

RESEARCH RELATIONSHIPS

Between the
Province of British Columbia
and British Columbia's Universities

Final Report

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www.researchrelationships.bc.ca





It is our pleasure to present this Report on Research Relationships between the Province of British Columbia and British Columbia's Universities. The principles and agreements outlined in this Report will greatly improve and simplify research relationships between the two parties.

The provincial Ministries of the BC Government and BC's universities have for years been engaged in collaborative research endeavours, valued at over \$30 million annually. Until now, each project has been negotiated on a case-by-case basis, with each party bringing its own unique contractual expectations to the table. This Report and its companion Tool Kit provide a framework for a streamlined process, by setting out agreed-upon principles that will apply to all research contracts between the Ministries and BC Universities.

We are proud to note that BC is the first province in Canada to develop such a framework. Indeed, this Report is another indication of the tremendous degree of collaboration between the Provincial Government and BC's universities on research and innovation.

We commend the Working Group on its excellent work and look forward to the results of this work for years to come.

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Deputy Minister
Ministry of Advanced Education

Cheryl Wenezenki-Yolland
Comptroller General
Ministry of Finance

John Hepburn
Chair, Vice President Research Committee
University Presidents' Council of BC,
and Vice-President, Research
University of British Columbia

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Introduction

The Province of British Columbia and the six public universities have enjoyed a long relationship of research collaboration. In fiscal year 2004/05, the total value of these research relationships reached \$33 million. However, negotiation of research agreements between universities and the Province has been challenging at times as the different parties endeavor to adhere to their respective policies and regulations, many of which can appear to conflict.

In June 2006, a working group was formed comprised of representatives from the Ministries of Health, Education, Advanced Education, Children and Family Development, Finance, the University of British Columbia, University of Northern British Columbia and the University Presidents' Council of British Columbia. The stated purpose of the working group was to streamline the process of arriving at research agreements between the Province and BC's public universities.

This document provides the working group's final report as well as a set of "tools" designed to guide the development of research relationships and the legal instruments that support them. The context for research relationships between the Province of British Columbia and universities is described, as well as the most common objectives of each party and a set of principles that should guide these research relationships. More specific guidelines, sample agreements and other tools for developing agreements that govern research relationships are also included.

These resources were developed through a collaborative process involving all the members of the working group. (Refer to Appendix 1 for the Terms of Reference that guided this work). The tools and sample agreements have all been endorsed by

both parties. For the Province, the tool kit was approved by the Ministry of Advanced Education, Legal Services Branch, the Intellectual Property Program and Risk Management Branch. For the universities, these tools were endorsed by the Vice Presidents, Research.

Scope

This document and its associated resources address those situations where the Province of British Columbia enters into an agreement directly with a university (or universities) to have research conducted in an area directly related to government priorities, policies or individual Ministry mandates. More specifically,

- Research services, investigation, testing, analysis and evaluation to
 - > Increase generalized knowledge or understanding, or
 - > recommend advice or solutions for a particular subject matter/issue for overall benefit to the Province of BC; or
- A defined research project with specific objectives and deliverables that is for the direct benefit or implementation in ministry programs or operations.

These documents and tool kit do not address:

- Research funding provided by independent research funding agencies such as the Michael Smith Foundation for Health Research, Genome BC;
- The Forest Investment Account and the British Columbia Knowledge Development Fund;
- Staffing, secondments or hiring of co-op students;

- Purchase of finished research papers, reports, or products;
- Websites or training delivery programs;
- Personal consulting arrangements between individual faculty members and the Province, and;
- Educational Services contracts (e.g., for the development of curriculum).

The Value of Research Relationships to the Province of British Columbia and Universities¹

Governments and universities are natural partners. They are both designed to serve the public interest and both have an interest in conducting research. For universities, research is integral to their mandates and forms part of their legislated mandates. Governments have an interest in supporting a capacity for pure and applied research to drive innovation and knowledge transfer, as well as an interest in more directed research targeted to specific public policy issues. The benefits that accrue to the participants of provincial government-university research relationships, as well as to society as a whole, are substantive, ranging from an increase in the stock of new knowledge, to rich educational experiences for students, to new and improved public policies, services and products. These benefits result in improved social, economic and environmental conditions for Canadians.

