



# Policy

<b>Policy Title:</b>	Copyright and Intellectual Property (IP)	
<b>Applies To:</b>	Team Members	
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## PURPOSE

This policy outlines treatment of Intellectual Property (IP) created by Team Members, and the process involved related to identifying, protecting and commercializing IP that can improve the lives of patients. This includes, but is not limited to, treatment of Copyright, Inventions, Commercialization.

## DEFINITIONS

<b>Assignment</b>	The transfer of ownership of IP or IP Rights to another party through contract or other means.
<b>Benefit</b>	Includes, but is not limited to, up-front payments of incurred costs, sharing of royalties on commercialization, equity in spin-off companies, or other contributions toward the mandate of Nova Scotia Health as may be agreed upon.
<b>Citation</b>	Giving credit to the original author or source of the information through formal Citation style (e.g., American Medical Association, American Psychological Association, etc.).
<b>Commercialization</b>	Making, using, selling, offering to sell, marketing, distributing, licensing, or otherwise making efforts to generate revenues from the commercial use of Intellectual Property.
<b>Copyright / Canadian Copyright Law</b>	Copyright is the sole right to produce or reproduce a work or a substantial part of it in any form. It includes the right to perform the work or any substantial part of it or, in the case of a lecture, to deliver it. If the work is unpublished, Copyright includes the right

	<p>to publish the work or any substantial part of it (Copyright Act, Statutes of Canada, 1985)</p> <p><a href="http://laws-lois.justice.gc.ca/eng/acts/C-42/">http://laws-lois.justice.gc.ca/eng/acts/C-42/</a></p>
<b>Educational Institution</b>	<p>Section 2 of Copyright Act defines an Educational Institution as:</p> <p>(a) a non-profit institution licensed or recognized by or under an Act of Parliament or the legislature of a province to provide pre-school, elementary, secondary or post-secondary education,</p> <p>(b) a non-profit institution that is directed or controlled by a board of education regulated by or under an Act of the legislature of a province and that provides continuing, professional or vocational education or training,</p> <p>(c) a department or agency of any order of government, or any non-profit body, that controls or supervises education or training referred to in paragraph (a) or (b), or</p> <p>(d) any other non-profit institution prescribed by regulation;</p> <p>(Copyright Act, Statutes of Canada, 1985)</p>
<b>Fair Dealing</b>	<p>Copying of content that is (1) for research, private study, education, parody, satire, criticism, review or news reporting and (2) “fair”. Neither the Copyright Act, nor the decisions of the courts interpreting Fair Dealing set out exactly what is “fair” in any particular instance at this time (University of British Columbia, n.d). Ultimately, “fairness” will depend on the circumstance. In their 2018 position statement on Fair Dealing, the Canadian Federation of Library Associations (CFLA-FCAB) recommended that Sections 29, 29.1 and 29.2 of the Copyright Act remain “unchanged to retain current allowable uses.”</p>
<b>Interlibrary Loan</b>	<p>Process through which an individual Staff member may request access to original or reproduced content from libraries outside of the organization. This includes document delivery, which is the supply of journal articles not held by current library subscriptions. Acquisition of content by Nova Scotia Health library on behalf of Staff is done for individual Research, education and/or private study. As such, content acquired by Interlibrary Loan is not licensed for further Reproduction.</p>
<b>Invention</b>	<p>The following subject matter and any improvements thereto, regardless of whether or not they are patented or patentable: (i) any new and useful process, machine, manufacture or composition of matter; (ii) know-how; (iii) new life forms; (iv) methods of medical treatment; (v) analytical and surgical methods; (vi) computer software (source or object code) and any computer related technology; (vii) any other discoveries; (viii) improvements to existing Patents; and (ix) Research Data;</p>

