

**BY-LAW No. 3**

Being a by-law to provide for the indemnification of the members of The Niagara Parks Commission in suits respecting execution of his or her office.

**BE IT ENACTED** that By-law No. 3 passed on the 21<sup>ST</sup> day of August 2009 is hereby revoked and the following substituted therefor as a By-law No. 3 (June 18, 2010) of The Niagara Parks Commission.

Every Commissioner of The Niagara Parks Commission be indemnified in suits respecting execution of his/her office according to the terms of the INDEMNITY AGREEMENT attached hereto as Appendix A.

The Chair and General Manager are hereby authorized to execute said INDEMNITY AGREEMENT in favour of each Commissioner, including the Chair.

The INDEMNITY AGREEMENT referred to herein has received the consent of the Ministry of Finance pursuant to section 28 of the Financial Administration Act in correspondence dated September 24, 2009.

Passed by The Niagara Parks Commission and sealed with the corporate seal this 18<sup>th</sup> day of June, 2010, to take effect as of June 18<sup>th</sup>, 2010.

***Original Signed***

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Fay Booker  
Chair

Reviewed and reconfirmed by the Board of Commissioners on February 15, 2012.

**Appendix A**

**INDEMNITY**

To: \_\_\_\_\_

In consideration of your agreement to be appointed to act as a director of the board of THE NIAGARA PARKS COMMISSION, THE NIAGARA PARKS COMMISSION hereby agrees, subject to the terms hereof, to indemnify and hold harmless you and your heirs and legal personal representatives against and from any and all losses, costs, damages, expenses and liabilities of whatsoever kind, including amounts paid to settle an action or to satisfy a judgement and including all legal fees and other expenses (a "Claim" or collectively, the "Claims") which you may sustain or incur or become subject to by reason of your being or having been a director of THE NIAGARA PARKS COMMISSION, but this indemnity does not apply with respect to Claims:

- (a) arising from any circumstances for which coverage is provided under an insurance policy or claims fund to the extent that you are indemnified or covered under such policy or fund;
- (b) arising out of circumstances in which you did not act in the performance or intended performance of your duties as a director of THE NIAGARA PARKS COMMISSION; or
- (c) brought about or contributed to by your dishonesty, gross negligence or willful misconduct if a judgement or other final adjudication adverse to you establishes that there was dishonesty, gross negligence or willful misconduct on your part which was material to the cause of action as adjudicated.

In order to be entitled to indemnification hereunder, you must comply with the following terms and conditions:

- (i) if you receive a notice of Claim or Claims, whether actual or threatened, you shall forthwith deliver to THE NIAGARA PARKS COMMISSION through the General Manager a notice setting forth in reasonable detail all available particulars of the Claim;
- (ii) upon the written request of THE NIAGARA PARKS COMMISSION, you shall furnish to THE NIAGARA PARKS COMMISSION copies of all documents and provide any other information relating to the Claim(s) that is in your possession or under your control;
- (iii) you shall take all reasonable steps necessary to secure and preserve your rights in respect of the Claim(s) and, to the extent that you have a right to commence a proceeding against another person (whether for damages or indemnification or otherwise) in respect of a matter for which you claim indemnification from THE NIAGARA PARKS COMMISSION hereunder, you shall assign that right to THE NIAGARA PARKS COMMISSION and subrogate THE NIAGARA PARKS COMMISSION to that right to the extent of the amounts paid by THE NIAGARA PARKS COMMISSION or for which THE NIAGARA PARKS COMMISSION is liable hereunder;

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(iv) you shall not voluntarily assume any liability in respect of or settle or compromise a Claim or any proceeding relating thereto without obtaining THE NIAGARA PARKS COMMISSION's prior written consent;

(v) THE NIAGARA PARKS COMMISSION shall have the right to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and any proceedings relating thereto or appeal thereof but THE NIAGARA PARKS COMMISSION may not settle any action commenced against you without your written consent;

(vi) if THE NIAGARA PARKS COMMISSION elects to participate in or assume control of the negotiation, settlement or defence of the Claim(s) and any proceedings relating thereto or appeal thereof, you shall cooperate fully with THE NIAGARA PARKS COMMISSION in connection with the same, and you shall agree to be represented by legal counsel chosen by THE NIAGARA PARKS COMMISSION, unless, in the opinion of such legal counsel, there would arise a conflict of interest preventing such legal counsel from representing you, and, where it is such legal counsel's opinion that a conflict of interest prevents their representing you, you will be entitled, subject to THE NIAGARA PARKS COMMISSION's prior written approval, to retain legal counsel of your choice (it being understood that THE NIAGARA PARKS COMMISSION may withhold its approval in relation to any counsel proposed by you who does not agree to retainer terms, including fees, consistent with the policies of the Ministry of the Attorney General of Ontario), and the fees and expenses of your counsel incurred in your representation shall be costs to which this indemnity extends;

(vii) if THE NIAGARA PARKS COMMISSION is not also a party to the Claim, you shall consent to any order or leave that may be required for the Crown to be added as a party or to be allowed to make representations on its own behalf without being a party; and

(viii) the expenses incurred by you in investigating, defending or appealing any Claim(s) shall, at your request, be paid by THE NIAGARA PARKS COMMISSION as may be appropriate to enable you to properly investigate, defend or appeal such Claims(s), with the understanding that if it is ultimately determined that you are not entitled to be indemnified hereunder, you shall immediately repay such amount(s) so paid, which shall become payable as a debt due to the Crown.

(ix) you agree to pay to THE NIAGARA PARKS COMMISSION all amounts you receive as a recovery or reimbursement of any Claim which has been previously indemnified by THE NIAGARA PARKS COMMISSION hereunder.

For greater clarity, this indemnity shall apply to Claim(s) that are referable to the period during which you were a director of THE NIAGARA PARKS COMMISSION, and of which notice is received by THE NIAGARA PARKS COMMISSION either during the period you are a director or after you cease to be a director.

IN WITNESS WHEREOF, the undersigned has duly executed this indemnity this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE NIAGARA PARKS COMMISSION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: **CHAIR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: **GENERAL MANAGER**