



Animal services lacked power to withhold Ikea monkey, court told

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A small monkey wearing a winter coat and a diaper apparently looks for its owners in an IKEA parking lot as customers take photos in Toronto on Sunday Dec. 9, 2012

There was no authority under a Toronto bylaw for animal services officers to keep the Ikea monkey from its owner when she came looking for him, court has heard.

Animal services supervisor Carl Bandow testified Friday at a trial surrounding the ongoing saga of Darwin, the Japanese snow monkey found wandering in an Ikea parking lot in December wearing a faux-shearling coat.



A small monkey wearing a winter coat and a diaper apparently looks for its owners at an Ikea store in Toronto on Dec. 9, 2012. THE CANADIAN PRESS

Toronto Animal Services officers scooped up the monkey at Ikea, where it had escaped the locked crate inside the locked car where owner Yasmin Nakhuda had left him.

Ms. Nakhuda showed up at animal services soon after, frantically looking to get her monkey back.

Instead, by the end of her visit to animal services, she had signed a form that transferred ownership of the monkey and he was soon sent to Story Book Farm Primate Sanctuary in Sunderland, Ont., where he has resided ever since.

Ms. Nakhuda hadn't realized that by signing the form she was relinquishing her ownership of Darwin, she testified Friday. She wept as she described how she felt she had no choice but to sign the form that she thought would allow animal services to take Darwin for medical tests.

The animal services officer said if she signed the surrender form he would let her see Darwin, she testified.

"I was not going to walk out without at least making sure he was okay, Mr. Toyne, why don't you understand that?" she said under cross-examination by Kevin Toyne, the lawyer for the primate sanctuary. "He has anxiety disorders.... I had no choice, Mr. Toyne. I needed to see him. I had to see him."

Mr. Bandow was not at the animal services office that day, but as the supervisor on call he received a phone call from one of the officers asking what he should do about a monkey that had been found at Ikea.

Even though it is illegal to own a monkey in Toronto, animal services officers have no power under a city bylaw to detain such an animal if the owner comes to claim it, Mr. Bandow testified. Prompted by this case, the city is looking at revisions to that bylaw.

Mr. Bandow knew he had no authority to order the monkey detained at animal services, he testified, but he didn't want to immediately release Darwin as he had concerns that the monkey posed a threat to public safety. He told the officer over the phone to see if Ms. Nakhuda would give up the monkey on her own.

"I was looking to see whether or not she would voluntarily surrender the animal to us, but I also understood there was nothing compelling her to do that," Mr. Bandow testified.

Ms. Nakhuda's lawyer, Ted Charney, noted that Ms. Nakhuda says that is not how the animal services officer framed her options when speaking with her.

"Why would you want her to give up ownership of her monkey if all you wanted to do was see if it had any diseases?" Mr. Charney asked Mr. Bandow.

"I'm not sure," Mr. Bandow replied.

Public health officials or federal wildlife officers may have had the power, under their respective pieces of legislation, court heard, but Mr. Bandow wanted to detain Darwin until he could look over the relevant laws, he said.

Ms. Nakhuda has not seen Darwin since that day in December at Toronto Animal Services, and is suing Story Book Farm Primate Sanctuary for recovery of personal property.

The animal services officer, who is expected to testify when the trial resumes June 10, told her she could face criminal charges and if she didn't sign the surrender form, the situation could get worse for her, she testified. The sanctuary's lawyer has indicated the officer will testify that is not true.

Ms. Nakhuda, a real-estate lawyer, ought to have known the legal meaning of the form, Mr. Toyne said, but Ms. Nakhuda disagreed.

"I don't see why the surrender form would make me lose ownership of Darwin," she said, adding she thought she was temporarily relinquishing him for testing. "I don't understand why anybody sees this form as a transfer."

The form shows a box checked off next to the words "for owned animal(s) surrendered/signed over."

"I agree that by signing this document that, to the best of my knowledge, the animal(s) specified above has (have) NOT bitten anyone within the last ten (10) days," it reads. "I also agree that the final disposition of the animal(s) specified above shall be at the discretion of Toronto Animal Services."

The only other reference to surrendering an animal on the form is another checked box next to the words "own surrender" in a list of options including adoption, stray and quarantine.

Ms. Nakhuda's domestic partner, Samar Kotach, also testified Friday and told largely the same story as Ms. Nakhuda of their attempts to get Darwin back at animal services. He also broke down as he talked about the five months that the monkey lived with them and Ms. Nakhuda's two sons, aged 16 and 12. He said he and Ms Nakhuda were "out of it" that day at animal services.

"We were in a daze," he said. "I'm telling you, it's like being struck by a car. You cannot think."