

POLICY GROUP: NC900 – Applied Research

POLICY TITLE: Commercialization

A. Background and Definitions

In July 2020, in response to the recommendations of the Expert Panel established in 2019 to help Ontario become more strategic in its approach to generating, protecting and commercializing intellectual property (IP), the government of Ontario released the province’s first Intellectual Property Action Plan. One of the key action items of the Plan is to clarify the commercialization mandates of postsecondary institutions. In response, the Ministry of Colleges and Universities released a Commercialization Mandate Policy Framework in early 2022, directing each postsecondary institution to develop a Commercialization policy focused on the objective of harnessing the IP generated with the institution’s resources so as to achieve Ontario’s goal of ensuring that made-in-Ontario innovations benefit Ontarians.

Under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, the objects of Niagara College (the College) are to offer a comprehensive program of career-oriented, postsecondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment, and to support the economic and social development of their local and diverse communities. The Act further provides that in carrying out its objects, the College may undertake a range of education-related and training-related activities, including applied research. It is within such context that the College involves its students, faculty and other staff in applied research projects, notably through the rendering of applied research services to third-party entities (TPEs). Through its applied research activities, the College, along with all other Canadian colleges, plays a critical role in supporting small and medium-sized enterprises (SMEs), fostering competitiveness and innovation, and contributing to Ontario’s economic growth.

Applied Research: For the purposes of this policy, refers to research and development activities directed at solving a specific challenge faced by an external partner or TPE. Applied research at colleges is typically carried out by teams of students working under the guidance, supervision and mentorship of faculty or staff, and in collaboration with partner organizations or under agreement with TPEs. Applied research includes grant-funded and industry-sponsored applied research and curriculum-based research projects in collaboration with an external organization.

Applied Research Office (ARO): refers to the research administration office of the College or equivalent (Research and Innovation Division).

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Applied Research Services Agreement: An agreement between the College and a TPE whereby the College agrees to provide applied research services to the TPE.

Arising IP: IP that is developed by one or more parties in the course of applied research activities which did not previously exist. It is also referred to as “foreground IP”.

Commercialization: The process of taking an invention or scientific discovery (e.g. new technology, new or improved manufacturing process) or other IP to one or more commercial markets.

Commercialization Pathways: The various methods by which IP may be commercialized. A list of commercialization pathways is available on the College’s website.

Creator: Any Niagara College employee, or student who creates IP at the College.

Invention: A tangible or intangible concept, system, device, process, machine, scientific discovery, work, or creation which is unique and original, as well as any related IP. Inventions can be issued a patent under the *Patent Act (Canada)*.

Intellectual Property (IP): Any form of knowledge of expression created by one’s intellect that can be legally protected, including technical information, inventions, models, drawings, photographs, specifications, prototypes, computer software, curriculum and teaching materials, and other creations that can be protected under patent, copyright, trademark, integrated circuit topography, plant-breeders rights, and industrial design laws. For the purposes of this policy, confidential information having a commercial value is to be considered IP.

Literary Work: Work consisting of, but not limited to; text, such as books, pamphlets, or computer programs.

Patent: In Canada, patent is a right granted by the federal government to the inventor (or person to whom the investor has assigned their rights) to stop others from making, using and/or selling an invention from the day the patent is granted to a maximum of 20 years after the day on which the patent application is filed.

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Public Disclosure: The communication of information relating to IP to external parties, including students who are not presently contractors or employees of the College. Public disclosure includes, but is not limited to, disclosure in written or oral form; communication by email; posting on a web blog or social media platform; disclosure in a news report, press release or interview; publication in a journal, abstract, poster or report; presentation at a conference; demonstration of an invention at a trade show; or the industrial application of an invention.

Third Party Entities (TPEs): An industry or community partner with which the College has contracted to provide applied research services that could result in arising IP.

B. Purpose

This policy provides a framework for the College’s role in supporting TPEs and facilitating the commercialization of Arising IP by them.

The College has developed this policy in conformity with the requirements of the Commercialization Mandate Policy Framework, giving due consideration to the specificities of research in a college environment, the College’s other policies relating to intellectual property, and the current legislative framework. By adopting this policy, the College aims to foster an environment in which the commercialization potential for the intellectual property derived from applied research services rendered to TPEs can be maximized for the benefit of Ontarians. More specifically, by adopting this Policy, the College seeks to achieve the following:

- Promote the appropriate use and protection of IP arising from the College’s research activities;
- Maximize the socioeconomic benefits to Canada and Ontario of such IP;
- Promote individual and collective compliance with College and third-party expectations with regards to applicable legislation and regulations;
- Define the roles and responsibilities of the various stakeholders in the management of arising IP; and
- Promote the use and dissemination of research results in subsequent teaching or research activities at the College.

