DOUGLAS COLLEGE

SEXUAL VIOLENCE AND MISCONDUCT PREVENTION AND RESPONSE POLICY

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A. PURPOSE

Acts of Sexual Violence and of Sexual Misconduct undermine and violate the rights, personal dignity and integrity of individuals. This policy articulates the duty and commitment of Douglas College (the College) to support students and other members of the College Community who are affected by Sexual Violence or Sexual Misconduct; to create and make available programs and resources to educate students and other members of its Community on the prevention of Sexual Violence and Misconduct; and to provide a fair and effective process for responding to and investigating allegations of Sexual Violence and Misconduct.

The College strongly encourages all members of the College Community to become knowledgeable about Sexual Violence and Misconduct and about their rights and obligations under this policy.

B. SCOPE

This policy applies where an incident of Sexual Violence or Sexual Misconduct is alleged to have occurred

a. on College Property, or
b. off College Property in connection with an event or activity sponsored, organized, led or required by the College, including but not limited to off-campus activity that students are required to participate in for successful completion of their studies (e.g., field trips, practicum placements); and

where the alleged incident of Sexual Violence or Sexual Misconduct involves a member of the College Community or a person who was a member of the College Community at the time of the incident.

If an alleged incident of Sexual Violence or Sexual Misconduct does not meet the above criteria, the College may still take steps to mitigate the impact of the incident on the learning or working environment.

Limitation of Scope

The College does not have jurisdiction to take disciplinary action against a person who is not a member of the College Community or who is not currently affiliated with the College. However, under certain circumstances the College may be able to take other action, such as revoking a person's access to College property or a College event.

This policy is separate from any criminal or civil proceedings. The College is not responsible for determining violations of criminal or civil law.

This policy is designed to complement and not to conflict with the College's collective agreements. If there is any inconsistency between this policy and a collective agreement, the applicable collective agreement provision(s) will prevail to the extent of the inconsistency.

Application of Other College Policy

Conduct that violates this policy may also violate other College policies, such as but not limited to the following:

- For bullying and harassment of an employee, including Students who are also employees and who experience the bullying and harassing behaviour while acting in their capacity as employees, see also the *Bullying and Harassment Prevention and Response* policy;
- For bullying and harassment of a Student who is not also a College employee, where that bullying and harassment is alleged against other Student(s) who are not College employees, see also the *Student Non-academic Misconduct* policy;
- For conduct that meets the definition of Discrimination on grounds protected under the BC *Human Rights Code*, see also the *Human Rights* policy; For Violence or the threat of Violence that is sexual in nature, including Sexual Harassment, see also the *Sexual Violence and Misconduct Prevent and Response* policy; and For all other forms of Violence or the threat of Violence, see also the *Violence Prevention and Response* policy.

C. DEFINITIONS

College Community: All College employees, Students and Board members, and any other person who is contractually obligated to comply with College policy.

College Property: In addition to the College's physical campuses and centres, includes, for the purposes of this policy, technology and technological spaces—such as online learning platforms and social media networks—that are relied upon by students and/or employees in the completion of their studies and/or work.

Complainant: A person who files a Complaint; in instances where the College becomes aware of allegations of Sexual Violence or Sexual Misconduct that, if true, would violate this policy but no person comes forward with a Complaint, or where an investigation is required by law, the College may initiate an investigation.

Complaint: A written statement alleging Sexual Violence or Sexual Misconduct or other violation(s) of policy.

Consent: Freely given voluntary agreement to engage in the sexual activity in question. For the purposes of this policy, Consent

a. is never assumed;
b. is not implied or given by the absence of "no";
c. is not implied or given by silence;
d. cannot be given if the individual is incapacitated by alcohol or drugs, or is unconscious;
e. can never be obtained through threats or coercion;
f. can be withdrawn at any time;
g. cannot be obtained if a party induces another to engage in sexual activity by abusing a position of trust, power or authority;
h. given for one kind or instance of sexual activity does not mean that consent is given for any other sexual activity or instance; and
i. cannot be expressed by the words or conduct of a third party.

Disclosure: The communication to a College employee of an experience of Sexual Violence and Misconduct. Disclosure on its own does not initiate an investigation, except where required by this policy.

Investigator: A person appointed by the College to investigate a Complaint.

