



POLYTECHNIQUE
MONTREAL

LE GÉNIE
EN PREMIÈRE CLASSE

Official documents

Policy Regarding Technological Intellectual Property

Version française

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0 PREAMBLE ▲

Whereas the Corporation de l'École Polytechnique de Montréal (hereinafter "Polytechnique") is mandated to provide higher education and promote research in every scientific domain applicable to the practice of engineering (Art. 3 – *Loi sur la Corporation de l'École Polytechnique de Montréal*, 1987);

Whereas Polytechnique relies on its innovative capacities in terms of teaching and research, on the strength of its industry partnerships and the effectiveness of its administration (*Mission et énoncé de vision de l'École Polytechnique*, 2007);

Whereas Polytechnique safeguards the interests of its professors, researchers, students and its own interests with regard to intellectual property

Whereas Polytechnique encourages its researchers to apply their findings to research and development ("R&D") and to technology transfer;

Whereas any R&D carried out within Polytechnique is collaborative endeavour between the researcher employed by Polytechnique and the institution itself, with both parties contributing in different ways, promoting the best interests of and fulfilling their respective obligations regarding scientific findings and the commercialization of such findings;

Accordingly, the objectives of this Policy are as follows:

- a) To identify and manage the intellectual property of Polytechnique, its faculty, researchers and students;
- b) To foster the transfer of technologies developed by Polytechnique and/or its business partners to society;
- c) To safeguard the interests, financial or otherwise, of Polytechnique, its faculty, researchers, students and/or business partners in the commercialization process for technologies arising from research carried out at Polytechnique.

1 AREA OF APPLICATION ▲

This Policy applies to all persons associated with research carried out at Polytechnique whose findings may undergo commercialization.

2 REFERENTIAL FRAMEWORK ▲

This Policy falls within the framework of all research-related policies and regulations at Polytechnique, including:

- *Règlement sur les conflits d'intérêts des membres du personnel* (Regulation Regarding Staff Conflicts of Interest)
- *Politique relative à l'intégrité et aux conflits d'intérêts en recherche* (Policy Regarding Integrity and Conflicts of Interest in Research Matters)
- *Politique en matière de probité* (Integrity Policy)
- *Politique sur l'administration des fonds de recherche* (Policy Regarding the Administration of Research Funding) and its terms and conditions
- *Politique sur l'éthique de recherche avec des sujets humains* (Policy Regarding Ethical Conduct in Research Using Human Subjects) and its terms and conditions
- *Politique sur les relations avec les entreprises dérivées* (Policy Regarding Relations with Spin-off Companies)
- *Politique d'encadrement des étudiants des cycles supérieurs* (Graduate Supervision Policy) and its terms and condition

- *Politique en matière de droit d'auteur* (Copyright Policy)
 - *Procédure de certification des travaux de recherche comportant ou pouvant comporter des risques informatiques* (Certification Procedure for Research Involving Computer Risks)
 - the policies and regulations of all federal (NSERC, SSHRC, CIHR, CFI, etc.), provincial (FQRNT, FQRSC, FRSQ, etc.) and other funding agencies
-

3 USED IN THE POLICY ▲

BRCDT Bureau de la recherche et Centre de développement technologique (Office of Research/Centre for Technological Development)

NSERC Natural Sciences and Engineering Research Council of Canada

SSHRC Social Sciences and Humanities Research Council of Canada

CIHR Canadian Institutes of Health Research

CFI Canada Foundation for Innovation

FQRN TFonds québécois de la recherche sur la nature et les technologies

FQRSC Fonds québécois de recherche sur la société et la culture

FRSQ Fonds de recherche en santé du Québec

4 OBJECTIVES OF THE POLICY ▲

This Policy addresses the technological intellectual property to which Polytechnique may hold rights.

Conversely, this Policy does not cover intellectual property pertaining to books, educational software or any other works of pedagogical or general interest that do not constitute a technology. Non-technological intellectual property at Polytechnique is governed by other regulations or usages, notably the *Copyright Policy*.

5 DEFINITIONS ▲

5.1 Corporation de l'École Polytechnique de Montréal, Polytechnique

Throughout this Policy, *Corporation de l'École Polytechnique de Montréal* refers to the legal entity whose signatories are authorized to act on its behalf in legal matters; *Polytechnique* refers to the university institution in all other circumstances.