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C. Policy Statements

1. This policy has been developed within the unique applied research funding context for Ontario colleges. The operating funding provided to colleges by the province is designed to support the core education and training mandate of colleges and does not reflect the overhead costs of exploring, developing, and overseeing applied research projects. These costs must be met through other revenue sources. Funding from granting agencies, primarily federal agencies, is crucial for the College to undertake specific applied research projects. These projects increase innovation at the community and regional level by enabling the College to work with companies to develop solutions to specific business and technical challenges. With the help of such funding, the College can actively engage in applied research and collaborations that can lead to the commercialization as well as technology transfer, adaptation, and adoption, of new technologies by TPEs.
2. This policy applies to all employees or contractors of the College, and all Niagara College students involved in paid research activities, who generate IP in the course of government-funded applied research activities. Other IP, e.g., copyright in literary works, authored by the foregoing persons, is addressed in the College’s Ownership of Intellectual Property policy.
3. This policy does not restrict an employee from exercising their rights under a collective agreement.
4. This policy is to be read in conjunction with the College’s Ownership of Intellectual Property policy, which addresses the ownership of IP developed by its employees and students.

Disclosure

5. All creators have an obligation to promptly disclose to the College, IP with commercial potential. The College shall establish a procedure to facilitate such disclosure to the ARO or TPE. This may include the use of a disclosure form, or it may be included in a report provided to the TPE describing the invention or other IP, the creators, and any existing agreements related to the invention, or other IP. Such disclosure is not considered public disclosure.

Given that the responsibility to disclose rests with the individuals, the College will educate potential creators on the importance of thorough and timely disclosure.

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Non-Disclosure and Confidentiality

6. While disclosure of IP is important, non- disclosure of IP is equally so. Creators should be aware that public disclosure may result in loss of IP protection rights. This is especially true of inventions as, generally speaking, a patent is difficult or impossible to obtain if public disclosure of the invention has occurred. Care must be taken to avoid premature disclosure before a patent application has been filed. In light of this, creators are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible and consult with the ARO prior to making any public disclosure of IP.
7. Partnerships and research collaborations with TPEs often involve the communication of them by confidential proprietary information, some of which is likely to implicate IP. Any applied research services agreement must contain confidentiality clauses, and any College employees and students must be made aware of such confidentiality provisions to ensure that they are respected.
8. Persons engaged in research shall treat as confidential all information received in the context of research activities that is designated as confidential by the party disclosing it or protected by a confidentiality clause. This is especially important in the context of an invention that could be patented, since in some jurisdiction a patent cannot be obtained and in other jurisdictions it can be difficult to obtain a patent, if there has been public disclosure of the invention.
9. TPEs may require individuals within the College community to sign non-disclosure agreements (NDAs) as additional protection, often prior to the College and the TPE entering into an applied research services agreement. In such case, the individual shall be required to sign the NDA as a condition of participating in the project to indicate their acknowledgement of the NDA terms.
10. Where the ARO believes that IP belonging to the College, or which the College licenses from a third party, may be divulged in the course of research activities, the College will request the TPE to sign a NDA. As a matter of practice, the NDA which the TPE has asked the College to sign may offer both parties mutual protection.

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Use of a Proper Binding Agreement

11. Regardless of the commercialization pathway chosen, applied research services agreements that could result in the creation of new IP must be documented in a written contract which:

- a) Protects the interest of the College, its employees, and students e.g., by minimizing the potential for, and the consequences of, a breach of the agreement and saves it from future IP-related claims; and
- b) Retains rights for the College to use the IP for educational and research purposes.

In all instances, the contract shall explicitly or implicitly specify whether the decision to commercialize arising IP will rest with the College or with the TPE.

Rights Retained

12. The College must endeavour to maintain the right to use any arising IP resulting from applied research services agreements, for internal academic and teaching purposes, including for the purposes of enhancing curriculum relating to the subject matter thereof and of providing case studies and examples of research-derived IP and the management thereof.