Respondent(s): A person or persons alleged to have engaged in conduct that violates policy.

Responsible Administrator: An executive of the College or an administrator responsible for the operations of a College Department, Faculty or service area (e.g., Dean, Director, Chief Information Officer, Registrar).

Retaliatory Action: Any adverse action taken against a person because that person reports or alleges a violation of policy, seeks advice on making a Disclosure or Complaint, makes a Disclosure or Complaint, or cooperates in an investigation of a Complaint.

Sexual Misconduct: Any prohibited behaviour or act captured in the definition of Sexual Violence and Misconduct (below) that does not involve committed, threatened or attempted violence.

Sexual Violence and Misconduct: Any sexual act or act targeting a person's sex, sexuality or gender identity or expression, whether the act is physical or psychological in nature, which is committed, threatened or attempted against a person without the person's Consent, including but not limited to

a. sexual assault;
b. sexual exploitation;
c. sexual harassment;
d. stalking;
e. indecent exposure;
f. voyeurism;
g. the distribution of a sexually explicit photograph or video of a person to one or more persons other than the person in the photograph or video without the Consent of the person in the photograph or video;
h. the attempt to commit an act of Sexual Violence and Misconduct; or
i. the threat to commit an act of Sexual Violence and Misconduct.

Student: A person enrolled at the College in credit or non-credit courses.

Young Person: A person who is under the age of 19 years.

D. POLICY STATEMENTS

1. Douglas College is committed to providing a safe learning and working environment that allows for the full and free participation of students and all other members of the College Community. Sexual Violence and Misconduct undermines these objectives, violates the rights, personal dignity and integrity of individuals, and is strictly prohibited under this policy.

2. The College recognizes its responsibility for addressing Sexual Violence and Misconduct and for meeting the following ongoing commitments:

    a. to implement and actively promote awareness and training programs to educate members of the College Community regarding Sexual Violence and Misconduct and the issues addressed in this policy;

b. to promote learning and working conditions that seek to prevent or eliminate the potential for incidents of Sexual Violence and Misconduct to occur on College Property or between members of the College Community;

c. to support members of the College Community who are affected by Sexual Violence and Misconduct by reducing barriers to Disclosure and to the filing of Complaints regarding their experiences; responding to Disclosures and Complaints in a procedurally fair, efficient and consistent manner; and providing academic, non-academic and other supports as required;

d. to communicate the support services and resources available to members of the College Community who may be directly or indirectly affected by Sexual Violence and Misconduct; and

e. to remedy situations where Sexual Violence and Misconduct has been found to have occurred.

3. The College recognizes that while Sexual Violence and Misconduct can affect any member of society, such experiences and their consequences may disproportionately affect individuals who experience intersecting forms of systemic discrimination or barriers (e.g., on grounds of any combination of factors such as their sex, sexual orientation, gender identity and/or expression, Indigeneity, race, ethnicity, religion, (dis)ability or class), and individuals who occupy the less powerful position in a relationship characterized by a power dynamic (e.g., a student in relation to an instructor, a staff person in relation to a supervisor).

4. All persons who make a Disclosure or file a Complaint regarding an experience of Sexual Violence or Sexual Misconduct can expect the College to provide the following:

   a. compassion, dignity, and respect, including respect for their choice as to whether they wish to disclose or file a Complaint regarding their experience;

   b. timely assistance with safety planning;

   c. timely information about available support services and resources;

   d. timely consideration of appropriate academic, workplace or other accommodations;

   e. information on the options for addressing an incident of Sexual Violence or Sexual Misconduct, and the limits to confidentiality associated with each option; and,

   f. where they do decide to file a Complaint, a clear explanation of the investigation and decision-making process and a procedurally fair and unbiased process, which includes but is not limited to protecting the Complainant from unreasonable and/or irrelevant questions, such as those pertaining to past sexual history or gender expression, complying with collective agreement provisions where applicable, and providing regular updates on the status of the process.

5. All persons who are accused of violating this policy can expect the College to provide the following:

   a. compassion, dignity, and respect;

b. timely information about available support services and resources;

c. information on the options available to them; and,

d. where a Complaint is filed, a clear explanation of the investigation and decision-making process, and a procedurally fair and unbiased process, which includes but is not limited to complying with collective agreement provisions where applicable and providing regular updates on the status of the process.