5.2 Technology

Any scientific or technical knowledge, know-how, method, technique or technological intellectual property that may be involved in the practical application of scientific findings. "Practical application" may constitute, in whole or in part, a process, product, software package or information or process management system. R&D results achieved in whole or in part at Polytechnique may constitute or engender marketable technologies.

5.3 Scientific or engineering software

Computer software or applications which together represent or support a technology.

5.4 Intellectual property and technological intellectual property

5.4.1 Intellectual property

All rights granted to creations of the mind. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols and designs. Common types of intellectual property include copyrights, trademarks, patents, designs, domain names and the appellation of origin.

5.4.2 Technological intellectual property

For the purposes of this Policy, all intellectual property whose content constitutes a technology is designated “technological intellectual property.” Given the nature of the research carried out at Polytechnique, technological intellectual property may include patentable inventions, know-how, trade secrets, technological upgrades, scientific or engineering software, industrial designs and integrated circuits.

5.5 Researcher, Polytechnique researcher , external researcher

5.5.1 Researcher

Individual who contributes personally to the creation of a technology or of scientific or engineering software as part of research carried out in whole or in part at Polytechnique. Numerous individuals may collectively or successively contribute to the process engendering a given technology. For the purposes of this Policy, “researcher” should be understood in the collective sense, i.e. to designate a group of individuals (a research team) who are researchers under the definition provided herein. The plural form is only used where the use of the singular would cause confusion.

5.5.2 Polytechnique researcher

Any researcher who, as part of his or her job-related or educational tasks at Polytechnique or connection to the institution through a contract bearing the designation “Polytechnique researcher,” makes a personal contribution to the creation of a technology.

5.5.3 External researcher

Any researcher other than a Polytechnique Researcher who contributes personally to the creative process.

5.5.4 Special cases

Under this Policy, researchers may be affiliated with Polytechnique or an outside institution or organization. The designation “Polytechnique researcher” must be specified in all contracts signed with individuals who, as neither Polytechnique students nor employees, have been engaged to conduct research at Polytechnique. More complex situations may entail a special agreement between Polytechnique and one or more third parties.

5.6 Valorization

Any actions and/or investments (financial or otherwise) whose aim is to develop knowledge, know-how, scientific findings or technology and transfer the benefits to society. Valorization notably includes the publication and maturation of research results, scientific training, contracts and partnerships, as well as any actions aimed at commercially developing or marketing the research.

5.7 Commercialization and commercial development

Commercialization refers to the successful market launch and continued sales of scientific findings and/or the technology stemming from such findings. Commercial development comprises all actions pertaining to the protection, promotion and transfer of a technology, notably with regard to its licensing or assignment.

5.8 Income derived from the commercial development of a technology

5.8.1 Gross income

Income received by Polytechnique or its business partner, if any, and derived from the valorization or commercialization of a technology. Gross income excludes all earnings derived from the fairness provision, for which specific provisions must be detailed in an agreement between Polytechnique or its business partner, if any, and the researchers.

5.8.2 Direct costs

Costs incurred by Polytechnique, its business partner or any other individual that directly relate to the evaluation, promotion, protection and commercialization of a technology. Such costs include royalties payable to third parties; expenses related to obtaining and maintaining patents or other intellectual property rights; administrative or legal fees related to defending patents or other intellectual property

rights; and expenses related to the negotiation/granting of licensing rights, assignment, or any other technology transfer.

5.8.3 Net income/net earnings

Net income is gross income minus direct costs. Net earnings are derived from the fairness provision, minus any investment by Polytechnique or a commercialization or governmental organization in the technology. With regard to income or earnings received by a business partner of whom Polytechnique is a shareholder or sponsor, Polytechnique's share of the net income or net earnings is proportional to its participation in said company.

5.9 Third party

Any individual, external researcher, company, organization, government agency or university other than Polytechnique or its researchers who participates in or contributes to R&D carried out in whole or in part at Polytechnique. Such participation or contribution may take any form whatsoever, including through human resources who qualify as external researchers under Article 5.5.3.

