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Rug case won over wording of Customs Act

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A section of the Customs Act used by officers to seize about 700 rugs from the Oriental Rug Bazaar on July 29 was declared unconstitutional in a B.C. Supreme Court judgment released Wednesday.

Justice Josiah Wood found the English-language version of Section 111(1) of the statute failed to establish an adequate standard for granting prior authorization to conduct a search or seizure.

Though the French-language version would meet the standard as set by Section 8 of the Canadian Charter of Rights, and interpreted in a 1984 Supreme Court of Canada ruling (*Hunter vs. Southam Inc.*), Wood said he was bound to give preference to the English version, because it was most recently amended (1986).

He said he also had to apply the standard rule "that when Parliament alters the language of a statute in a material way, that alteration may fairly be presumed to have been intentional."

Since the law declares each language version of the section to be equally valid, though in this case they are incompatible, Wood said he must declare the section "of no force or effect."

The English version said a warrant may be issued where "there are reasonable grounds to believe that there may be found" evidence of a contravention of the Customs Act.

That wording would authorize "fishing expeditions" on the basis of suspicion and would not set "a proper standard for securing the right to be free from unreasonable search and seizure," the Supreme Court of Canada said in its 1984 decision.

The French version, literally translated, requires a reasonable belief in the presence of the evidence sought before a warrant can issue.

If Parliament did not intend the unconstitutional change in the English version, "the only other possible explanation is that the change was a drafting error which somehow managed to slip past the careful attention of our federal legislators when the 1986 Act was being considered in committee," said Wood.

Customs officers executed the warrant on Sonny Nima, carrying on business as Oriental Rug Bazaar at the Medical Dental Building, 905 West Georgia, on July 29. Nima's lawyer, David Church, obtained an injunction requiring the return of 250 to 300 rugs, because they were seized after 6 p.m., contrary to the hours specified in the warrant.

Church said the result of Wood's ruling on the constitutional issue, which was argued Aug. 15, will mean the return of about 400 additional rugs and business records.