6. The College reserves the right to initiate an investigation and/or to inform the relevant law enforcement agency without the Consent of the person making the Disclosure or filing the Complaint regarding an incident of Sexual Violence and Misconduct if the College has a reasonable belief that the safety of any member(s) of the College Community is at risk.

7. A student or other Community member acting in good faith in making a Disclosure or reporting an incident of Sexual Violence or Sexual Misconduct will not be investigated by the College for consuming alcohol or drugs at the time of the disclosed or reported incident(s), even if they were under the legal age for such consumption or the substance was illegal.

8. The College reserves the right to implement immediate interim measures as it considers appropriate to protect the safety of the College Community or any of its members during an evaluation of a Disclosure or Complaint or pending the completion of an investigation. Such measures may include but are not limited to some or all of the following actions:

   - providing a safety plan for the Complainant;
   - supporting the Complainant in reporting the incident to the police, if appropriate;
   - communicating clearly to the Respondent that particular behaviours are unwelcome and must stop immediately;
   - restricting the Respondent's access to a College campus, to specific area(s) of a College campus and/or to College technology;
   - altering the learning or work schedule of an individual;
   - imposing a no-contact directive; and/or
   - arranging temporary, non-disciplinary leave of an individual.

   Where applicable, interim measures will be carried out in accordance with the provisions of the relevant collective agreement(s).

9. A student or any other member of the College Community has the right to pursue other processes external to the College in connection with alleged incidents of Sexual Violence and Misconduct, such as reporting the matter to the police, initiating a civil action, or filing a complaint under the BC *Human Rights Code*. If an external course of action is pursued, the College may elect to place its process under College policy in temporary abeyance, pending the outcome of the external process.

10. A breach of this policy by any member of the College Community represents serious misconduct and is cause for disciplinary sanctions, which may include, where appropriate, suspension, dismissal or expulsion.

E. PROCEDURES

Prevention and Response Program

1. The College will establish and maintain a Sexual Violence and Misconduct Prevention and Response Program that will provide coordination and oversight for the following:
    a. risk assessment and risk management practices;
    b. appropriate education and training for students and other members of the College Community regarding this policy;
    c. appropriate education and training for students and other members of the College Community on how to respond appropriately and supportively to Disclosures, and conditions under which those receiving a Disclosure may be obligated under the law to act on (i.e., share) this information;
    d. procedures for reporting, investigating and documenting incidents of Sexual Violence and Misconduct promptly and sensitively, and in accordance with *WorkSafeBC* regulations, where applicable;
    e. notification of any members of the College Community who may be exposed to a known risk of Sexual Violence and Misconduct of the nature and extent of the risk;
    f. appropriate support for or referrals on behalf of members of the College Community who make a Disclosure or file a Complaint under this policy;
    g. preparation of statistical reports of Disclosures and Complaints of Sexual Violence and Misconduct made under this policy, as required by and in accordance with applicable legislation; and
    h. regular reviews to evaluate the effectiveness of this policy, occurring at least once every three (3) years or as advised by the Minister responsible for advanced education.

Accommodation and Safety Planning

Any student or other member of the College Community affected by an incident of Sexual Violence or Sexual Misconduct may request a safety plan or other academic or workplace accommodation(s) relating to the incident. Students or other non-employee members of the College Community may contact the Director, Safety, Security and Risk management (SSRM). Employees may contact the Associate Vice President, Human Resources.

Disclosure of Sexual Violence or Misconduct

1. Any student or other member of the College Community who has experienced Sexual Violence or Sexual Misconduct may choose to disclose the experience by confiding in another member of the College Community.

2. The College encourages but does not require students or other members of the College Community who have experienced Sexual Violence or Sexual Misconduct to seek immediate assistance. Prompt action may be important to ensure physical safety, to obtain medical care or emotional support, or to preserve evidence.

3. A Disclosure is not the same as a Complaint under this policy. Under many circumstances, someone making a Disclosure about an experience of Sexual Violence or Sexual Misconduct may choose to seek support and appropriate resources or referrals without initiating a Complaint that leads to an investigation. To initiate an investigation, a Complaint must be filed with the Director, SSRM, except under circumstances outlined in Policy Statement 6 (above), when the College itself may initiate an investigation.