Governments and universities also differ in important ways. For example, their cultures and their missions differ. Government bureaucracies are hierarchical, with clear chains of command that

culminate in democratically elected representatives. Some of the government's underlying goals are to protect the public interest, responsibly manage public resources and develop and administer sound public policies. Standards for ethical behavior and financial accountability are growing increasingly stringent. Governments must ensure that all of their activities are carried out in a transparent fashion and that any public expenditure can be demonstrated to result in a direct public benefit or that it contributes to the broad public interest.

In contrast, the organization of a university is generally more dispersed, with significant authority given to individual schools, faculties and departments. Universities' missions are to educate, to develop and disseminate new knowledge and to provide community service. Academic intellectual independence is highly valued; the ability of researchers to discuss their work with colleagues and to publish their results is a cornerstone of the academic enterprise and supports the creation of new scientific and other knowledge. Universities are accountable to multiple stakeholders including students, provincial and federal governments and the communities in which they reside.

The commonalities and differences between universities and governments offer the potential for a range of successful research collaborations. The academic independence of university researchers can provide government with valuable, objective assessments of policies and practices. In addition, provincial government jurisdiction in a wide range of social, economic and environmen-

¹ While university colleges, colleges and provincial institutes are not specifically addressed in this document, much of the framework described here could provide a basis for preparing research agreements involving these post-secondary education institutions.

tal matters can present university researchers with important research opportunities.

In British Columbia, universities receive their mandates from the provincial government through provincial legislation. The relevant Acts provide universities with their mandates for research, as well as considerable autonomy with which to carry out their mandates.

The Province of British Columbia, by virtue of its responsibility for post-secondary education and provincial economic development, has an interest in fostering knowledge development, transfer and commercialization. The Province demonstrates its support for university research in many ways, including financial support for organizations such as the Michael Smith Foundation for Health Research, the BC Knowledge Development Fund, Genome BC and the Leading Edge Endowment Fund. These organizations play a critical role in building pure and applied research capacity for British Columbia and typically have broad mandates to fund research based on traditional peer reviewed assessments.

In addition to supporting these research organizations, the Province of British Columbia will enter into research agreements directly with universities on matters related to individual Ministry mandates. It is these types of relationships that this document is primarily concerned with.

Objectives

The Provincial Government and Universities have different reasons for entering into research relationships. The Working Group identified the following objectives in order to develop proposed approaches that would meet the needs of both parties.

Researcher Objectives

- To validate the applicability of a researcher's interests to society;
- To address and to potentially inform important public policy questions;
- To have access to challenging and vexing problems;
- To receive financial support for research programs;
- To obtain valuable educational experience for students; and
- To gain access to government-held data.

Province of British Columbia Research Objectives

- To enhance British Columbia's economy, society, culture and/or the environment;
- To inform the Provincial Government's strategic priorities;
- To validate and/or assess provincial government programs and policy decisions; and
- To support the informed development and management of provincial government standards and regulations.

General Principles Governing Research Relationships between the Province of British Columbia and Universities

While the approach taken on any given project will need to consider the specifics of that project, in general the following principles govern most research relationships involving Universities and the Province of British Columbia:

- Both groups operate in complicated and constrained environments that are bounded by legislation, standard operating procedures, and prescribed authorities. Universities and the Province of British Columbia shall endeavor to understand each other's environments and work within the existing systems on projects that provide mutual benefit;
- Both groups acknowledge the need for timeliness and transparency and to ensure that funds are controlled, accounted for and well-managed within generally-accepted financial, procurement and reporting frameworks;
- Both groups are subject to the *Freedom of Information and Protection of Privacy Act*, and respect the need to adopt appropriate measures to protect personal information;
- All agreements will be made in the corporate name of the partners and in the case of Universities, not in the name of faculties, schools, institutes or individual researchers;
- The nature of individual research relationships between the Province of British Columbia and Universities may take many different forms including grants, transfer under agreements (also known as contribution agreements) and contracts for service. It is critical that the appropriate legal instrument be chosen for each project;
- Ownership and access rights to research outputs including intellectual property, reports and data will be determined at the project outset and will be appropriate to the research relationship and the legal instrument employed in creating the relationship. These decisions will be guided by the need for researchers to retain reasonable freedom to operate in relation to intellectual property (i.e. to use the knowledge or intellectual property generated in teaching, in future research, publications and in the practice of their professions), and the Province of British Columbia's need to receive project reports in forms and on terms of use that suit its purpose;
- Funds provided for the indirect costs of research will vary according to the nature of the research relationship;
- The core values of academic freedom must be maintained. Universities do not conduct secret research, and scientifically significant advances must be publishable in the open literature without unwarranted delay or editorial restrictions. Publications will not contain sponsor confidential information or personal information;
- Since much university research is actually performed by graduate students, it is also important to keep their academic needs in mind. Undergraduate and graduate students, postdoctoral fellows, and university faculty must ultimately be free to disseminate their research results, and students must be permitted to defend and publish their theses;

