

Procedure Title:	Intellectual Property Procedure
Procedure ID:	#OP 9-903
Manual Classification:	Section 9 – Applied Research
Linked to Policy:	9-903 Intellectual Property
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Contacts for Procedure Interpretation:	Vice President, Applied Research and Innovation

1.0 – Purpose

The purpose of this Operating Procedure (the “Procedure”) is to describe how to address agreements around intellectual property (IP) ownership of employee and student work based on [College Policy 9-903 Intellectual Property](#). This Procedure will address the following scenarios:

- a) Employees wishing to use College resources to create a work outside the course of employment;
- b) Students wishing to use College resources to create a work outside their course requirements;
- c) Use of student works for purposes other than what it was assigned for; and
- d) The process of appealing a decision around intellectual property.

Terms not defined in this Operating Procedure have the same meaning found in the College’s policy #9-903 Intellectual Property Policy.

2.0 – Procedure

2.1 – Overview

[College Policy 9-903 Intellectual Property](#) establishes that IP created by employees as part of their employment duties is owned by the College. Similarly, student-created IP as part of their coursework is owned by the student with a few exceptions. Within this framework there are a number of circumstances that require clarification via agreements. The following procedures allow for pre-emptive clarification of IP ownership in such circumstances.

2.2 – Employees wishing to use College resources to create a work outside the course of employment

If an employee wishes to use College resources to create a work outside the course of employment an agreement must first be entered into between the employee and the College. The following steps must be taken:

- a)** The employee needs to request, in writing, use of the resource from the manager responsible for the resource. The request should include a brief description of the work to be done, an estimate of the time required with the resource, and a plan for using the resource outside of the employee's work hours.
- b)** If the manager supports the use of the resource, the manager will provide a written schedule and costs (if any) that must be covered by the employee. In doing so, the manager must ensure that any extra costs (e.g., supplies, equipment repairs) are borne by the employee.
- c)** The information from **a)** and **b)** are combined into a work plan.
- d)** The employee's manager, if different from the manager of the resource, must approve the work plan.
- e)** Once the employee, the manager of the resource, and the employee's manager (if different from the manager of the resource) agree to the work plan, the work plan shall be forwarded to the Office of Applied Research and Innovation (OARI).
- f)** The Manager of the Office of Applied Research and Innovation will develop a Memorandum of Understanding (MOU) reflecting the work plan and provide it to the employee, manager of the resource, and employee's manager (if different from the manager of the resource) to sign.
- g)** The Office of Applied Research and Innovation will be the repository of signed MOUs.

2.3 – Students wishing to use College resources to create a work outside their course requirements

If a student (or group of students) wishes to use College resources to create a work outside their course requirements an agreement must first be entered into between the student(s) and the College. The following steps must be taken:

- a)** The student(s) must request, in writing, use of the resource from the manager responsible for the resource. The request should include a brief description of the work to be done, an estimate of the time required with the resource, and a plan for using the resource.

- b)** If the manager supports the use of the resource, the manager will provide a written schedule and costs (if any) that must be covered by the student(s). In doing so, the manager must ensure that any extra costs (e.g., supplies, equipment repairs) are borne by the student(s).
- c)** The information from **a)** and **b)** are combined into a work plan.
- d)** Once the student(s) and the manager of the resource agree to the work plan, the work plan shall be forwarded to the Office of Applied Research and Innovation.
- e)** The Manager of the Office of Applied Research and Innovation will develop an MOU reflecting the work plan and provide it to the student(s) and the manager of the resource to sign.
- f)** The Office of Applied Research and Innovation will be the repository of signed MOUs.

2.4 – Use of student works for purposes other than what it was assigned for

On occasion, the College may wish to use IP that students created for the fulfilment of program requirements for other purposes. For example, a piece of art created by a student to meet a course requirement might be requested to be part of an advertising campaign for a program. To respect the student's ownership of the IP, the College must receive prior, written consent from the student before using the IP. To do so, the following steps must be taken:

- a)** The manager of the unit wishing to use the student IP must provide a written request to use the IP. The request must clearly identify the IP, the intended use of the IP including timeframes for that use, and make it clear the student may withhold consent.
- b)** If the student agrees to the use of the IP, the manager will send the details of the agreement to the Office of Applied Research and Innovation.
- c)** The Manager of the Office of Applied Research and Innovation will develop an MOU reflecting the agreement reached between the manager and the student and provide it to the student and the manager to sign.
- d)** The Office of Applied Research and Innovation will be the repository of signed MOUs.

2.5 – Appeal Process

If a student or employee, disagrees with any decision or agreement regarding IP, they should seek to informally resolve the issue via the Office of Applied Research and Innovation. The Manager of the Office of Applied Research and Innovation shall hear the concern and attempt to find a solution.

If the student or employee is not satisfied with the response from the Office of Applied Research and Innovation, they can appeal:

- a) Appeals must be made in writing to the Vice President, Applied Research and Innovation (VPARI@flemingcollege.ca). Appeals must be received within 10 working days of the student or employee receiving the response from the Office of Applied Research and Innovation. The appeal must explain the basis for the appeal and the resolution desired.
- b) Upon receipt of the appeal, the Vice President, Applied Research and Innovation will instruct the Manager of the Office of Applied Research and Innovation to strike an appeal committee, which will consist of:
 - The Manager of the Office of Applied Research and Innovation
 - Two other people in the college community as deemed appropriate by the Vice President of Applied Research & Innovation.

In addition, a representative of the appropriate Union for support staff or faculty or a representative of the appropriate student association for students may attend to support the employee/student.

- c) The appeal committee will hear the appeal and then deliberate. The decision of the appeal committee should be by consensus.
- d) The committee decision will be conveyed via letter to the employee or student within three (3) business days of the committee meeting.
- e) The employee or student can appeal the committee's decision to the Vice President, Applied Research and Innovation. The decision of the Vice President Applied Research and Innovation is final.

3.0 – Related Documents

- Faculty Collective Bargaining Agreement
- College Policy #9-901 Applied Research Policy (in development)
- College Policy #9-903 Intellectual Property
- College Policy #9-907 Commercialization Policy
- College Operating Procedure #9-907 Commercialization of College-owned Intellectual Property

4.0 – History of Amendments & Reviews

N/A