4. Under any of the following circumstances, a member of the College Community who receives a Disclosure of Sexual Violence or Sexual Misconduct must notify the Director, SSRM (or Campus Security if the Director, SSRM is not available):

    a. a person is at risk of self-harm or of harming others;

    b. there is an imminent risk of harm to any member(s) of the College Community and/or to the broader community;

    c. the Disclosure involves sexual harassment in a College workplace (for the definition of sexual harassment, see Douglas College's *Human Rights* policy);

    d. a Young Person is involved or affected; or

    e. Disclosure is otherwise required by law.

    In these instances, the minimum amount of information needed to meet legal or other obligations must be disclosed. Every effort will be made to involve the person making the Disclosure in decision-making and to mitigate any associated risks. Any College Community member who is unsure of their responsibility to disclose should seek advice from the Director, SSRM.

Complaints of Sexual Violence and Misconduct or Other Violations of this Policy

1. A student or any other member of the College Community who has experienced Sexual Violence or Sexual Misconduct, or who is otherwise affected by a violation of this policy, may file a Complaint under this policy with the Director, SSRM.

2. Complaints are to be made in writing; however, in circumstances where the victims of alleged Sexual Violence or Sexual Misconduct are unable to submit a written Complaint, they may contact the Director, SSRM for accommodation, which could include accepting an initial verbal report or arranging for the verbal report to be written down by another party.

3. The Complaint should set out the relevant details regarding the alleged incident of Sexual Violence, Sexual Misconduct or other alleged violation of this policy. The Complaint should

include a list of any potential witnesses, along with a description of the information those witnesses are expected to provide. Any relevant documents, including any social media communications, should also be included with the Complaint.

4. A Complainant has the right to withdraw a Complaint at any stage of the process. However, the College may continue to act on the issue identified in the Complaint where it is obligated by law or by this policy to do so.

Initial Review

1. Upon receipt of a Complaint, the Director, SSRM will within two (2) business days acknowledge receipt of the Complaint and conduct an initial review to determine whether any immediate interim measures (per **Policy Statement 8**) are warranted to ensure the safety of the Complainant pending full review of the Complaint; where interim measures are warranted, the College will put these in place expeditiously.

2. After acknowledging receipt of the Complaint and, where warranted, putting interim measures in place, the Director, SSRM will within an additional seven (7) business days review the Complaint in full and do one of the following:

    a. Where the allegations within the Complaint do not fall within scope of this and/or any other College policy, the Director, SSRM will advise the Complainant of this decision and provide an explanation.

    b. Where the Director, SSRM determines that the Complaint falls within scope of this policy and/or any other College policy, the Director will do one of the following:

        i. advise the Respondent that a Complaint has been filed; and
        ii. with the agreement of both Complainant and the Respondent, refer the matter to an alternative resolution process, as outlined below; or
        iii. appoint an Investigator to investigate the Complaint, as outlined below.

3. If the Director, SSRM believes that the Complaint discloses other kinds of misconduct or information that the College may need to act on under another College policy or process, the Director may refer the Complaint or the relevant portions of the Complaint to the appropriate College authority. When appropriate, the Director will consult with the person making the Complaint before referring it elsewhere.

Alternative Resolution

1. If the Director, SSRM believes that an alternative resolution process may be appropriate, the Director, SSRM will discuss this option with the Complainant. If the Complainant agrees that an alternative resolution process may be appropriate, the Director, SSRM will contact the Respondent to advise that a Complaint has been made, and will discuss this option with the Respondent. If the Respondent agrees to participate in an alternative resolution process and the Director, SSRM remains satisfied that an alternative resolution process is appropriate,

then the Director, SSRM will explore the options available and, with the agreement of both parties, will refer the matter to that process for resolution.

2. Participation in an alternative dispute resolution process is entirely voluntary. If either the Complainant or the Respondent decides at any time that they no longer wish to participate in the alternative resolution process, the Director, SSRM will then appoint an Investigator to investigate the Complaint.

Investigation

1. When the College appoints an Investigator to conduct an investigation into a Complaint, consideration will be given to the subject matter of the Complaint and the expertise and training of the Investigator. Investigators may be external or internal to the College. In every case, prior to making an appointment, the College shall ensure that there are no grounds for a reasonable apprehension of bias on the part of the Investigator under consideration.

