

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

and

NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons or entities unknown to the plaintiff who are reproducing, publishing, promoting and/or authorizing the reproduction and promotion of the Infringing Materials

Defendants

**REPLY TO PLAINTIFF'S STATEMENT OF ISSUES**

(of the defendant Nagib Tajdin)

In response to the Plaintiff's Statement of Issues dated March 29, 2011, the Defendant, Nagib Tajdin ("Tajdin") states as follows:

1. This copyright lawsuit is about a book entitled "Farmans 1957-2009 - Golden Edition Kalam-E Imam-E-Zaman" (the "Golden Edition") and an mp3 audio bookmark (the "MP3"), collectively (the "Infringing Materials").
2. The Golden Edition is a book of Biblical proportions containing most of the general pronouncements made by the Aga Khan as Imam of the Ismailis from 1957 to 2009. These pronouncements of divine nature called "Farmans" are made in various countries across the world and are binding to all Ismailis unless stated otherwise within the Farman.
3. The MP3 is an audio bookmark preloaded with 14 short audio extracts of recording of Farmans read in the Aga Khan's own voice. Each extract is about 30 seconds in length.
4. In his Reasons for Judgment dated January 7, 2011, and amended January 13, 2011 (the "Reasons for Judgment" and his Judgment dated March 4, 2011 (the "Judgment") the Honourable Mr. Justice Harrington declared the Plaintiff to be the owner of the copyright in the Farmans and Talikas and held that the Defendants had infringed the

Plaintiff's copyright.

5. By Notices of Appeal dated February 7, 2011, the Defendants appealed to the Federal Court of Appeal the Judgment, and on June 16, 2011, the Defendants perfected their appeal. The Plaintiff's counsel served and filed their responding Memorandum of Fact and Law on the Defendants on July 14, 2011.
6. The named Plaintiff, His Highness Prince Karim Aga Khan ("Imam"), is the spiritual leader of the Shia Imami Ismaili Muslims. There are approximately 15 million Ismailis worldwide, located in over 25 countries across the world. The Imam succeeded his grandfather, Sir Sultan Mahomed Shah Aga Khan, to become the 49th hereditary Imam on July 11, 1957.
7. The Aga Khan is not just a religious leader in the ordinary sense, but is the bearer of the "Noor", a word which means "The Light", and the Noor has been handed down in direct descent from the Prophet. As Imam of the Ismailis, the Aga Khan has an absolute authority in interpreting the faith of the Ismailis to practice according to the Time and Age, and such guidance is given by the Imam through His Farmans.
8. According to the traditions of the Ismaili faith, the Imam's word on matters of faith is "taken as an absolute rule," and the Ismailis are expected to unconditionally abide by their Imam's Farmans with respect to religious matters. The Aga Khan, when responding to questions posed by the *Sunday Times* reporter on December 12, 1965, stated:

Q: Are you, for all believing Ismailis, a symbol of their Faith?

A: "Yes. Since My grand-father, the last Aga Khan, died, I have been the bearer of the "NOOR" a word which means "The Light". The NOOR has been handed down in direct descent from the Prophet. But My work and responsibilities overflow into the practical side of life."

Q: You have been compared to the Pope. Is your word, like his infallible?

A: "The Imam's word on the Faith is taken as an absolute rule. Every Ismaili is expected to accept it. The Community always follows very closely the personal way of thinking of the Imam. It's one of the particularities of Ismailis. An Ismaili who did not obey My word in matters of Faith, would not be excommunicated, he would still be a Muslim. He simply would no longer be a member of the Jamath – The Community of Ismaili Muslims. "One has to make a very careful distinction here between worldly and religious matters. An Ismaili may ask My advice on a worldly problem, then not accept it. Bit if he were to ignore the Imam's decision on matters of Faith, the Community pressures on him would be very strong."

