement, such agreements will be negotiated between the third party and the students working on the project. The College will provide templates and non-legally binding guidance to both parties.

## 2.7 Copyright Notice

Where the College is the owner of the copyright in any works according to this policy, or otherwise, it will place the following copyright notice in a conspicuous place in the works: ©[year of publication] New Brunswick Community College.

Notwithstanding the above, consistent with the provisions of the Copyright Act (1985), the College will remain the owner of the copyright in all works created in the course of employment with the College, whether or not the work is marked with the copyright notice as described above.

## 2.8 Commercialization of IP

Where the College owns IP rights in a work which it wishes to commercialize, it may consult with the creator(s) on the best means for commercialization.

The author/creator of a work in which the College owns the IP rights, may, with the prior approval of the College, pursue opportunities to exploit the work, and negotiate with the College the terms of exploiting such work. Approval must be obtained by the College Director of Applied Research and Innovation and/or selected delegate.

In the case where the College elects not to commercialize its Intellectual Property, the College may assign the NBCC-owned Intellectual Property to the employee, student, and/or industry partner that created it, if so, requested by the creator. Such an assignment shall include a provision that the College will have the right to receive a 20% share of the income from commercialization realized by the inventor.

## 2.9 Waiver of Rights

The College may waive, transfer, or license to the creator its rights to any Intellectual Property when such action does not conflict with obligations to other interested parties. A waiver cannot be issued on behalf of NBCC without approval from the Vice President Finance and Administration and the President and CEO.

### **3.0 OTHER RELATED DOCUMENTS**

Non-Disclosure Agreement (3304.4715)

IP Sharing Agreement (3304.4782)

IP Agreement (3304.4784)

IP Procedure (3304.4787)

Student Confidentiality and Professional Practices Agreement (1109.2810)