2. The Investigator will advise participants in the investigation of the option to have a support person present for interviews. For students, this would normally be the DSU Advocate, a counselor or a person from Indigenous Student Services. For unionized employees, this would normally be a steward or Union representative. The Investigator has discretion to consider requests for others to serve as support persons.

3. Except in exceptional circumstances, investigations (including the preparation of the Investigator's report) will be completed within sixty (60) calendar days of an Investigator's receipt of a Complaint. If during the course of an investigation the Investigator believes that this timeline cannot be met, the Investigator will contact the Complainant, the Respondent, and the Director, SSRM as soon as possible to inform them of the revised timeline.

4. Investigations are not adversarial processes, and hearings will not be held as part of the investigatory process. Formal rules of evidence commonly associated with a civil or criminal trial will not be applied.

5. In all investigations, the Respondent will be informed of the allegations made against them and will be given a full opportunity to respond.

6. The Investigator will conduct the investigation using a procedurally fair and sensitive process, taking care to minimize or avoid circumstances that might reasonably be expected to cause participants distress (e.g., the Complainant having to come into direct contact with the Respondent). The investigation process may include, but is not limited to, the following:

    a. requesting a written response to the Complaint from the Respondent, including a list of any potential witnesses along with a description of the information those witnesses are expected to provide, and any relevant documents, including any social media communications;

    b. meeting separately with or requesting further information from the Complainant;

    c. meeting separately with or requesting further information from the Respondent;

d. meeting separately with or requesting further information from any other individuals who may have information relevant to the investigation;

e. inviting the Complainant and the Respondent to submit questions they believe should be asked of the other party or of any witness, with the understanding that the decision as to whether such questions will actually be asked of the other party or any witness is entirely within the discretion of the Investigator; and

f. obtaining any other evidence that may be relevant to the investigation.

7. At the completion of the investigation, the Investigator will submit a written report to the Director, SSRM. The report will normally include the following information:

   a. a summary of the evidence considered;

   b. any assessment of credibility that is required to render a determination; and

   c. the Investigator's findings of fact, and a determination as to whether, on a balance of probabilities, this policy has been violated.

Investigation Outcomes

1. If the Investigator's report determines that Sexual Violence or Sexual Misconduct has occurred, or that this policy has otherwise been violated, the following will occur:

   a. the Director, SSRM will provide a copy of the Investigator's report to the Responsible Administrator;

   b. the Responsible Administrator will determine what disciplinary[1] or other measures are appropriate based on the findings in the report, which may include the requirement that parties to the investigation, or other members of the College Community affected by the Complaint or by the investigation, participate in workshops and/or mediation;

   c. where suspension of a student or employee is a potential outcome, the Responsible Administrator will refer the matter to the President for decision, in compliance with Section 37 of BC's *College and Institute Act*;

   d. the Complainant and the Respondent will be notified of the Investigator's findings and the Respondent will be notified of the Responsible Administrator's decision regarding disciplinary or other measures to be taken against the Respondent; and

   e. the Respondent will be notified of the option to appeal, as described below.

2. If the Investigator's report determines that that College policy has not been violated, the Director, SSRM will dismiss the Complaint and so notify the Complainant and the Respondent. The Complainant will be notified of the option to appeal, as described below.

[1] A unionized employee who is the Respondent to a Complaint may challenge the RA's disciplinary decision through the grievance process as outlined in the appropriate collective agreement. Timelines and process matters for such a grievance will be as set out in the collective agreement.

3. Whether or not the Investigator's report determines that Sexual Violence or Sexual Misconduct has occurred, or that this and/or any other College policy has otherwise been violated, if the Director, SSRM believes that the Investigator's report discloses other kinds of misconduct or information that the College may need to act on under another College policy or process, excluding matters pertaining to the consumption of alcohol or drugs, addressed in Policy Statement 9 (above), the Director, SSRM may refer the Investigator's report, or the relevant portions of it, to the appropriate College authority. When appropriate, the Director, SSRM will consult with the Complainant before referring the matter elsewhere.

Appeal

1. A Complainant or Respondent may appeal the investigative process followed by the Investigator only if there are grounds to show that the policy was incorrectly applied or that due process was not followed during that process.