<b>Intellectual Property/IP</b>	Any tangible or intangible form of intellectual or artistic activity, including, but not limited to: Inventions, Research Data, databases, source code, object code, Copyrighted Works and Trademarks, industrial designs, as well as all other creations that can be protected under Patent, Copyright, Trademark, Trade Secret or similar laws.
<b>IP Creator</b>	The Nova Scotia Health Team Member(s) who creates, designs, discovers, invents, or authors IP.
<b>IP Rights</b>	Any and all proprietary rights anywhere in the world provided under (i) patent law, (ii) copyright law, (iii) design patent or industrial design law, (iv) semi-conductor chip or mask work or integrated circuit topography law, (v) trade-mark law or (vi) any other statutory provision or common law principle, including trade secret law, which may provide rights in IP or the expression or use of such IP.
<b>Learner</b>	Includes: <ul style="list-style-type: none"> <li>○ Any student</li> <li>○ Independent learner, or</li> <li>○ Department of National Defense personnel who are stationed in Nova Scotia and need to maintain their clinical skills.</li> </ul>
<b>License</b>	Any grant of IP Rights to any party and includes without limitation a grant of contingent or future right(s) to receive a License or sublicense of any IP Rights (such as an option or right of first refusal) but does not include an Assignment, or Official, documented authorization to use and/or reproduce content granted by content Copyright owner. License Agreements for content are often established for a defined period of time and generally outline any parameters or limitations regarding content Reproduction (Raysman et al, 2011).
<b>Moral Rights</b>	Rights of the content creator, which include claim of authorship, anonymity, integrity (prevent distortion, modification or mutilation of work), and association (control of activities associated with work). Even if a creator has assigned Copyright to another entity, the creator would continue to maintain the Moral Rights to the work. These rights are important for authors to ensure they get appropriate recognition for their works and for prohibiting any prejudicial changes to their works. In Canada, Moral Rights are granted to all types of Copyrighted work. (Dalhousie University, n.d., University of Waterloo, n.d. & Harris, L.E., 2017). As defined by the <i>Copyright Act, R.S.C. 1985, c. C-42</i> , as amended or replaced from time to time.

<b>Non-employee Nova Scotia Health Researchers</b>	Any Team Members, including but not limited to physicians, students or affiliated scientists, when acting in a capacity other than in the scope of their job duties as a paid employee of Nova Scotia Health.
<b>Nova Scotia Health Employee</b>	All persons employed by Nova Scotia Health, including, but not limited to full and part-time staff.
<b>Nova Scotia Health Resources</b>	Premises, buildings, equipment, IP, whether owned wholly or jointly by Nova Scotia Health, and other facilities, resources or property under control of or owned, leased or licensed by Nova Scotia Health and funds, regardless of source, that are administered wholly or partially under the control, responsibility, or authority of Nova Scotia Health.
<b>NSHA Team Member/Team Member</b>	Unless specifically limited by a certain policy, refers to all Employees, physicians, Learners, volunteers, board members, contractors, contract workers, franchise employees, and those with affiliated appointments and other individuals performing activities within Nova Scotia Health.
<b>Patent</b>	Shall have the meaning prescribed by the Patent Act, R.S.C. 1985, c. P-4, as amended. Patent Act, Statutes of Canada. (1985, c. P-4). Retrieved from the Justice Laws Website: <a href="http://laws-lois.justice.gc.ca/eng/acts/P-4/">http://laws-lois.justice.gc.ca/eng/acts/P-4/</a>
<b>Patient</b>	All individuals including clients, residents, and members of the public who receive or have requested health care or services from Nova Scotia Health and its health care providers.
<b>Permission</b>	The “process of getting consent from a Copyright owner to use the owner’s creative material.” (Stanford University Libraries, 2018). Permission and allowable use could be covered in a licensing agreement such as a Creative Commons License.
<b>Principal Investigator</b>	The Member who has consented to assume, alone or with another Member(s), primary responsibility for the design, conduct and supervision of a Research project.
<b>Reproduction</b>	Creating copies of content. This may take the form of sharing content through attaching files to an email, uploading content to internal systems (e.g. published Research article to a learning management system, or shared network drive), or making copies, e.g. photocopies.
<b>Research</b>	Any disciplined enquiry or systematic investigation intended to extend knowledge or to establish facts or principles. It does not include, when undertaken for Nova Scotia Health’s internal assessment, management or improvement purposes (“Internal Assessment”), quality assurance and quality improvement studies,