- Proprietary and sensitive data and information belonging to each party must be protected from unauthorized, inadvertent, or untimely disclosure;
- Future public use of certain research outputs by the university or researcher will acknowledge the financial contribution of the Province of British Columbia;
- Conduct of research will be in accordance with the university's research policies regarding the use of human subjects, animals, radioactive materials and biohazards; and
- The Province of British Columbia does not assume risk for commercial use of research results or intellectual property developed in the course of carrying out a research project. The University's licensing of intellectual property developed with financial support of the Province of British Columbia shall be structured so as to not expose the Province to third party liability.

Results

The key outcome of the working group's work is the development of a tool kit to assist the Province and universities in arriving at mutually agreeable research agreements. The tool kit consists of:

- Sample agreements
- Reference Table
- Reference documents

SAMPLE AGREEMENTS

The Working Group developed sample agreements that it recommends for use in Province-funded research projects conducted at BC universities.

Documents were developed for use in the following situations:

- Research Grants (Sample Grant Letter);
- Sponsored Research Agreements (Transfer Under Agreement); and
- Service Contracts (Schedule F for use in a General Service Agreement).

There are a number of elements that are common to all three types of relationships. In each case, one party to the resulting agreement is the relevant Ministry and the other is the University; the agreement may also include an affiliated teaching hospital as a third party. The University is always provided with the right to publish all non-confidential information that results from its research. In all cases, the Ministry normally requires appropriate acknowledgement in publications. Indemnification is addressed through a standard set of mutual indemnification clauses. In all cases overhead may be included in the total price, as per University policy.

There three types of relationships are summarized below.

Research Grants (STOB 77)

These are the simplest form of research relationship and have the least number of specified deliverables and terms and conditions. Normally initiated by the researcher, in this form of relationship, no specific result is specified and no financial reporting is required. Payment is received up-front as a lump sum and no budget is normally required, except as part of an application, if required. The Grant does not include terms relating to intellectual property and the University retains unrestricted publication rights.

Sponsored Research Agreements (STOB 80; Contribution Agreement; Transfer Under Agreement)

These research relationships are often the most complex. Projects defined by these types of agreements may be initiated by either party and are defined in a detailed work plan; researchers report on the research results as per a Statement of Work that is attached in the agreement as Schedule A. A detailed financial report is also required. A budget is either included in Schedule B or is included in a proposal developed by the university researcher. Payment schedules are linked to reporting, milestones or deliverables that are well described in Schedule B. An up-front payment for a portion of the budget should be included to prevent such research projects from operating in deficit.

In Sponsored Research Agreements, the university or researcher owns all results, data, inventions, improvements and other IP produced by the project in accordance with the university's policies. The Province is granted rights/licenses to use intellectual property for non-commercial uses.

Confidentiality provisions are included that require all confidential information provided by each party to remain confidential.

Service Contracts (STOB 60 or 61; General Service Agreement; Service Contract)

Service Contracts are normally initiated by the Province. These relationships are referred to as General Service Agreements when the value of the contract is below \$250,000 or Service Contracts when the value is over \$250,000. These research projects often arise as a result of a need for advisory services or specific expertise for the direct use or benefit of the Province. A payment schedule is negotiated and included as Schedule B.

In these contracts, the Province purchases rights to all new intellectual property and may therefore use the intellectual property without restriction. The Province may provide the university with a royalty-free perpetual license to use the intellectual property for academic and educational purposes. A waiver of moral rights by the researcher(s) may be required. The Province will determine the nature of release of data and/or reports.

In these contracts a budget is not required, however, a Statement of Work is required and constitutes Schedule A.

REFERENCE TABLE

A Reference Table was also developed as a guide to help Ministry representatives and University research administrators determine:

- The appropriate document to be employed for a particular research relationship; and
- The principles behind each section of the document.

