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# Ikea Monkey Darwin's former owner has a decent case for getting him back: animal-rights lawyer

[Sarah Del Giallo](#) | Dec 18, 2012 4:14 PM ET

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The former owner of Darwin, the Ikea monkey, has a decent chance at success when she goes to court on Thursday in a bid to win him back, says one lawyer who specializes in animal rights cases.

"Based on what I know, I think she has a good case," said Nick Wright, a Toronto lawyer and executive director of Animal Justice Canada.

While keeping non-human primates is prohibited under Section 349 of the municipal code — and is thereby deemed an offence under the Provincial Offences Act — neither the code nor the Act confer the power to take animals from owners.

"It seems as if there is no authority granted under the bylaw or the Provincial Offences Act for Animal Services to seize the animal," he said.



THE CANADIAN PRESS/HO Yasmi Nakhuda is shown with her pet Rhesus macaque Darwin in this court photo released on Saturday Dec. 15, 2012. The owner of a monkey who was found in a Toronto Ikea parking lot last weekend wearing a shearling coat is going to court to get him back.



THE CANADIAN PRESS/HO, Bronwyn PageA small monkey wearing a winter coat and a diaper apparently looks for its owners at an IKEA in Toronto on Sunday Dec. 9, 2012.

So, unless Yasmin Nakhuda forfeited ownership of Darwin, he shouldn't have been taken from her, said Mr. Wright.

The seven-month-old rhesus macaque made international news on Dec. 9 when he escaped from a locked crate in a locked car to wander a North Toronto Ikea parking lot in a fashionable winter coat. Toronto Animal Services officers were called, and took the monkey, laying a \$240 fine on Ms. Nakhuda for owning the animal.

Ms. Nakhuda's lawyer, Ted Charney, said while the fine was legal, the seizure of Darwin was not, as Animal Services had no right to keep him after issuing the fine.

"The bylaw officer didn't return [Darwin] to her, and we think that he should have," said Mr. Charney.

Ms. Nakhuda has stated that while she did give Darwin up, she did so out of panic, since she was told if she didn't sign him over she would never see him again. Darwin was moved the next day to Story Book Farm Animal Sanctuary in Sunderland, about an hour northeast of Toronto.

Mr. Charney and Ms. Nakhuda head to the Ontario Superior Court of Justice Thursday with a motion that states: "Darwin was unlawfully taken from the possession of the plaintiff or has been unlawfully detained by the defendants," and "The plaintiff is the owner and is lawfully entitled to possession of Darwin."

"It sounds like it will be an issue as to whether or not she legitimately forfeited Darwin," said Mr. Wright.

Both the sanctuary and its owner, Sherri Delaney, have been listed as defendants in the motion to recover personal property. The motion also states that should Darwin not be returned to Ms. Nakhuda, she be granted "reasonable access" to Darwin.

That label of “personal property” may complicate the proceedings, said Toronto lawyer Lesli Bisgould, author of *Animals and the Law*.

“It’s really an interesting case,” said Ms. Bisgould. “This woman’s own position is really quite contradictory.”

She said claims by Ms. Nakhuda that Darwin is her son and that she loves him like a child don’t jive with his being deemed as a thing to own.

“It’s not sustainable. It’s not consistent with modern scientific knowledge of sentient animals,” said Ms. Bisgould. “The number one question should be, ‘What’s in the best interest of this animal?’ Not ownership.”

Ms. Bisgould said judges are dealing with the interests of animals in custody hearings more frequently. It’s become more common for couples, after splitting, to argue for custody of their pets.

“You do see courts starting to pick up on that language,” she said. With Ms. Nakhuda’s insistence that Darwin is like a child to her, there may be a compromise reached if he is not returned to her.

But that depends on whether the court is convinced Darwin should be looked at as property, or as an animal with individual needs to be met. Ms. Bisgould said the notion that we love our pets, and yet insist on treating them as property is not appropriate or sufficient for an intelligent animal.

“The animals are the real victims of this ambivalent relationship we have with them,” she said. “Even if they’re born in captivity, they’re wild animals, and wild animals don’t belong in a house.”

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