5.10 Third-party agreement

A written agreement between Polytechnique and a third party regarding R&D carried out at Polytechnique. For the purposes of this Policy, the term "third-party agreement" includes all research contracts or agreements, as well as multi-agency grants in which Polytechnique is involved. A contractual agreement between Polytechnique and a third party must be drawn up by a qualified individual and according to recognized procedures. Its final form must be approved by a duly mandated individual appointed by Polytechnique, failing which Polytechnique be not bound by this agreement, in any manner whatsoever.

6 POLICY ▲

6.1 General provisions

6.1.1 Polytechnique and researcher rights

Polytechnique holds rights to any technological intellectual property created in association with Polytechnique researchers; the research results at the basis of such intellectual property are jointly and equally owned by both parties. The application of these rights is on a case-by-case basis in compliance with third-party agreements and/or collective or other agreements between Polytechnique and the category of employee to which the Polytechnique researcher may belong.

6.1.2 Identification of the researcher

The various individuals who personally contribute to a technology's creation may all be researchers within the meaning of this Policy. Only the research team, acting under the project manager, can acknowledge and determine those to whom the designation of researcher applies. The quality of researcher is not related to a title or function, but rather to the nature of the contribution to the project in question. Accordingly, tasks related to creation must be distinguished from those related to execution, which are carried out by collaborators.

In any case, prior to the undertaking of any commercial development by Polytechnique or its business partner, all researchers along with their home institution and employment relationship should be definitively identified. Researchers must also have come to an agreement amongst themselves as to their respective creative contributions to the technology.

In addition, researchers agree that, as required, Polytechnique and its business partner may publish the name of the technology along with those of its creators.

6.1.3 Researcher's decision

Within the limits of their obligations and commitments to Polytechnique and, where appropriate, to third parties, Polytechnique researchers shall choose whether or not to commercially valorize scientific findings or a technology issued from those findings, and participate in any ensuing procedures and decisions related to that choice.

6.1.4 Commercialization of a technology

6.1.4.1 Invention disclosure

Any researcher who has wholly or partially developed a technology at Polytechnique and who intends to commercially valorize that technology, whether or not the operational conditions have been laid out in a third-party agreement, must complete and submit to the BRCDT a confidential and proprietary invention disclosure signed by all researchers (see form in Appendix 1). The disclosure must be made as soon as practicable and, wherever possible, before the technology is disclosed to the public. It should identify any person involved in the technology's development, specifying their researcher status and organization of affiliation. The invention disclosure is an essential precondition to the future sharing of any income or earnings that may be received by Polytechnique or its business partner as a result of the commercial valorization of this technology. Where appropriate, Polytechnique undertakes to forward to any third party a statement disclosing the involvement of an external researcher in this technology's development. No requests from a researcher for a share of the income or earnings will be admissible unless Polytechnique has received an invention disclosure signed by the said researcher.

6.1.4.2 Commercial development

Upon receiving the invention disclosure signed by all researchers, Polytechnique or its business partner will, within a reasonable timeframe and at its own expense, evaluate the technology. Based on the evaluation, Polytechnique or its business partner may declare its interest in helping develop the technology disclosed. An agreement is then reached between Polytechnique or its business partner, all researchers and all third parties. Through this agreement, the Researchers yield to Polytechnique their rights to the technology, subject to the provisions of the Policy with regard to consideration. The parties entrust Polytechnique, its business partner or a third party with the responsibility for executing and financing the commercialization process. The agreement also establishes the terms and conditions under which the technological intellectual property can be used and developed, as well as the terms of sharing any revenue or earnings that may result from the development. For research collaboration involving multiple organizations, the agreement will specify the terms of income sharing between the organizations so that each, in proportion to its participation, ensures payment of its own researchers. All researchers and the organizations with which they are affiliated must approve the agreement for it to be valid.

6.1.4.3 Relinquishment by Polytechnique

After evaluating the technology, Polytechnique or its business partner may choose not to participate in the commercial development of a technology, while retaining the intellectual property rights pertaining thereto. Any such relinquishment must be in writing. Polytechnique may then grant a licence to develop the technology based on terms and conditions to be negotiated. Exceptionally, Polytechnique may also assign its rights to the technology, in whole or in part; the assignee would then be free to undertake the commercialization process at its own expense, in its own name and under its own responsibility. In this case, Polytechnique and its business partner are absolved of all responsibility regarding this technology's commercialization.