ROLES & RESPONSIBILITIES

The College

13. As an institution supporting and facilitating the commercialization of IP created in Ontario, the College's role is to ensure that IP created with the use of its physical and human resources (i.e., arising IP) will be identified, its protection evaluated and acted upon and, if specified as such in the applied research services agreement, transferred to TPEs or, if so directed by them, to third parties who are capable of assessing the IP's commercial potential.

Executive Team

14. The College's Executive Team is responsible for approving and ensuring this policy is reviewed and updated in compliance with the College's policy review schedule.

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Applied Research Office

15. The ARO is responsible for the administration of all matters relating to Commercialization and IP at the College. Its functions include:

- a) Ensuring and promoting compliance with this policy and other IP policies of the College, if any, namely by informing relevant stakeholders of their rights, roles and responsibilities;
- b) Responding to questions regarding the application, interpretation, and implementation of the policy;
- c) Managing agreements signed with TPEs, including NDAs, assignments and licences, including establishing, negotiating and reviewing all such agreements, with the assistance of legal counsel if necessary, before they are signed by any employee, contractor, or student of the College;
- d) Serving as the repository for the foregoing agreements;
- e) Reviewing all written IP disclosures in a timely manner;
- f) Where possible, supporting employees, students and industry partners with any issue related to IP protection and commercialization; and
- g) Making research team members aware of the terms and condition of the relevant research agreement that could impact them e.g. disclosure and confidentiality provisions.

The ARO is not responsible for identifying inventions or confirming the ownership of IP that have not been disclosed as per Item 5 above.

Vice President, Research & External Relations

16. The Vice President, Research and External Relations or equivalent individual with authority to legally bind the College, must sign all agreements that could result in arising IP, including all applied research services agreements.

Director, Research & Innovation

17. The Director, Research and Innovation is responsible for supporting and implementing this policy. This may require the support of other senior management staff of the College, including, but not limited to, Deans, Directors and Associate Deans.

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Employees

18. College employees, including faculty, staff, paid researchers and paid students, are responsible for abiding to this policy. All College employees whose work may involve the creation of IP have a duty to both disclose and protect such IP.

Creators

19. All creators have an obligation to promptly disclose IP with commercial potential per Item 5 of this policy.

20. Creators shall collaborate with the College TPEs and any other relevant third party, in order to identify and protect third party IP rights, as well as any rights that the College may have in IP.

21. Creators recognize that ownership of arising IP resulting from projects involving third parties depends on the terms of the agreement between the College and the third party.

22. Creators may be asked to sign a waiver, as assignment of rights, or any other document relating to ownership and protection of the arising IP per Item 26 below.

Education & Awareness

23. In order to promote the objectives of this policy, the College may:

- a) Provide all employees with access to IP education resources made available by the IP office of the Province of Ontario (IPON);
- b) Organize and hold periodic “IP 101” sessions, during which, participants will be introduced to the content of the College’s IP policy and this commercialization policy;
- c) Provide access to IP training and educational information materials on the College server;
- d) Raise awareness of this commercialization policy to reach its relevant audience (printed and/or online); and
- e) Take any reasonable steps to further the objectives of this policy.

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Providing Net Benefit to Ontarians & Institutional Engagement with the Innovation Ecosystem

24. In order to build institutional capacity to conduct applied research and thereby develop and enhance Ontario-based IP, the College will continue to build and maintain relationships with local innovation ecosystem partners such as incubators, accelerators, innovation centres, research networks, industry associations, without impacting federal funding received by the College in relation to the applied research projects it undertakes.

25. Partnering with Ontario businesses will result in a net benefit to Ontarians by keeping IP development and enhancements in Ontario. In order to optimize the commercial potential of the College’s applied research activities, the College will:

- a) Prior to entering into an applied research services agreement, make a summary assessment of the TPE in order to confirm that it has a minimum level of viability; and
- b) Following the completion of the applied research services agreement, handle the transfer of arising IP as agreed with the TPE in the applied research services agreement.

Discrepancies & Exceptions

26. In case of discrepancy between this policy and the terms of an applied research services agreement, the terms of the agreement shall prevail. Any other exception to this policy requires prior approval of the ARO.

D. Related Documents

Policy: NC900 Ownership of Intellectual Property

Procedure: NC900 Disclosure of Intellectual Property (in development)

Other: Commercialization Pathways

Revision/Review:
Last Revision/Review:
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E. Document History

Date	Approval/Review/Key Change(s)
December 12, 2022	New, per Ministry mandate