	program evaluation activities and performance reviews, or testing within normal educational requirements. For greater certainty, where data is collected for Internal Assessment but later used for Research purposes, such secondary use of the Internal Assessment data constitutes Research.
<b>Research Material</b>	Written and non-written material produced by a Nova Scotia Health Member during the course of conducting Research, including, but not limited to, know-how, information, processes, techniques, computer software, databases and information stored therein, and other computer-related product or documentation. It does not include materials owned or for which the rights have been assigned to a third party as part of the research project.
<b>Researcher</b>	Any person conducting research within Nova Scotia Health or any person conducting research within Nova Scotia Health who has an affiliation with Nova Scotia Health.
<b>Trademark</b>	Meaning as prescribed by the Trade-marks Act, R.S.C. 1985, c. T-13 and amended and includes a mark that is used by a person for the purpose of distinguishing wares or services manufactured, sold, leased, hired or performed by that person from those manufactured, sold, leased, hired or performed by others. <a href="http://laws-lois.justice.gc.ca/eng/acts/T-13/">http://laws-lois.justice.gc.ca/eng/acts/T-13/</a>
<b>Trade Secret</b>	Any form of know-how, data concepts, discoveries or other information not generally known to the public and derives actual or potential value from not being known.

## PRINCIPLES AND VALUES

1. Nova Scotia Health's values are accountability, respect, integrity, courage, and innovation. By understanding Copyright and demonstrating fair use of IP, Team Members demonstrate these values.
2. As users of information, Team Members should fully grasp the need to maintain the integrity of Copyrighted material. This includes showing respect for the rights of Copyright holders and the Moral Rights of content creators through the acquisition of relevant Licenses/or Permissions to reproduce content, and through the clear and consistent use of Citation styles (e.g., American Medical Association, American Psychological Association, etc.).
3. Appropriately citing sources and linking to content instead of reproducing it without Copyright Permission demonstrates respect for the IP Creator's ownership of the content.
4. Nova Scotia Health Team Members work in an environment of integrity and accountability that supports and encourages innovation, research, and development.
5. This policy provides clarity and respect for Team Members' rights and responsibilities such that they can leverage IP to the fullest in service of Nova Scotians.

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6. Nova Scotia Health is committed to helping realize the full scope of potential impact for Nova Scotians and beyond for IP created by Team Members.

## POLICY STATEMENTS

### Copyright

1. Team Members must comply with current Canadian Copyright Law regarding the use and/or reuse of IP to inform decision making, create new knowledge, and/or enhance education.
  - Team Members are responsible to educate themselves on compliance with Copyright.
2. Only Copyright owners have sole and exclusive rights to production or Reproduction of work or substantial parts of it in any form.
3. Permissions for sharing or reusing IP licensed through subscriptions may vary by contract.
  - Team Members are responsible to be aware of the Copyright Permissions outlined in Nova Scotia Health's contract with the publisher, usually held by Nova Scotia Health Library Services.
4. Team Members are responsible for tracking Copyright Permissions and properly citing sources when using IP to create content, including in-house publications.
5. Permission must be obtained to reproduce all or part of an existing work, normally with attribution of the source through Citation (after Permission is obtained).
6. Nova Scotia Health, as a non-profit body, as well as an organization associated with the provincial government of Nova Scotia providing continuing professional education to health care professionals, may be considered an Educational Institution.
  - 6.1. As such, per section 29.4 of the Copyright Act, use of content within some departments/services of Nova Scotia Health may be deemed "educational".
    - Using content for educational purposes does not automatically fall under educational exemptions or Fair Dealing. When in doubt, Permission from the Copyright holder is to be obtained and retained. If the content is a library-licensed electronic resource, permission is determined by the License agreement.
  - 6.2. Use of Copyright materials for any purpose other than education and training (including, but not limited to, clinical, commercial, and promotional activities) is not covered by the education exception in the Copyright Act.

### Ownership of IP

7. Ownership of IP created by Nova Scotia Health Team Members is determined by type of IP Creator (see table below), circumstances of the IP creation, and any current or pre-existing agreements that impact IP ownership.

