

YORK UNIVERSITY

FACULTY OF GRADUATE STUDIES

Intellectual property, ethical behaviour and the graduate student: Policy, principles and practice

In February of 1995, the Faculty of Graduate Studies Task Force on Intellectual Property reported to the Faculty. The Council of the Faculty of Graduate Studies approved the report in May, 1995. The report noted that it found abundant evidence of a general nature in favour of the proposition that all universities should be mindful of, and should promulgate intellectual property policies.

While the majority of graduate student/supervisor relationships are fruitful cooperative linkages flourishing in a positive and supportive environment, occasionally a supervisor or co-worker may take unfair or inappropriate advantage of that relationship to the detriment of the student. In the past few years, several cases of misapplication of intellectual property rights and unethical or inappropriate behaviour occurred in the graduate student/supervisor relationship. Several of these unfortunate events related to the authorship of research papers. In this context, the Task Force noted one survey that stated that a third of a sample of faculty and students reported cases of inappropriate credit given to authorship of research papers.

Although a simple policy on ethical behaviour might be all that is required to discourage or correct 'bad' behaviour, this is usually not the case. For example, in the York University Vice-Presidential report "*In the wake of Fabricant: York in the age of accountability*", the authors note that because of the experience reported at Concordia University, it is clear that policies will not be enough to regulate ethical behaviour, and that graduate programmes will need guidance and assistance. Because policy alone is not sufficient, procedures and practices are required in tandem with any policy statement.

The purpose of this proposal is to focus on matters pertaining to the graduate student/supervisor relationship, intellectual property and related aspects. This document does not discuss the development or application of overriding university policy in these areas because that would be beyond the jurisdiction of the Faculty of Graduate Studies. Questions regarding the extent of public ownership, or of university ownership in intellectual property created at, by, or through the university, or with public funding, need to be addressed elsewhere than by the Faculty of Graduate Studies.

In view of the foregoing, the Faculty of Graduate Studies proposes a general policy on intellectual property rights and behaviour in the graduate student/supervisor context, based on the mission of the University and fundamental ethical responsibilities. The guiding principles and procedures that follow the policy statement include an authorship code of ethics to ensure that the spirit of the policy is firmly rooted in practice. Finally, the procedures ensure that, where disputes occur in the graduate student/supervisory relationship concerning intellectual property, authorship and related issues, mechanisms are in place to deal with disputes in a timely and procedurally fair manner.

Faculty of Graduate Studies Intellectual Property Policy

The Faculty of Graduate Studies recognizes the mission of the university to seek, preserve, and disseminate knowledge and to conduct research in a fair, open, and morally responsible manner.

In such regard, the Faculty of Graduate Studies believes that intellectual property rights are divided among several interests, and that the rights and obligations of various claimants should be specified, fairly regulated, and that disputes arising may be mediated. All parties— students and faculty— are expected to behave in an ethically appropriate manner beyond their immediate graduate student/supervisory relationship, to encompass intellectual property rights, dissemination of research data, and in making decisions on authorship and publication of joint research.

Because of the varied cultural aspects and practices that differ among the graduate programmes, each programme is responsible for enacting and enforcing this policy of appropriate ethical practices on intellectual property rights, in accordance with the basic tenets of the general principles found in the Faculty of Graduate Studies Report on Intellectual Property (February 1995). Programmes which choose not to enact their own specific policy are bound by the ***Faculty Policy on Intellectual Property for Graduate Programmes***.

Application of the Faculty of Graduate Studies Intellectual Property Policy

The purpose of this section is to allow programmes to enact a variant policy, to take into account normative practices and procedures of a discipline that may not be adequately described in the ***Faculty Policy on Intellectual Property for Graduate Programmes***. Programmes will have an obligation to inform their students and faculty of the existence of the programme policy, and especially of the nature of any special conditions, or of the ***Faculty Policy on Intellectual Property for Graduate Programmes***, if a programme does not elect to formulate their own policy.

In the production of a programme policy, no programme may impose unreasonable or unusual conditions on any student or faculty member as a condition of admission to, or participation or teaching in a programme. Furthermore, no individual agreement between a faculty member and a graduate student will impose unreasonable or unusual conditions on the student.

To ensure that the unequal power and influence of the faculty member in the supervisor/student relationship does not overwhelm the student, the Executive Committee of the Graduate Programme will review all individual agreements to ensure that this condition is respected. The policy of each programme must ensure that the Executive Committee of the Graduate Programme may annul any individual agreement, and/or ask for redrafting of an agreement, where they consider that this condition has not been respected.

The programme policy will be entitled '***Intellectual Property Policy of the Graduate Programme in***', and must be submitted to the Faculty of Graduate Studies for approval by the Executive Committee and Council within three months after approval of the ***Faculty Policy on Intellectual Property for Graduate Programmes***.