6.1.4.4 Income sharing

When no researcher holds equity in a company that develops a technology, Polytechnique shall ensure that all Polytechnique researchers who hold rights to this technology receive, after sharing with all third parties concerned if relevant, an overall amount equivalent to at least 50% of the net income generated by the technology's commercialization. The income sharing terms are negotiated between Polytechnique (or its business partner) and the Polytechnique researchers. When a researcher owns equity in such a company, income sharing shall be the subject of a special agreement between Polytechnique (or its business partner) and the Polytechnique researchers regarding shared net income and net earnings. This agreement specifies the sharing of net earnings of any equity derived for the technology transfer, stemming from the fairness provision held by Polytechnique or its business partner, as well as the equity held by the Polytechnique researchers, if any. Any subscription equity is excluded from the sharing of income or earnings if the equity was obtained through funds invested directly by Polytechnique or its business partner in the company developing the technology.

6.1.4.5 Technologies developed outside of Polytechnique

A Polytechnique Researcher claiming to have developed a technology in a framework external to Polytechnique must submit a written statement to Polytechnique, identifying any Polytechnique researcher and third party involved in its development. Polytechnique will then review the situation in good faith and, as appropriate, confirm in writing that it does not claim proprietary rights to the technology in question. After receiving confirmation, the Polytechnique researcher and any affiliated

third party cannot claim a link with Polytechnique in the commercialization process, nor does Polytechnique assume any responsibility or liability for the commercialization of the technology.

6.1.5 Use in teaching, research and management

At all times, Polytechnique retains the right to use, free of charge, the technologies developed by researchers for its internal teaching, research and management needs. Researchers also retain the right to use any technology they have helped develop in executing their teaching or research duties at Polytechnique or their home institute. These rights must be mentioned in any agreement between Polytechnique and the researchers or a third party, and must be governed in accordance with the terms of confidentiality.

6.1.6 Publication of scientific findings

Within the limitations of agreements reached with third parties, Polytechnique may as appropriate report on all R&D carried out in its community. As appropriate, researchers must declare their affiliation with Polytechnique in any external publication or distribution of the scientific findings for which Polytechnique holds intellectual property rights.

6.2 Provisions specific to third parties

6.2.1 Research collaborations

When a project is executed jointly by Polytechnique and a third party, the latter may hold rights to the technological intellectual property created therein. All such projects must be subject to an agreement between Polytechnique and said third party prior to any commercial valorization process undertaken by Polytechnique, its business partner or the third party. The agreement must identify each party's role, establish the seat of the project's scientific management and identify the members of each party liable to act (or to have acted) as researchers under the definition put forth in this Policy. The agreement must also set out the terms and conditions governing the commercial valorization of any technological intellectual property created in the course of the project, along with, as required, the sharing of any net income or earnings derived from the technology assignment between Polytechnique or its business partner, the Researchers and the third party, excluding any subscription equity as outlined above.

6.2.2 External researchers

At all times with regard to intellectual property, external researchers are subject to the policies of their respective companies or institutions. Accordingly, any third parties to which the external researchers are affiliated may hold rights to the technological intellectual property created in the course of the project. Should the scientific findings undergo commercialization, the external researchers will receive any earnings due to them (whatever form these earnings may take, including any earnings derived from the fairness provision) through their organization of affiliation or agent acting on behalf of said organization, and in the proportion due to this organization. An external researcher who is not affiliated with another institution or company (e.g. is self-employed) will, based on the terms of a written agreement, be linked to a participating university organization for the purpose of sharing any income stemming from the commercialization of the scientific findings.

7 COMING INTO FORCE ▲

This Policy comes into effect upon being adopted by the Board of Directors.

8 MINOR MODIFICATIONS ▲

Any minor modification to this Policy shall be made by the Director of Research and Innovation, who informs the Assemblée de direction of the amendments.

9 RESPONSIBILITIES ▲

(The Director of Research and Innovation is responsible for updating this Policy; the director of the BRCDT is responsible for its application. The BRCDT will distribute any updates to the information

therein to Polytechnique's professors, researchers and students. The appended Invention Disclosure Form may be modified at any time by the BRCDT.

Site Web: http://www.polymtl.ca/sg/docs_officiels/en/propintel_en.htm [Webmestre-Sg](#) mis à jour le 2012-01-19