9. All Ismailis give their oath of allegiance to the Aga Khan, and the Aga Khan in return promises to guide and protect His followers, and therefore, all Ismailis have an inherent right to the Farmans of the Aga Khan.
10. Tajdin is a loyal follower of the Imam and has sworn allegiance and obedience to Him. All of Tajdin's Farman book publication projects were done out of his love and affection for the Imam and His followers. The Imam encourages all within his community to give generous voluntary services in various capacities to the Ismailis and to the local communities. Accordingly, the publication of the Farman books were undertaken by Tajdin in the spirit of service in the same manner as Christians would spread the Good Word without any ulterior motive of making profit. Publishing these books has been a labour of love for Tajdin.
11. The Golden Edition is the last of a series of 10 books of Farmans of the Aga Khan published by Tajdin. The Golden Edition (published in late December 2009) is a consolidation of the previous Farman books published by Tajdin since 1992, along with new Farmans made by the Imam. These publications were undertaken after the Imam expressly gave His consent and authorization in Montreal, on August 15, 1992.
12. The Golden Edition contains 1,513 pages and weight about 2.5 kg. It has a comprehensive index of more than 200 pages. It is a hard binding with separations within and comes in a decorative box with the MP3. It is presented respectably as a

precious book of divine nature made as a service to the community without regards to costs, expenses, work, difficulty or time investment. The module in the shape of a bookmark is an invention of the publisher and contains 3 batteries instead of one for long life duration. Tajdin has never tried to cut the cost and make profit. On the contrary all effort have been made to present the highest quality of book sold at the lowest possible subsidised price. A similar book on the market, *without* the MP3 and the decorative box, is being sold for about \$120.00 to \$200.00 per book, in a for-profit market.

13. Tajdin ordered 5,000 books, but the printer published 5,500 copies of the Golden Edition on December 13, 2009 (the birthday of the Imam), and copies were either sold or distributed free to Ismailis and delivered to various countries to Ismailis (followers of the Imam) only. By November 2010, Tajdin was left with 193 copies, which were delivered as a gift to ITREB of Kenya (religious organization of the Ismailis) for their use. This is the same organization to which Justice Harrington later ordered all remaining Golden Edition books to be delivered.
14. There is no profit made by Tajdin in this matter. The evidence shows that for each of the publications, about 33% of the Farman books were given away free. Tajdin is a loyal follower of the Aga Khan, and he and his family are "Major Donors" to all the Aga Khan's Institutions. In fact, in January of 2010, before this lawsuit started, Tajdin offered to donate one book free for each of the 5,000 to 7,000 existing Jamatkhana in the world, a gift based on a number given by Shafik Sachedina and estimated to be of \$300,000 in value.
15. Tajdin is in the process of seeking witnesses from across the world from who are willing to sign affidavits to confirm that they received Golden Edition free of all charges, including shipping costs.
16. On March 29, 2011, plaintiff's counsel submitted a Requisition to the Court reference

to conduct "discovery" for accounting for damages as ordered by Justice Harrington, including discovering the identities of the persons to whom the books were sold, and for all of the Farman books sold or distributed as from 1992 (see paragraph 24(a)), when Justice Harrington's order extends to damages or profit for the publication of the Golden Edition only (published in December 2009).

17. The previous publications are not subject of the lawsuit, and yet the plaintiff's counsel seems to be seeking damages for all Farman books published by Tajdin between 1992 and December 2009, even though the pleadings specifically identified only the Golden Edition (published in December 2009) as the infringing material
18. No harm has been done to the Aga Khan by this publication. On the contrary, Tajdin has obeyed Him. In His Farmans, the Aga Khan encourages His followers to share and disseminate His Word within the community as has traditionally been done for centuries. The previous Imam has even said that by distributing His Farman, Ismailis are helping in keeping them alive. According to Ismaili Constitution and belief, Farmans of previous Imams are valid up to the time the Farman has been specifically revoked by a subsequent Imam, not by any other person. This Farman is still valid for the community.
19. Tajdin's work in collecting, transcribing, publishing, and even distributing the various Farman books published over the past two decades, has been undertaken in the nature of service and donation to his community not only without expectation of profits, but at enormous personal costs, both time and monetary, incurred by Tajdin. Since this undertaking is a voluntary religious undertaking to the community without any expectation of profits and not undertaken as a profit making project nor as a business, Tajdin did not keep records of same.
20. The Golden Edition, which is a labour of love, is a compilation of most of the Farmans collected during Nagib's trips to over 52 destinations. [See Schedule A]