THE FACULTY POLICY ON INTELLECTUAL PROPERTY FOR GRADUATE PROGRAMMES

The following clauses, concerning authorship, publication and individual agreements, are to serve as the **Faculty Policy on Intellectual Property for Graduate Programmes** who wish to devise their own policy, principles and practices. Clauses 1 through 13, either in their entirety or reworded, must be included in all Graduate Programmes' policies. If clauses are reworded, the programmes must ensure that the spirit of the Faculty wording is encompassed. The clauses may be augmented if the programmes so wish. All programme policies, which will be expected to have an appropriate preamble, are subject to the approval of the Faculty of Graduate Studies Executive Committee and Council.

Authorship

- 1. Authorship can only be credited to those who make substantial intellectual contributions to a piece of work. Accepting the addition of an author who has not made a significant intellectual contribution to the piece of work is not ethical for authors.**
- 2. Authors accept not only credit but also responsibility for their work and, in particular, for ensuring that the work conforms to appropriate standards of Academic Honesty.**
- 3. Generally, the order of authors' names in a publication should reflect the substance of their relative contributions to the work, with priority going to those who made the greatest or most significant contribution. Supervisors should discuss the issue of authorship, and what factors may determine the final order of authorship, normally before commencing the work.**
- 4. Where the major substance or data of a coauthored publication is based on a portion of a graduate student's work, the student will normally be the first author. The supervisor, or joint authors should be prepared to offer a rationale in cases where the student is not listed as the first author. Where the work has been written up in a dissertation or thesis or paper before the research is published, the publication will normally cite the dissertation, thesis, or paper on which it is based.¹**
- 5. Anyone otherwise entitled to be acknowledged as a coauthor may forfeit that right if they leave the project before substantially completing it. In such cases their contribution to the work shall nonetheless be acknowledged in an appropriate manner by the author(s), for example in the acknowledgements section of the publication.**

¹ Programmes should consider clarifying what contributions in their discipline deserve authorship. For example, in the sciences, co-authorship may be appropriate notwithstanding that the coauthor has not written much of the work, provided they meet two or more of the following criteria:

- a) made a major contribution to the conception and design of an experiment;
- b) participated directly in or executed the laboratory work or experiment that was essential to the success of the project;
- c) contributed in a significant way to the analysis and/or interpretation of data important to the work; or
- d) provided substantial non-editorial advice necessary for the completion of the published work.

6. Providing financial support for a student's dissertation, thesis, or research paper is not, in itself, sufficient to warrant authorship. Only where intellectual input is provided beyond financial support, should co-authorship be considered.

7. Supplying minor editorial work for a student's dissertation, thesis, or research paper is not, in itself, sufficient to warrant co-authorship.

8. If a student is employed as a Research Assistant in circumstances where the work done in the course of that employment is not intended to and does not in fact become part of work done for the degree requirements, then the student may not normally claim co-authorship and does not own the data, except through a prior agreement that is consistent with the general principles above.

9. If a student is employed as a Research Assistant in circumstances where the work done in the course of that employment becomes part of the thesis/dissertation/research paper, the student may, at a minimum, claim co-ownership of the data but as the author of the thesis/ dissertation/research paper owns the overall copyright.

Publication

10. The university has an important duty, grounded in the public interest, to seek, preserve and disseminate knowledge. Therefore, authors should attempt to publish their work as soon as possible. In cases where work must be kept confidential and unpublished for a time, the period of delay should normally be no more than one year from the date of acceptance of a thesis or dissertation, and should in no circumstances extend beyond two years from that date.

11. Publications by graduate students and faculty must give full and proper acknowledgment to the contribution of other students or faculty, or others to their work, notwithstanding that such contribution may not warrant authorship. Such contributions should be substantial, in accordance with the particular discipline, and may include items such as original ideas that led directly to the research work, or requested commentary that resulted in significant changes to the research.

12. Normally, all co-authors or co-owners of the data need to concur in publishing or presenting the work. Co-authors should agree to the time or place of presentation or publication of their jointly authored work prior to the presentation or publication, but such agreement should not be unreasonably withheld. The inability of the author(s) to contact another co-author prior to presentation at a meeting or seminar should not prevent work from being publicly disseminated, provided they make reasonable efforts to contact all contributors to obtain prior agreement.

13. To verify research materials or data, there must be provisions for access. Supervisors and sponsors may, with agreement of the student, retain the original materials provided. Under such circumstances students shall normally be presented on request with complete and usable copies of those materials.

14. Where there has been significant material and intellectual contribution by the

supervisor to the conduct of the research, the physical research materials (including notebooks and magnetic media, CDs, computer output, genetic material, synthesized compounds, or other such form as the research materials may take) shall normally be the joint property of graduate students and their supervisor or sponsor for the masters or doctoral project in which the materials were created.² Agreements concerning research materials and data should be made, where possible, before the commencement of research.