2. An appeal must be submitted in writing within ten (10) business days after receipt of the decision being appealed: that is, ten days after receipt of the Investigator's findings or ten (10) days after receipt of the Responsible Administrator's disciplinary decision, depending on the scope of the appeal. The written submission must provide specific grounds for appeal, describing how this policy was incorrectly applied or due process was not followed.

    a. A student or other member of the College Community who is not an employee of the College must submit the appeal to the Vice President, Student Affairs.

    b. Employees must submit the appeal to the person to whom the Responsible Administrator reports (e.g., to the Vice President, Academic and Provost if appealing the decision of a Dean; to a Dean/Director if appealing the decision of an Investigator).

    A student or a College employee who has been suspended by the President has a right of appeal to the College Board. Where an appeal of a suspension is submitted, that appeal must be forwarded by the Vice President, Student Affairs or the Responsible Administrator to the College Board Chair via the College Secretary

3. An appeal will not reconsider the original Complaint, although the person or body deciding the appeal has the discretion to consider any new evidence that could not reasonably have been available at the time of the original investigation.

4. The appeal may be upheld or dismissed, in whole or in part, and/or referred back to the Responsible Administrator for reconsideration.

5. The person or body deciding the appeal will give reasons for the decision in writing.

CONFIDENTIALITY

1. Confidentiality of all persons and information involved in a Disclosure or Complaint of Sexual Violence and Misconduct is expected.

2. To protect the integrity, fairness and effectiveness of investigations, and to ensure compliance with BC's *Freedom of Information and Protection of Privacy Act*, all participants in an investigation must act in accordance with the requirements set out below.

3. Individuals, including the Complainant and the Respondent, who have obtained personal information about an identifiable individual through the course of participating in an investigation must not disclose this information to anyone except their own personal advisors or representatives, or as required by law. However, this section does not prevent

    a. any participants in an investigation from disclosing information about themselves or from disclosing information that they have obtained outside the investigation; or

    b. College representatives from disclosing investigation-related information as authorized under this policy.

4. The College will not disclose any personal information related to an investigation except to the extent that such disclosure is

    a. expressly authorized by the affected individual;

    b. made to a College representative on the grounds that it is necessary for the performance of that individual's duties (e.g., communicating to a supervisor any restrictions to the times of day or days of the week that an employee may access specific College facilities);

    c. made to a Complainant, Respondent, witness or other participant in the investigation on the grounds that it is necessary for the conduct of the investigation;

    d. authorized by this policy;

    e. authorized or required under law; or

    f. deemed necessary to prevent imminent risk of harm to self or others in the College Community or wider community.

5. To maintain the integrity of the investigation process, the College must ensure that both Complainants and Respondents know the Investigator's findings.

6. Under the FIPPA, the College will authorize the Disclosure of disciplinary actions it has taken against a Respondent only if such Disclosure is necessary for compelling health or safety reasons (e.g., the College will normally inform Complainants of any restrictions that may have been imposed upon the Respondent's movements or activities).

RETALIATORY ACTION, BREACHES OF CONFIDENTIALITY AND COMPLAINTS MADE IN BAD FAITH

1. Retaliatory Action of any kind is prohibited.

2. Where a member of the College Community is found to have engaged in Retaliatory Action, or to have breached the confidentiality requirements in this policy, the College may take appropriate disciplinary action.

3. Where an investigation determines that a Complaint was filed in bad faith, the College may take appropriate disciplinary action.

F. SUPPORTING FORMS, DOCUMENTS, WEBSITES, RELATED POLICIES

Administration Policies

- *Bullying and Harassment Prevention and Response Policy*
- *Human Rights Policy*
- *Student Non-academic Misconduct Policy*
- *Violence Prevention and Response Policy*

G. RELATED ACTS AND REGULATIONS

- BC *Human Rights Code* [RSBC 1996], c. 210
- *College and Institute Act* [RSBC 1996], c. 52
- *Criminal Code of Canada* [RSC 1985], c. 46
- *Freedom of Information and Protection of Privacy Act* [RSBC 1996], c. 165
- *Sexual Violence and Misconduct Policy Act* [SBC 2016], c. 23
- *Workers Compensation Act* [RSBC 1996], c. 492

H. RELATED COLLECTIVE AGREEMENTS

- Current *Collective Agreement between Douglas College and the BC Government and Service Employees' Union (BCGEU)*
- Current *Collective Agreement between Douglas College and Douglas College Faculty Association (DCFA)*