THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 10-167

BEING A BY-LAW TO PROVIDE LEGAL INDEMNIFICATION FOR THE PAYMENT OF COSTS OR DAMAGES AWARDED AGAINST AN EMPLOYEE OR A MEMBER OF CITY COUNCIL DURING THEIR TERM ON COUNCIL OR THEIR EMPLOYMENT WITH THE CITY WHILE ACTING UNDER LEGITIMATE INSTRUCTIONS OR WHILE ATTEMPTING TO PERFORM THEIR DUTIES IN GOOD FAITH

WHEREAS by section 279 of The Municipal Act, 2001, as amended, Council may pass By-laws to pay any damages or costs awarded against the members of Council or employees of the municipality or expenses incurred by them as a result of any action or other proceeding, except a proceeding brought under the Municipal Conflict of Interest Act, arising out of acts or omissions done or made by them in their capacity as members of Council or officers of the municipality or local board including while acting in the performance of any statutory duty or for paying any sum required in connection with the settlement of an action or other proceeding and for assuming the cost of defending such person in such an action or other proceeding.

AND WHEREAS the Council of the Corporation of the City of Peterborough deems it appropriate and advisable to pass such a bylaw

NOW THEREFORE, THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. DEFINITIONS

1.1 In this by-law,

“Action or Proceeding” includes civil, criminal or administrative Action or Proceeding

“City” means the Corporation of the City of Peterborough

“Council” means the Council of the Corporation of the City of Peterborough

“Employee” means any salaried officer, or any other person in the employ of the City and includes:

(i) persons that provide their services on behalf of the municipality without remuneration, exclusive of reimbursement of expenses or honoraria;

(ii) persons appointed by Council to a Local Board;

(iii) “Local Board” means a municipal service board, transportation commission, public library board, board of health, police services board, planning board or any other board, commission, committee, body or local authority established or exercising any power under any act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority; and
“Member” means a member of Council.

“Good faith” means the state of mind consisting of honesty in belief or purposes, faithfulness to ones duty or obligations, observance of reasonable commercial standards of fair dealing, and absence of intent to defraud or to seek unconscionable advantage. Without limiting the generality of the foregoing, good faith will not be demonstrated if that state of mind was reached as a result of wilful blindness or reckless disregard of the circumstances.

2. FORMER EMPLOYEES AND MEMBERS

2.1 This By-law applies to Members, Employees as well as to Former Members, and Former Employees who were Employees or Members at the time the cause of action or other proceeding arose but who subsequently ceased to be Members or Employees as the case may be.

2.2 Reference to the terms “Member” and “Employee” in this by-law shall be deemed to include “Former Member”, “Former Employee” as the context suggests.

3. EXCLUDED ACTIONS AND PROCEEDINGS

3.1 This By-law does not apply to an Action or Proceeding where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the City as an employer.

4. INDEMNIFICATION

4.1 The City shall indemnify its Employees and Members and save them harmless from all suits for damages, costs, charges, expenses or proceedings in the manner and to the extent provided in section 5 in respect of any civil, criminal or administrative Action or Proceeding, including appeals, by a third party for acts or omissions arising during the course of and relating to the Employee’s and Member’s term of office or employment, as the case maybe, if:

(a) the Employee or Member acted honestly and in good faith with a view to the best interests of the City and with no improper, immoral or objectionable purpose; or

(b) in the case of a criminal or administration action or proceeding that is enforced by a monetary penalty, the Employee or Member had reasonable grounds for believing that his or her conduct was lawful, or

(c) the interests of the City and the Member or Employee are not adverse to each other, or

(d) the actions of the Employee were not of a nature as to provide grounds for immediate termination without notice; or

(e) the indemnification is not prohibited by statute or court order.
4.2 Despite section 4.1 there shall be no indemnification provided by the City to Employees or Members, for damages, costs, charges, expenses or proceedings if any one or more of the following circumstances are applicable:

(a) In prosecutions commenced by the City against a Member or Employee for the enforcement of its own By-laws or other statutes enforced by the City;

(b) In any criminal proceeding against a Member or Employee prosecuted by the City or in which the City was the complainant;

(c) In civil actions commenced by the City against Employees or Members;

(d) Where the Employee or Member was performing his or her duties in otherwise than in good faith, dishonesty, or with malice;

(e) Where, in committing some alleged wrong, the Employee or Member was clearly acting on his or her own behalf and not that of the City;

(f) In respect of legal proceedings against Members arising out of any municipal election, including election expense audits and recounts;

(g) In defamation cases, where the words complained of consisted of the personal view of the speaker or writer of such words, and were not expressed or published on behalf of the municipality in accordance with explicit instructions from Council or senior management of the City;

(h) Where adverse parties in civil proceedings would each be entitled to funding for defence costs under this by-law, it being the policy of the City that it shall not finance both sides of litigious disputes and that neither party should receive indemnification in such circumstances; and

(i) In third party claims or crossclaims brought against Employees or Members where such third party claims or crossclaims are for relief over against such Employees or Members in a proceeding commenced by the City.

4.3 In the event that there is any uncertainty on the part of the City Solicitor as to whether or not a Member or Employee meets the requirements of this section, the City Solicitor may seek advice and assistance of a qualified and independent solicitor to decide whether that Member or Employee can be indemnified and propose any terms and conditions that may be applied to such Employee or Member.