Nova Scotia Health Team Member Type	IP Rights (patentable IP and copyright)
Employees, contractors, contract workers	Nova Scotia Health-owned
Learners (includes students)	IP Creator-owned
Physicians	IP Creator-owned
Affiliate Scientists	IP Creator-owned
Volunteers	IP Creator-owned

8. Ownership of IP created by a non-employee (Learners, Physicians, Affiliated Scientists, and Volunteers), will belong to the IP Creator, subject to any contract between the IP Creator and Nova Scotia Health or another party.

- The ownership of IP Rights described in Section 7 may be modified by a written agreement relating to the IP Rights between Nova Scotia Health and a Team Member and/or third party. In which case the terms of the written agreement will take precedence.

8.1. Nova Scotia Health owns the IP Rights when the IP:

- Is created by a Nova Scotia Health Employee, pursuant to and in the course of their employment with Nova Scotia Health,
- Is commissioned by Nova Scotia Health,
- The associated IP Rights are acquired by Nova Scotia Health through a written contract, Assignment or by a bequest in a will; or,
- consists of Trademarks created for goods, wares, or services, related to the business of Nova Scotia Health.

8.2. IP Rights for all other IP developed by Team Members using Nova Scotia Health Resources belong to the IP Creator.

### IP Created by Learners

9. Ownership of IP by Learners may be subject to any applicable policies of their academic institution.

- A formal Assignment and/or waiver of IP Rights by the Learner in favour of an investigator, institution or third party may be required for certain projects in appropriate circumstances.

### Jointly Created IP

10. IP Rights in IP created jointly between a third party, Nova Scotia Health and/or the IP Creator will be governed by:

- Any applicable affiliation agreements with academic institutions,
- Collaborative Research agreements, or
- Similar agreements with the third party.

- 10.1. In the absence of an agreement, this policy, and any policy of the third party will be applicable.

## Collaborations

11. IP created as part of a collaboration between Nova Scotia Health and a third party may require alternative processes and agreements about disclosure, ownership, and revenue sharing. Any contract between Nova Scotia Health and a third party will supersede this policy.

## Research Material and Samples

### Research Material

12. Nova Scotia Health Team Members are expected to fully disclose and provide copies of all Research Material to other Team Members as appropriate and necessary for the conduct of the Research.

### Samples

13. All human biological samples collected at Nova Scotia Health and accessed/used by Nova Scotia Health Team Members must remain within Nova Scotia Health control, and within Nova Scotia Health's physical sites.

**EXCEPTION:** Samples may be transferred outside of Nova Scotia Health pursuant to a written agreement between Nova Scotia Health and the receiving party and with Nova Scotia Health Research Ethics Board (REB) approval.

- 13.1. Any access, use, storage, or transfer of biological samples must be done in accordance with applicable laws and Nova Scotia Health policies.
- This includes any requirements for Patient/participant consent, and in compliance with all agreements with third parties.

### License to Nova Scotia Health upon Departure

14. Upon notice from the Team Member of their departure from Nova Scotia Health, Nova Scotia Health may provide a written request for a License to use the Research Material.
- 14.1. The Team Member must grant to Nova Scotia Health a royalty-free, perpetual, and irrevocable License to Nova Scotia Health to use, reproduce and display the Research Material for medical education, Research and clinical or related purposes, subject to the following terms and conditions:
- The Team Member may refuse to grant a License to Nova Scotia Health if granting the License jeopardizes the ability of the Team Member to Patent or otherwise register IP Rights in an Invention.
  - Nova Scotia Health must ensure that the License granted under this Section and the contribution of the Team Member are appropriately acknowledged in each use of the Research Material by Nova Scotia Health; and

- The License will not prevent the Team Member from requiring that Nova Scotia Health purchase products containing the IP, where such products are articles of manufacture.

### **Participant Information**

15. The Team Member is responsible to maintain the security and confidentiality of all Nova Scotia Health information. This includes participant/Patient information as per [Privacy and Confidentiality of Personal Health Information - NSHA AD-AO-030](#).

