

Policy Title:	Intellectual Property
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Contacts for Policy Interpretation:	Vice President, Applied Research and Innovation

1.0 - Policy Overview

Fleming College (“the College”) is committed to encouraging, promoting and fostering innovation and discovery by its employees, associates and students, in all fields of study, inquiry and endeavour.

Patents, inventions, creative works, and other forms of Intellectual Property (IP) developed by members of the Fleming College community may have commercial as well as scientific and scholarly value. This policy defines the ownership, dissemination, and recognition of Intellectual Property developed at the College.

Fleming College recognizes that current intellectual property laws do not protect all forms of Indigenous traditional knowledge. The College commits to recognizing these differences and supporting the rightful Indigenous ownership over cultural heritage, traditional knowledge and traditional cultural expressions on its campuses.

2.0 - Purpose

The purpose of this Policy is to establish the ownership of Intellectual Property in the creation and development of works within the College.

The Policy is intended to ensure that any IP produced will be utilized and developed for the benefit of the creators, the College, research partners, and the public.

3.0 - Definitions and Acronyms

The following definitions and/or acronyms apply in this Policy:

Collaborative Partnership(s): Agreements and actions made by consenting organizations or individuals to share resources to accomplish a mutual goal

Copyright: In relation to a work, the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and to authorize such acts. Copyright Act (R.S.C., 1985, c. C-42)

Indigenous Knowledge: While no single definition exists, Indigenous Knowledge, sometimes referred to as Traditional Knowledge (TK) and Traditional Cultural Expression (TCE), is recognized as a set of complex knowledge systems based on the worldviews of Indigenous peoples. Indigenous knowledge reflects the unique cultures, languages, governance systems and histories of Indigenous peoples from a particular location. Indigenous knowledge is dynamic and evolves over time. (Government of Canada).

Traditional knowledge (TK) and traditional cultural expressions (TCEs) are important elements of the cultural heritage and social and historical identity of many local and Indigenous communities, as well as many nations and regions with a shared cultural history

Industrial Design: Features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye. Industrial Design Act (R.S.C., 1985, c. I-9)

Express Written Consent: The IP owner provides, in writing, a clear, unambiguous and informed agreement for their IP to be used by the College in a specific way.

Integrated Circuit Topographies (ICT): The design, however expressed, of the disposition of (a) the interconnections, if any, and the elements for the making of an integrated circuit product, or (b) the elements, if any, and the interconnections for the making of a customization layer or layers to be added to an integrated circuit product in an intermediate form. Integrated Circuit Topography Act (S.C. 1990, c. 37)

Intellectual Property (IP): Patents, Trademarks, Copyrights, Industrial Designs and Integrated Circuit Topographies. For the purpose of this Policy the College also recognizes Indigenous Knowledge as a form of IP.

Invention: Any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter. Patent Act (R.S.C., 1985, c. P-4)

Moral Rights: Under the Copyright Act, Moral Rights provide protection for an author's association with a creative work by preserving the integrity of the work and intent behind the work. Moral rights can be divided into two overarching categories: rights of attribution and association and rights of integrity.

Patent: The exclusive rights granted for an Invention (see *Invention*). Patent Act (R.S.C., 1985, c. P-4)

Scholarly Works: Academic publications such as journal articles, conference presentations, papers or books that are written based on an author's scholarship, learning or research.

Trademark: There are two definitions for the purposes of this policy: (a) a sign or combination of signs that is used or proposed to be used by a person for the purpose of distinguishing or so as to distinguish their goods or services from those of others, or (b) a certification mark. Trademarks Act (R.S.C., 1985, c. T-13)

Agreement: The goal of protection of the Intellectual Property of the partners is handled through collaborative research and development agreements and/or separate Intellectual Property (IP) agreements. Such IP agreements define both background IP and IP anticipated to be developed through the project activities.

4.0 - Scope

This policy applies to all College personnel, whether compensated or not, including staff in the Academic and Support Staff bargaining units, sessional and part time staff, administrative staff, contractors, consultants, volunteers, students employed by the College, students conducting research as a requirement for their academic program, and all other persons who engage in projects using the College's employees, students, facilities, and/or resources.