4.4 In the event that it should appear that a Member or Employee does not qualify for reimbursement after reimbursement payments have been paid to him or her or on his or her account, the City Solicitor shall take whatever necessary steps to recover the amount of such payments from him/her.
5. **MANNER AND EXTENT OF INDEMNIFICATION**

5.1 The City shall indemnify a person who meets requirements of section 4.1 by:

(a) assuming the cost of defending such person in an Action or Proceeding;

(b) paying any damages or costs, including a monetary penalty, awarded against such person as a result of an Action or Proceeding provided that the City has agreed to assume these cost;

(c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such person as a result of an Action or Proceedings; and

(d) paying any sum required in connection with the settlement of an Action or Proceeding.

to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the City’s insurance program for the benefit and protection of such person against any liability incurred by him or her and further provided that the conditions of this bylaw have been complied with.

5.2 Indemnification shall be made by providing a retainer to the lawyer representing the Member or Employee and by the prompt payment of accounts submitted by such person, subject to the discretion of the City Solicitor.

6. **CONFLICT OF INTEREST PROCEEDINGS**

6.1 A Member shall be indemnified to the extent permitted in the *Municipal Conflict of Interest Act*, as amended, in respect of proceedings brought against them under that legislation. Subsection (2) sets forth the allowable level of indemnification under that legislation as of the date of this by-law.

6.2 Members against whom proceedings have been brought under the *Municipal Conflict of Interest Act*, as amended and have been found by a Court not to have contravened that Act, may receive reimbursement for their reasonable costs and expenses incurred in defending those proceedings.

7. **EFFECT OF INSURANCE COVERAGE**

7.1 Where insurance coverage is available in respect of any claim advanced against an Employee or a Member, the provisions of such insurance coverage shall apply and not the provisions of this by-law. The provisions of this by-law are intended to supplement the protection provided by such policies of insurance.

7.2 In the event of conflict between this by-law and the terms of any such policy of insurance, in place from time to time, the terms of such policy or policies of insurance shall prevail. It is intended that if a policy of insurance or other form of third-party indemnity pays for the costs of defending a claim or damages recoverable as the result of such claim, then the City shall not be responsible for reimbursing a Member or Employee to the extent same have been paid by such insurer or indemnifier.
8. **LAWYER RETAINED BY CITY’S INSURER**

8.1 Notwithstanding any other provision of this by-law to the contrary, any lawyer retained by the City’s Insurer from time to time to defend the City in any Action or Proceeding shall represent an Employee with respect to that Action or Proceeding unless the City instructs the lawyer retained by insurer otherwise.

9. **CITY’S RIGHT TO SELECT LAWYERS**

9.1 Subject to section 6, the City shall have the right to select and retain the lawyer to represent a Member or an Employee and may in its selection consider the lawyer of choice requested in writing by the Member of Employee.

9.2 The City Solicitor shall:

   (a) advise such person of the lawyer selected to represent the Member or Employee; and

   (b) advise the City Council of the selection.

9.3 The City shall have the right to approve the settlement of any Action or Proceeding. In the event that the City should wish to settle an Action or a Proceeding by paying a sum of money to the claimant but the Employee or Member does not wish to accept such settlement, the City shall have no further obligation to reimburse the costs incurred by the Member or Employee from the date the Member or Employee indicated such wish from or against any damages which he or she suffers as a result of the Action or Proceeding pursuant to section 4 or 5.

9.4 Notwithstanding that the City has selected and anticipates paying the accounts of the lawyer who will represent the Member or Employee, the lawyer will report to, take instructions from and otherwise be accountable to the Member or Employee and not to the City. Notwithstanding the foregoing, the City reserves the right to pay only the reasonable legal fees of the Member or Employee after such fees have been, at the discretion of the City, subjected to an accounting or assessment.

10. **PERSONS SERVED WITH PROCESS**

10.1 Where an Employee is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena or summons, in connection with any Action or Proceeding, the employee shall:

   (a) unless he or she is the head of a department, forthwith deliver the process or a copy thereof to the head of the department or their designate, who in turn shall deliver a copy thereof to the City Clerk; or

   (b) if he or she is the head of the department, forthwith deliver the process or a copy thereof to each of the Chief Administrative Officer and the City Clerk.

10.2 Where a Member is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena or summons, in connection with any Action or Proceeding, the Member shall forthwith deliver the process or a copy thereof to the City Clerk.
11. CONTROL AND COOPERATION

11.1 A Member or Employee involved in any Action or Proceeding shall co-operate fully with the City and any lawyer retained by the City to defend such Action or Proceeding shall make available to such lawyer all information and documentation relevant to the matter as are within his or her knowledge, possession or control, and shall attend at all proceedings when requested to do so by such lawyer.

11.2 A Member or Employee shall fully and completely comply with every requirement of this by-law

12. FAILURE TO COMPLY WITH BY-LAW

12.1 The City shall not be liable to assume or pay any of the costs, damages, expenses or sums mentioned in section 5 and 10 of this by-law if a Member or Employee fails or refuses to comply with the provisions hereof.

13. REIMBURSEMENT

13.1 Where the Employee, or Member is to be indemnified by the City, the amount of the indemnification shall be reduced by the amount of any costs or damages recovered by the Member or Employee and where indemnification has been paid, any costs and damages recovered by the Member or Employee shall be paid or assigned to the City up to the amount of the Indemnification.

14. EXECUTIVE ACTS AUTHORIZED

14.1 The Mayor and City Clerk are hereby authorized and directed to do all things necessary, including executing any necessary documents under the seal of the City to give effect to this by-law according to its true intent and meaning, including but not limited to agreements with Members or Employees to effect the provision of this by-law.

15. COMMENCEMENT

15.1 This by-law shall come into force and effect upon the day of passing thereof

By-law read a first, second and third time this 13th day of September, 2010.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) John Kennedy, Deputy Clerk