REFERENCE DOCUMENTS

A set of Reference Documents were also collated, some of which were created by the group, for convenient consultation by parties involved in developing agreements. The documents are:

- Excerpts from the Province's Core Policy and Procedures Manual on transfer payments, procurement and advance payments;
- Fact Sheet on Personal Consulting Activities of Academics;
- Provincial government policy on reimbursable GST

- Fact Sheet on Produced Materials and Intellectual Property
- Sample Employee/Research Confidentiality Agreement
- Glossary

Conclusion

There was excellent consensus within the Working Group that the Provincial Government-University research relationship resulted in a high degree of mutual benefit and there was a strong willingness by all participants to ensure that the relationship continued to develop in the most efficient and effective manner possible.

It is expected that the Tool Kit developed by the Working Group will ease the development of agreements to support research relationships between the provincial government and universities. Feedback regarding the Tool Kit may be directed to the contacts identified on this page.

Recommendations

As a result of the series of discussions and meetings, the Working Group has made the following recommendations:

1. That the Final Report and the documents be disseminated to all Ministries of the Province of British Columbia as provincial government policy and practice, effective January 30, 2008;
2. That the Vice Presidents of Research of British Columbia universities adopt the Final Report and the documents produced by the Working Group as guidelines when conducting research sponsored by Ministries of the Province of British Columbia effective January 30, 2008;

3. That a review of the proposed Implementation Plan be conducted 24 months after implementation.

Contact for Ministries

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Terms of Reference

Working Group on Provincial Government— University Research Agreements

PURPOSE

To develop a set of principles and recommend contract language templates and/or guidelines for research agreements that are satisfactory to both the Province of British Columbia and the Universities of British Columbia. While university colleges, colleges and provincial institutes are not represented on this Working Group, it is anticipated that this work should provide a good basis for preparing research agreements involving these public post-secondary education institutions as well.

MEMBERSHIP

- Christine Massey, Director, Policy & Research, The University Presidents' Council of British Columbia (TUPC);
- Diana Lucas, BC Ministry of Advanced Education and Ministry of Education;
- Spencer Payne, BC Ministry of Children and Family Development;
- Brenda Rafter, BC Ministry of Health;
- Dave Collisson, Deputy Chief Procurement Officer, Office of the Comptroller General;
- Tamsin Miley, Research Services Manager, University of Northern British Columbia (until March 2007);
- Angus Livingstone, University-Industry Liaison Office, The University of British Columbia; and

- Mario Kasapi, University-Industry Liaison Office, The University of British Columbia.

TERM

The Working Group will be constituted for a time-limited period, meeting over a period of 4 months, with a goal to complete its work and make recommendations to TUPC and to the Province of British Columbia by September 30, 2006.

BACKGROUND

Universities and the Province of British Columbia regularly enter into agreements for research. The primary value is in new knowledge and solutions generated by the research that directly benefits social, economic and cultural needs, with the added value of training students in the advancement of research and development.

A variety of instruments has been used, including contracts for services, contribution agreements and custom-built research agreements. Alternatively, the Province of British Columbia has provided grant funding to particular research projects that may also be co-funded by other governments and/or industry.

Both parties agree that the diversity and substance of legal instruments used to implement research initiatives are unsatisfactory. For a number of reasons, these instruments do not appropriately reflect the nature of the collaborative relationship between the parties, the particular operating environment of universities or the range of possible research work that can be undertaken. The impact for both parties to date has been stalled agreements, repeated or protracted revision/approval cycles and use of poor fit "boilerplate" agreements.

In their research efforts, universities and the Province of British Columbia share the same vision, however a great deal of business diversity exists within these two cultures in terms of policies, approvals and data and intellectual property ownership requirements. There may be a latent lack of common understanding or accommodation of natural differences between the parties on an administrative level.

As a result, representatives from TUPC, two universities and the Province of British Columbia have agreed to come together and recommend more appropriate legal instruments for use in drafting research arrangements. The desired outcome will see reduced time and effort required to secure agreements and a greater understanding of the framework of provincial government-university research agreements.