This policy extends to third parties who participate in collaborative research projects and/or joint initiatives, such as industry or sector partners; however, if any part of this policy conflicts with provisions of a signed agreement between the College and a creator of IP, or between the College and a third party, the provisions of the signed agreement will prevail.

This policy does not cover intellectual property created by third parties without collaborating with the College but is used by the College. For example, the IP created and then presented by a guest speaker in a class would not be considered College IP and therefore not covered under this policy.

5.0 - General Principles

5.1 - Overview

Parameters for ownership of IP created at the College are established in this Policy.

Recognition of the Moral Rights of the creator of the work will be respected in the Policy.

The College acknowledges that all possible scenarios surrounding IP cannot be anticipated. As such, should a unique circumstance arise that is not addressed by this or any other College policy and/or related procedure, the College will work collaboratively with all parties involved as articulated in section 4.0 of this Policy (Scope) to fully understand and address these situations individually.

5.2 – Employee Work

- a) In the absence of any written agreement to the contrary between the College and an employee, the College shall be the owner of all IP rights in a work created by the employee in the course of employment with the College.
- b) Whether or not the College owns the intellectual property rights of a work, and in particular the copyright therein (pursuant to the Copyright Act, 1985), it will take steps to respect the moral rights of the authors or creators of the work. Specifically, it is understood that the author or creator has the right to request, where reasonable in the circumstances, to be given recognition of the work by name or by pseudonym; to remain anonymous; or to choose not to be associated with any modification of the work that is perceived to be prejudicial to his/her honour or reputation.
- c) 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:
 - Whether the employee created the work as part of their described employment duties;
 - Whether the employee created the work using College resources or property;
 - Whether the College has remunerated or compensated the employee for the work (including funded professional development leaves).
- d) Where the College owns the IP rights in a work, either by agreement with its author or creator, or pursuant to section **5.2 c)** above, the author/creator, shall have a non-exclusive right to use the work, provided the author/creator exploits the work only in the course of employment with the College, where the author/creator is a College employee, and only in the course of contractual relationship with the College, where the author/creator is an associate of the College and not an employee.
- e) Where 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. See [College Operating Procedure #9-903 Intellectual Property](#).

- f) Where an employee intends to create IP during a professional development leave, such activity is to be described in the application for the leave. Where a professional development leave is approved, the College shall own the IP rights in any work created and for which work the leave was granted.

5.3 – Employee-Owned Work

- a) The College makes no claim to ownership or Copyright arising in any material that is produced by an Employee or Contractor outside the context of their employment or contract position. This will include IP created during a pre-paid leave or any other leave from the College where the College does not pay the employee.
- b) The adoption and inclusion of employee-owned works in College course materials will be made only with the prior approval of the appropriate College administrator in accordance with [College Policy #3-344 Conflict of Interest](#).
- c) Owners of IP rights in scholarly works created in the course of research activities grant the College a non-exclusive, free, irrevocable, indivisible, and non-transferrable license to use, for academic purposes, all works created by an author. If such license interferes with academic publication of the scholarly work, the College will waive their license.
- d) In joint projects undertaken by Fleming employees, who have jointly produced material that is subject to IP the employees may reach agreement on how the IP is to be allocated among them. Such agreement must be in writing and with the Informed Consent of all members of the team.

5.4 – Non-Employee Work

Any agreement between the College and a person who is not a paid employee of the College (e.g., volunteer, independent contractor), to develop or create a work, must 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 does not include where an Indigenous Knowledge agreement has been created.

This policy may be adapted by written contract between the parties.

5.5 – Student Work

Students are the owners of the IP rights in the works they create in fulfillment of their Fleming program requirements and have the right to control all further uses of their work, 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 the students are required to obtain the College's consent for the use of its resources and facilities and create an agreement concerning IP ownership. See Procedure OP 9-903 Intellectual Property.
- c) Where the students create the works within their course requirements, in collaboration with a College or non-College Client.