### **Disclosure and Assessment of IP**

#### **Disclosure of Prior Agreements**

16. A Team Member with a prior agreement with any other party affecting ownership of IP, which may conflict with this Policy or Nova Scotia Health's IP Rights must disclose this to the Senior Director of Innovation/delegate.
- 16.1. In the event of a conflict or potential conflict, Nova Scotia Health, in consultation with the Team Member, may then negotiate the following with the other party:
- Ownership of the IP, or
  - Apportionment between Nova Scotia Health and the party of any income resulting from the commercialization of the IP.
- 16.2. Nova Scotia Health must inform the Team Member of any agreement it has made with the third party.
- The Team Member may be entitled to participate in negotiations relating to the agreement. This is subject to:
    - The agreement with the third party, and
    - Nova Scotia Health's Conflict of Interest Policy.

#### **Disclosure of Inventions to Nova Scotia Health**

17. Any IP Creator creating inventions resulting from Research or work-related duties conducted at Nova Scotia Health is encouraged to disclose to the Senior Director of Innovation/delegate.

#### **Disclosure of the Intent to Protect or Commercialize an Invention**

18. IP Creators who hold all IP Rights related to the Invention may disclose any intent to protect and/or commercialize an Invention to the Senior Director of Innovation/ delegate prior to disclosure to third parties.

#### **No Public Disclosure by Nova Scotia Health**

19. Where Nova Scotia Health is not the holder of the applicable IP Rights, Nova Scotia Health must not publicly disclose any information relating to an Invention to anyone not bound by this Policy, without prior written Permission of the IP Creator.

- 19.1. Nova Scotia Health may disclose information relating to an Invention to legal counsel for the purpose of seeking legal advice.

### **No Public Disclosure by IP Creators**

20. IP Creators who submit a disclosure form must withhold publication and refrain from making any public presentations on any material relating to the IP until Nova Scotia Health has had a reasonable opportunity, not to exceed 30 days, to identify commercially useful IP.
  - 20.1. IP Creators must withhold publication and refrain from making any public presentation relating to the IP for a further period, not to exceed 30 days, to enable Nova Scotia Health to seek Patent or other protection of IP if necessary.
  - 20.2. Disclosure of protectable IP to third parties is only permitted if the third party has signed a non-disclosure agreement, or other applicable confidentiality agreement in form and substance, that has been approved and signed by the Senior Director, Innovation.

### **Disclosure to Third Parties**

21. Where Nova Scotia Health owns the IP, the IP Creator will not disclose IP owned by Nova Scotia Health to a third party without the consent of Nova Scotia Health.
22. An Invention may be disclosed to a third party prior to filing a Patent application, provided the disclosure is included in a confidentiality agreement between Nova Scotia Health, the IP Creator, and the third party to whom the Invention is disclosed.
  - The written agreement must include wording to ensure that the third party understands the confidential nature of the information and its obligation to maintain confidentiality.

### **Assessment**

23. Nova Scotia Health will evaluate disclosed IP for technical and commercial potential within 30 days of receipt of a completed and signed disclosure form. The evaluation may consider the following:
  - Perceived public benefit,
  - Commercial potential,
  - Scientific merit,
  - Patentability,
  - Need or possibility of further work or information,
  - Ownership of the IP, and
  - Nova Scotia Health's interest in the IP.
- 23.1. Nova Scotia Health is not responsible or liable for any real or perceived lost opportunity as a result of the review and evaluation process.

## Assignment of Ownership Back to Employees

24. Upon request, IP owned by Nova Scotia Health may be assigned to IP Creators if Nova Scotia Health decides not to commercialize the IP, and the terms of assignment are agreed upon.
25. Nova Scotia Health is not obligated to transfer IP to any requestor.
26. If Nova Scotia Health assigns IP to an Employee, Nova Scotia Health retains a perpetual, royalty-free, non-exclusive, and irrevocable License to make, use, and modify any transferred IP solely for use by Nova Scotia Health, its affiliates, and any third-party health care provider in the Province of Nova Scotia for not-for-profit activities, or for the provision of health care services.
  - Nova Scotia Health must not sell or sub-license IP that has been assigned back to the IP Creator or a third party.

