

Lister v. City of Toronto (2020)

Lister and her family have long tended to their garden at their home near Davenport Road and Christie Street in the city of Toronto. Their family garden includes a front-yard meadow, a green roof and around 100 different species of plants, shrubs and trees, most of which are native to Ontario.

Issue:

In 2020, Professor and founder of the Ecological Design Lab Nina-Marie Lister was given a notice of violation for her naturalized garden by a by-law enforcement officer of the City of Toronto. The cited violation of Municipal Code Chapter 489, Grass and Weeds for containing grasses, flowers and other plants above 20 cm in height. The consequence of not complying with this 20cm height restriction was the threat of forced mowing and fines of up to \$5,000.

Concern:

In Ontario, previous case law has established the precedent that individuals have a right defended by the Charter of Rights and Freedoms to express environmental values through gardening.

See the complete *Bell v City of Toronto* case summary [here](#).

This ruling meant that the City of Toronto had to reevaluate the Municipal bylaws that inform grass, weed and gardening permissions in the city. Following the Bell v Toronto case the height restrictions in Chapter 489 remained with an allotted exemption that individuals could apply for to permit the cultivation of a natural garden.

The existence of the required exemption discourages gardeners from asserting their ecological and cultural beliefs. Professor Lister chose to fight for natural gardens as a rule rather than an exemption in Toronto, so that gardeners would be free to express their environmental beliefs. With the support of environmental lawyer David Donnelly, she challenged the City, identifying the by-law and natural garden exemption as illegal and unconstitutional.

What does the bylaw say?

The first step was a policy review in 2021, performed by graduate student Carly Murphy with the supervision of Prof. Lister. Murphy examined City of Toronto Municipal Code Chapter 489, Grass and Weeds, and compared it to five other North American municipalities' property standards and similar by-laws. Following this research, Murphy put together ecologically informed policy recommendations on how the City of Toronto (and other municipalities) might amend their weed and grass by-laws, and created a proposed model by-law intended to support environmental stewardship.

In making our case to the City, Nina-Marie Lister and the Ecological Design Lab team argued that allowing natural gardens would support diverse pollinator communities, and allow residents to create both ecologically significant and sustainable habitats on their property to actualize the biodiversity goals of the City. With environmental lawyer David Donnelly, Prof. Lister shared the model by-law and policy recommendations with Toronto City Council, which supported the approved amendment of the by-law to allow natural gardens without the requirement for an exemption.

You can review the reformed Turfgrass and Prohibited Plants Bylaw for the City of Toronto [here](#).