Fleming College shall not use a student's work for purposes other than that for which it was assigned unless prior written consent is received from the student. See [College Operating Procedure #9-903 Intellectual Property](#).

5.6 – Joint Initiatives with Outside Parties

Where the College enters into an agreement with an outside party (person(s), institution(s), or business(s)) that may result in the generation of IP, the parties will ensure that a written agreement sets out their respective rights to the IP in the work and any terms relating to the sharing of risk and revenue from the exploitation of the work.

6.0 – Administration of IP

6.1 – The Office of Applied Research and Innovation

Responsibility for administration of College IP issues resides with the Office of Applied Research and Innovation (OARI). The Vice President, Applied Research and Innovation and their team will assist staff to deal effectively and efficiently with IP issues and to ensure that there is consistency in the manner in which IP issues are addressed and decisions are made. Specifically, they will assist College employees in the following ways:

- a) Respond to all questions regarding the application, interpretation, and implementation of this policy;
- b) Review all written disclosures of Intellectual Property.
- c) Serve as a resource in the commercialization of works in which IP rights may exist, including license agreements, technology development agreements, and revenue sharing agreements.
- d) Serve as the office of primary interest for all records related to College IP issues, including confidentiality agreements, license agreements, revenue sharing agreements, memoranda of understanding, and other documents pertaining to research and/or IP.

6.2 – Confidentiality Agreements

- a) The College may sign Confidentiality Agreements with third parties seeking to conduct applied 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 by the Vice President Applied Research and Innovation. 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 Office of Applied Research and Innovation and signed on behalf of the College by Vice President Applied Research and Innovation. These Confidentiality Agreements are not applicable to students working on research projects (see **Section 5.5**).
- b) 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 cases where the third party requires a Confidentiality Agreement, such agreements will be negotiated between the third party and the students working on the project. The College may provide templates and non-legally binding guidance to both parties.

6.3 – Use of the College's Name on Created Works

The College has the right to be recognized or acknowledged in any work created by employees, students, or persons with whom the College is dealing, that the College has IP rights to (as described in previous sections). The College also has the right to be disassociated from such work and from work created by employees, students, or other persons with whom the College is dealing that the College does not have IP rights to.

6.4 - Copyright Notice

Where the College is the owner of copyright in any works created according to this policy, or otherwise, it will place the following copyright notice in a conspicuous place in the works:

© [year of publication] Sir Sandford Fleming 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 the work is marked with the Copyright notice as described above or not.

6.5 – Accountability and Compliance

The Vice President, Applied Research and Innovation is responsible for monitoring compliance with this Policy and updating it as required.

6.6 – Dispute Resolution

The Office of Applied Research and Innovation will handle questions regarding the application, interpretation, and implementation of this policy, or regarding disagreement among creators concerning assignment of rights or sharing of royalties.

If a conflict cannot be resolved informally, the matter may be submitted to an appeal committee (see Procedure OP 9-903 Intellectual Property).

7.0 – Related Documents

- *Copyright Act (R.S.C., 1985, c. C-42)*
- *Freedom of Information and Protection of Privacy Act (R.S.O., 1990 c.F-31)*
- Association of Canadian Community Colleges Fair Dealing Policy
- Faculty Collective Agreement
- College Policy #1-110 Honouring the Rights of Indigenous Peoples
- College Policy #3-344 Conflict of Interest
- College Operating Procedure #9-903 Intellectual Property
- College Policy #9-901 Applied Research Policy (in development)
- College Policy #9-904 Copyright
- College Operating Procedure #9-904 Copyright
- College Policy #9-907 Commercialization Policy
- College Operating Procedure #9-907 Commercialization of College-owned Intellectual Property

8.0 - History of Amendments/Reviews

June 1995	Original approval of College Policy #4-405 <i>Copyright</i>
January 2008	Revised, renamed and renumbered to College Policy #2-215 <i>Intellectual Property and Copyright</i>
October 2022	Revised, renamed and renumbered to College Policy #9-904 <i>Intellectual Property</i>