APPROACH AND DELIVERABLES

1. **Establish Membership:** A Working Group will be established with representatives from TUPC, the Province of British Columbia and the universities;
2. **Determine Terms of Reference:** The Terms of Reference will be developed and approved by the Working Group. The group will also determine an approval or decision-making process at its first meeting, for its output deliverables and recommendations;
3. **Clarify Needs and Principles:** The Working Group will meet and develop a set of principles to govern provincial government-university research relationships. The purpose of the principles is to ensure that the Province of British Columbia and universities start from a common basis of understanding for the concerns, issues and interests of the other party;
4. **Establish Types of Relationships and Key Issues:** Using a collaborative approach, the Working Group will identify the range of possible provincial government-university research relationships and identify and describe the key issues that can hamper the relationships or the efficient formation of written agreements;
5. **Recommend Solutions:** The group will develop and recommend improved approaches used for these research relationships. This could include: development of a toolkit, a decision guide (“menu” of scenarios and contract language to handle key issues), educational primers on various topics or other suggested approaches that can minimize or avoid unnecessary challenges in entering into provincial government-university research agreements;
6. **Communication and Consultation:** The group will seek support and/or approval for its recommendations from key stakeholders. For the Province of British Columbia, these stakeholders include the Procurement Council, the Ministry of Advanced Education Executive, Ministry of Finance Risk Management Branch (with respect to indemnity issues) and Ministry of Attorney General Legal Services Branch (with respect to contract language) and the Intellectual Property Program. For TUPC, key stakeholders include University-Industry Liaison Offices at member institutions and the Vice-Presidents Research Committee. The group may also consult with other public post-secondary institutions. The Working Group will also identify opportunities for provincial government and university research managers

to build relationships and communicate on an ongoing basis regarding common matters of concern; and

7. **Implementation and Accountability:** The group will develop an implementation plan for the recommended solutions including recommended timelines and the identification of any “quick wins”. The implementation plan will incorporate accountability and review mechanisms so that progress can be assessed against stated goals and solutions and plans may be adjusted as necessary.

ISSUES

The new approach will address a number of issues identified by both parties, such as (but not limited to):

- **Intellectual Property:** Policies that respect the ownership and intellectual property interests of both parties and are appropriate to the type of research being undertaken. This includes formal types of intellectual property such as patents, copyright, and trademarks as well as information, results and data;
- **Parties:** Appropriate legal entities that can sign university-provincial government research agreements. The *University Act* empowers a public university to enter into agreements in its name, but not in the name of a faculty or individual researcher. This distinction is a critical one since identifying the legal party at the university level also defines the appropriate and meaningful thresholds for conflict of interest, intellectual property and moral rights;
- **Conflict of Interest:** Conflict of interest policies that are appropriate to universities and that protect the interests of the Province of British Columbia;
- **Waiver of Moral Rights:** An approach to moral rights appropriate to the role of university faculty and the research relationship in question;
- **Indemnity:** An indemnity clause that reflect the status of British Columbia’s universities as government corporations under the provincial *Financial Administration Act* (FAA). According to the *FAA Guarantees and Indemnities Regulation* ministries and government corporations may only give an indemnity with the prior written approval of the Minister of Finance, or her representative, the Director of the Risk Management Branch. Therefore, the standard provincial indemnity provision is incongruous to provincial government-university research agreements and either needs to be revised or made subject to the limitations of the FAA and its regulations;
- **Good and Services Tax (GST):** Clear policies for the payment of GST. Universities receive 67% rebate for GST paid on purchases. The provincial government of British Columbia is immune from paying GST, and its private sector contractors can seek reimbursement from CRA for GST paid in fulfilling their provincial contract. Can this be reconciled so universities can seek CRA reimbursement or so that the Province of British Columbia can reimburse that amount by which the universities cannot recover (e.g. 33%), as an eligible contract budget expense, with the necessary evidence to support reimbursement?;
- **Confidentiality:** Clear policies on who owns and controls the use of confidential information used during, and produced as a result of, research activities, subject to the provisions for

the protection of privacy or confidentiality of data as outlined in British Columbia's *Freedom of Information and Protection of Privacy Act*;

- **Publication:** Clear policies setting out when university students and faculty are permitted to publish the results of the research both in academic journals and in student thesis; and
- **Overhead / Indirect Costs:** Policies that clearly outline the circumstances in which overhead charges would apply and ideally, at what rate.

RESOURCES

TUPC offers administrative support; the Province of British Columbia offers meeting facilities and administrative support as back-up to TUPC.

REFERENCE MATERIALS

- *The Lambert Model Agreements*, endorsed by the government and key university and business stakeholders in the United Kingdom: <http://www.innovation.gov.uk/lambertagreements/>
- Task Force on University-Industry Sponsored Research Arrangements. Final Report. University of British Columbia, University-Industry Liaison Office. 2006.