15. Students shall not use in their dissertations, theses or papers data or results generated by someone else without first obtaining permission from those who own the materials.

Individual agreements

Students and faculty may enter into individual agreements that modify their intellectual property rights. If they do so, the provisions of clauses 14 through 17 below must be observed.

16. Individual agreements should specify any financial relations and associated rights and obligations, provisions for ownership and control of original data and research materials, authorship, publication, and presentation.

17. All individual agreements must explicitly state that they are subject to applicable Collective Agreements and all University regulations in force at the time.

18. All individual agreements must be completed within four months of a student starting a significant portion of the research for a thesis or dissertation, or within four months of the student joining a laboratory. In the case for students joining a specific laboratory to undertake research with a specific supervisor, the supervisor should indicate prior to the arrival of the student the nature of any agreement expected to be entered into between the supervisor and the student.

19. All individual agreements will be reviewed by the Executive Committee of the Graduate Programme to ensure that the agreement does not impose any unreasonable or unusual conditions on the student. The Executive Committee of the Graduate Programme may annul any individual agreement or ask for redrafting where this condition has not been respected.

Education and Information

Education is a most powerful tool to promote appropriate ethical behaviour in the graduate student/supervisor relationship, especially concerning intellectual property rights, dissemination of research data, authorship, and publication of joint research. Moreover, a suitable educational

²Programmes should consider clarifying what contributions in their discipline would normally constitute significant material and intellectual contribution to merit joint ownership by the graduate student and supervisor(s) created in the student's research.

session to inform graduate students of their rights and obligations concerning intellectual property and associated aspects would go a long way to ensuring that potential conflicts are eliminated before intervention is required. Therefore, graduate programmes should present an educational and information session to incoming graduate students on such matters as part of their orientation. To assist in this task, graduate programmes should use the section of the report of the Task Force on Intellectual Property entitled "*Intellectual Property and the Graduate Student at York*", and ensure that copies of this section are provided to all new faculty and incoming graduate students. Furthermore, the Graduate Programmes would find an educational session useful to continually update faculty members on what documentation may or should be included in appropriate individual agreements. To ensure that the educational session is held, Graduate Programmes are required to include in their intellectual property policy the following statement:

That Graduate Programme in will normally hold an information session on ethical aspects of research including intellectual property rights, and related issues, during the orientation session for new incoming graduate students. All new students and faculty will be provided with copies of the most recent edition of the document entitled "Intellectual Property and the Graduate Student at York".

Dispute Resolution

In such a complex area, disputes may arise even among people of good will, for example, out of conflicting understandings of fact, or interpretations of the law, Faculty or programme regulations, or individual agreements.

The primary role of the Faculty of Graduate Studies should be to provide general directives and principles governing the graduate student/supervisory relationship, to educate and inform parties about their rights and appropriate behaviour, and to assist parties in mediating disputes.

The latter imply that the parties can probably come to a voluntary and informed agreement between themselves. Generally, the imposition of resolutions by a Faculty or by arbitrators is far less satisfactory. Therefore, the following mediative process is suggested as a means of resolving disputes.

In disputes arising out of Programme Policies or Individual Agreements, parties should initiate a complaint in writing, and bring it to the attention of the Programme Director of the Programme in which the student is enrolled, with a copy to the Dean of the Faculty of Graduate Studies.

The Programme Director should arrange an informal meeting of the parties to discuss the substance of the dispute, the possibility of negotiating an agreement at the Programme level, and to determine the necessity of approaching the Faculty for assistance. At the meeting, the parties shall be informed that they may at their own expense, seek legal remedy. At any point, if any party chooses to proceed in law, the mediative role of the Programme or Faculty shall end.

If the parties choose to proceed to mediation, a mediator acceptable to the parties, preferably from outside the graduate programme will be used, unless all parties agree to mediation by the Programme Director. In cases where the nature of the dispute involves a requirement for technical knowledge of the matter, the Programme Director may form a

hearing committee consisting of her/himself and necessary experts in the subject matter who preferably come from outside the graduate programme. In assisting the parties in mediation, the Programme Director or mediator must have regard to the fact that students and faculty generally stand in a relation of unequal power, and thus ensure that any agreement reached is consistent with the general principles of the report of the Task Force on Intellectual Property.

If the dispute cannot be settled by mediation within the Programme, and on request of the parties, the Dean of the Faculty of Graduate Studies or his or her representative shall review the initial attempt at mediation, and if warranted may proceed with a new attempt at mediation, subject to the same conditions as stated above. In matters outside of ownership of intellectual property, the Faculty may direct how a settlement should be reached.