## Commercialization, Licensing and Spin-Out Companies

### Commercialization

27. The Office of the VP Research, Innovation and Discovery is responsible for negotiating and formalizing all Licenses and/or other agreements pertaining to commercialization of Nova Scotia Health IP for commercial use by the private sector.
28. Any agreement related to licensing or commercialization of Nova Scotia Health IP must be approved and executed by the Vice President Research and Innovation, and Discovery/delegate.
29. Nova Scotia Health reserves the right to enter into further agreements with other agencies for the purpose of advancing the commercialization of specific opportunities.
30. A Creator of IP that is commercialized by Nova Scotia Health may share in commercialization proceeds as agreed upon between the IP Creator and Nova Scotia Health.
  - Nova Scotia Health must advise the IP Creator of their intention to commercialize the IP.
  - Revenue arising from the development of IP shall normally be shared between Nova Scotia Health and the IP creator on a fifty-fifty basis, unless negotiated otherwise.
  - Any agreements entered into by Nova Scotia Health must reflect Nova Scotia Health's mandate to improve the health care of Nova Scotians through the support of Research and innovation at Nova Scotia Health.

### Licenses

31. If Nova Scotia Health declines to participate in protecting and/or commercializing an Invention (not owned by Nova Scotia Health), the Team Member who owns the IP may require that Nova Scotia Health obtains a License to continue to use the Invention.
  - The Team Member must then grant Nova Scotia Health a royalty-free, perpetual, and irrevocable License to Nova Scotia Health to use the IP for medical education,

Research, and clinical or related purposes, subject to the following terms and conditions:

- The Team Member may refuse to grant a License to Nova Scotia Health if granting the License jeopardizes the ability for them to Patent or register IP Rights in an Invention, and
- The License must not prevent them from requiring that Nova Scotia Health purchase products containing the IP, where such products are otherwise only available through commercial sale.

## Equity

32. The VP Research, Innovation and Discovery, in consultation with the Chief Financial Officer, is responsible for decisions related to acquiring equity (e.g., shares or ownership interest in a company) in connection with commercialization activities by Nova Scotia Health.

## Company Creation

33. The Office of the VP Research, Innovation and Discovery is responsible to participate in the creation of a new Nova Scotia company and any other newly created third party companies encompassing Nova Scotia Health IP and/or Nova Scotia Health Resources.
- This may include the following:
    - Negotiation of an appropriate Nova Scotia Health equity stake in the new company (each a “NewCo”),
    - The terms and conditions pertaining to the licensing of the Nova Scotia Health IP to the NewCo,
    - The use of Nova Scotia Health space or facilities by the NewCo, and/or
    - Any Research contract between the NewCo and Nova Scotia Health.

## REFERENCES

### Legislative Acts/References

Copyright Act, Statutes of Canada. (1985, c. 42). Retrieved from the Justice Laws Website: <http://laws-lois.justice.gc.ca/eng/acts/C-42/>

Patent Act, Statutes of Canada. (1985, c. P-4). Retrieved from the Justice Laws Website: <http://laws-lois.justice.gc.ca/eng/acts/P-4/>

Trademarks Act, Statutes of Canada. (1985, c. T-13). Retrieved from the Justice Laws Website: <http://laws-lois.justice.gc.ca/eng/acts/T-13/>

### Other

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## RELATED DOCUMENTS

[Nova Scotia Health, IWK Health Library Services Copyright Guide](#)

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**POLICIES BEING REPLACED**

CDHA RS 01-013 Intellectual Property

**VERSION HISTORY**

<b>Version:</b>	<b>Effective:</b>	<b>Approved by:</b>	<b>What's changed:</b>
Original	2018-10-01	ELT	Original title/numbering: Copyright and Intellectual Property - NSHA AD-LIB-005
Standard Review	2022-11-15	ELT	Major Revision <ul style="list-style-type: none"> <li>○ Formerly numbered NSHA AD-LIB-005</li> <li>○ Updated list of definitions</li> <li>○ Addition of table and new policy to clearly articulate the ownership of IP at Nova Scotia Health.</li> <li>○ Addition of statements related to: <ul style="list-style-type: none"> <li>● Disclosure of prior agreements</li> <li>● Revenue sharing of IP.</li> <li>● Creating of new companies including equity, licensing agreements, and research contracts.</li> </ul> </li> </ul>
Clarification	2024-10-22		Removed policy statement #3