Ruling of the Discipline, Interpretation, and Enforcement Board

Re: Universal Bus Pass Referendum (U-Pass #2)

Date Heard:
January 18, 2005

Members of the D.I.E. Board Present:
Alex Ragan, Chairman
Jeevan Nallainayagam
Catherine Lepine

Appearing For the Referring Party:
Mustafa Hirji

Other Parties Present:
Alison Lennie, Director, Environmental Coordination Office of Students, University of Alberta Students' Union

Questions Posed:

1. Considering the Students' Union must have a universal bus pass established by April 30, 2006, does this mean that if the universal bus pass cannot be purchased from Edmonton Transit Systems (and/or other transit providers) for $60 per term and the Students' Union does not find external supplemental funding that the SU must supplement with internal funding?
2. Can the Students' Union establish a universal bus pass on terms other than those outlined in the referendum question with the understanding that such an establishment of a universal bus pass would be in a completely separate activity from the universal bus pass specified in the referendum of March 2004?
3. Can the universal bus pass referendum's terms be amended without a referendum on the amendment?

Question 1:

A referendum must be interpreted in light of what a reasonable student would expect the referendum to mean (*Universal Bus Pass Reference #1*). This has been interpreted by the Board to mean that the Students' Union must take all reasonable measures to implement a universal bus pass according to the criteria enumerated in the Bus Pass Referendum (*Universal Bus Pass Reference #1*).

The nature of a referendum is that it is legally binding (s.2(e) Bylaw 2400). Moreover, referenda are of a special status that makes them unassailable by the simple acts or resolutions of representative bodies including Students' Council. The justification for this elevated status relates to both democratic process and a purposive interpretation of the referendum provisions enshrined in Bylaw 2400. Democracy entails the governance of a

population by its own free will. A referendum is the purest form of the expression of this will and therefore merits an elevated status above the decisions of elected representatives. Moreover, the presence of a mechanism for referenda found in Bylaw 2400 presupposes that the decisions of the student body are protected from the interference of Students' Council. Otherwise, what purpose could a referendum serve?

Given the nature of a referendum and the interpretive principle of the "reasonable student", the Board believes that a reasonable student would expect the Students' Union to commit a proportion of its budget towards this project. The question then becomes what amount is the Students' Union expected to contribute. Given the information presented, the Board finds itself unable to establish at this time a "bright line" level of funding that the Students' Union is bound to provide to the Bus Pass project. However, the Board feels confident that at least *some* amount of funding would be required. On the other hand, an amount that would cripple the Students' Union would be unreasonable. To establish the exact level of funding the Students' Union would be liable for, the Board would require: (a) information requesting the exact, undisputed amount of the bus pass, (b) what third party contributions are forthcoming and, (c) the tangible effect such an expenditure would have on the Students' Union.

Explicitly, with respect to Question 1, the D.I.E. Board finds that in the event the cost of the Universal Bus Pass exceeds $60, the Students' Union would be required to fund the excess cost of the bus pass to an extent that would be reasonable.

Questions 2 & 3:

Respecting Question 2, the Students' Union *can* establish a universal bus pass under terms different than those enumerated in the March 2004 Referendum. However, this would not discharge the Students' Unions' duties specified in the aforementioned referendum by virtue of their binding nature as discussed under Question 1.

Respecting Question 3, it is not within the power of Students' Council to amend the provisions of the referendum as adopted by the student body. This result follows from the elevated status of a referendum approved by the student body as discussed under Question 1. Accordingly, the only amendments that can be made must be effected through a second referendum.