

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101217

Docket: A-418-05

Citation: 2010 FCA 352

Present: NADON J.A.

BETWEEN:

**KATIA MONTANO COVARRUBIAS, ANGEL GABRIEL OLVERA RAMIREZ,
BEERI NOE OLVERA MONTANO, ASael OLVERA MONTANO
AND ELIEZER IVAN OLVERA MONTANO**

Appellants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 17, 2010.

REASONS FOR ORDER BY:

NADON J.A.

Federal Court
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REASONS FOR ORDER

NADON J.A.

[1] The applicants seek an Order amending the Reasons for Judgment of this Court in *Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365, [2007] 3 F.C. 169 (“*Covarrubias*”), so that the references to 2006 FC 444, now style *A.B. v. Canada (The Minister of Citizenship and Immigration) (AB)* reflect the Order of Barnes J. of the Federal Court, dated February 4, 2010 to anonymize the style of cause.

[2] More particularly, the applicants seek an Order which amends:

1. The quotation from *A.B.* appearing at paragraph 29 of the Reasons in *Covarrubias, supra*;
2. The references to the “pre-anonymization” style of cause cited in the list of cases applied;
3. Paragraphs 29 and 35 of the Reasons.

[3] The applicants were not a party to the proceedings which led to this Court’s decision in *Covarrubias*. However, they were parties in *A.B.* referred to at paragraphs 29 and 35 of our Reasons in *Covarrubias, supra*. In making the motion which is now before me, the applicants say that this Court should amend its Reasons so as to reflect the Order made by Barnes J. to anonymize the style of cause and Reasons in *A.B.* The Order made by Barnes J. reads as follows:

THIS COURT ORDERS that the style of cause, Reasons and all other electronically accessible docket information in this proceeding shall be amended by replacing the names of the Applicants with the following initials: A.B., B.B., C.B. and D.B.

[4] In support of their motion, the applicants argue that the Court may grant the Order sought on the basis of rule 4 of the *Federal Courts Rules*, i.e. the “gap rule”, which provides as follows:

4. On motion, the Court may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the superior court of the province to which the subject matter of the proceeding most closely relates.

4. En cas du silence des présentes règles ou des lois fédérales, la Cour peut, sur requête, déterminer la procédure applicable par analogie avec les présentes règles ou par renvoi à la pratique de la cour supérieure de la province qui est la plus pertinente en l’espèce.

[5] The applicants also argue that the Reasons in *Covarrubias* are no longer accurate because, *inter alia*, the name of their case has been changed following the Order made by Barnes J.

[6] The applicants further argue that the amendments sought are necessary to prevent a serious infringement of their privacy rights and that the amendments' salutary effects outweigh their deleterious effects. The applicants add that their motion presents two competing policy considerations, namely, the need to protect their privacy interests and the need for judicial proceedings to be open.

[7] Although sympathetic to the applicants' plight, I cannot grant the Order which they seek. First, the panel (coram: Linden, Nadon, Malone JJ.A.) which rendered this Court's decision in *Covarrubias* is now *functus* as no appeal was ever taken from the decision. Second, I can find no rule in the *Federal Courts Rules* which would provide a basis to grant the Order sought. More particularly, I see no basis on which I could amend or modify the Reasons of a Judgment rendered some four years ago. Lastly, I note that Barnes J. made his Order on the basis that it was "an appropriate situation to grant the relief requested". I need not decide whether that was a basis upon which he could grant the relief sought.

[8] I have therefore not been persuaded that I should grant the Order sought by the applicants and, as a result, the motion will be dismissed.

"M. Nadon
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-418-05

STYLE OF CAUSE: KATIA MONTANO
COVARRUBIAS et al v. M.C.I.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: NADON J.A.

DATED: December 17, 2010

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