21. All of the Farmans, which have been attended in person during these trips have descriptions either at the top of the page or within the text testifying information such as the mood of the community, the number of people who attended; etc For example, on page 914 of the Golden Edition, we read as heading to a Farman made in Dushanbe in 1995:

"The morning was cloudy with mild temperature. The Jamat started arriving just after 6:00 A.M. The gathering of around 8,000 Ismailis was expected. The soccer field itself was wet with morning dew and the people kept standing. Plastic bags were provided and the Jamat was encouraged to sit down. *Madhos* (religious poems) with musical instruments were sung, some mentioned "Sultan Mohamed Shah." Sermons were made with mentions of Aby Ali Ibn Sina, Nasir-Khusraw, al-Kirmanji etc. Explanation of Salwat and how to recite Salwat should be recited with loud voice

Mowlana Hazar Imam entered the Stadium at exactly 9:00 A.M. in full regalia: white *Sherwani*, ceremonial *Khitat* and *astrakhan* cap. He walked slowly, on the carpet for about 5 minutes, turned right before climbing the stage to sit on the chair. Behind the chair was the Imam Crest. Seated behind and to the left of Hazar Imam were six *Khalifahs* of Tajikistan Jamats. *Sura Noor* was first recited in Arabic then the translation was recited by a girl in Farsi. She bowed from afar. Then two men recited a *Madho*."

22. As a devoted Ismaili, Tajdin has never had any reservation whatsoever in practicing the long standing tradition of voluntary service in time or resources to help the community and please the Imam. Beside giving free copies to fellow believers, Tajdin absorbed most of the shipping expenses, which were substantial in view of the weight of the book and the remoteness of the many countries, where the Ismailis were sent the Farmans books. Rarely a token shipping charge was asked. Only about 300 books had been paid though Paypal had shipping charges to them as mostly they were from Ismailis in affluent countries that could afford to pay the cost.
23. Five thousand (5,000) copies of the Golden Edition were ordered by Tajdin in

December of 2009, but 5,500 were delivered and paid by him. In relation to the 15 million Ismailis worldwide, this was a very small publication, and most of the books were either distributed free or sold at \$50, and within six months only 193 copies were remaining with Tajdin in Nairobi which were delivered and given free to the ITREB Nairobi, (an organizations belonging to the Ismaili Community), before the hearing of the motions for summary judgment in December 2010.

24. All documents have been given to Plaintiff's counsel with Tajdin's Affidavit of Documents, sworn October 2, 2010, and served on Plaintiff's counsel, Mr. Gray, on October 4, 2010. In fact, the only documents that were not produced are the expenses incurred during the past 15 years because those were not kept, as this was a deficit project of religious nature.
25. In the case at bar, Justice Harrington refused to order the return of the Golden Edition from all individuals who bought these from the Appellants despite being sought by the Plaintiff. Divulging any names or contact information of the people who now have the books would be detrimental to them, as they would also be targeted and harassed and would breach their privacy and cause irreparable harm.
26. Harassment, ostracism in the community, threats of harm, and even death threats and physical attacks against Tajdin and Jiwa are on record. Evidence was also provided that people whose name we have given up to now have been subjected to harassment and ostracized in the community, therefore, the purchasers' privacy rights must be protected.
27. The reference is strictly to resolve the issues of monetary nature (profits, interest, etc..) not to extract information about defendants or others who they have come in contact with. No breach of privacy should be allowed. And no additional documents containing any names should be divulged.
28. The Plaintiff party should not be permitted to pursue further open-ended discovery,

such as discovering the names and addresses of the purchasers. On February 8, 2011, in its motion for judgment, the Plaintiff party asked for:

"....and the Defendants are ordered to attend for discovery to answer all relevant questions relating thereto. The Plaintiff may in his sole discretion choose not to proceed with the reference for damages or profits at any time, in which case all further steps in the reference shall cease and the reference shall be discontinued with no costs of the reference to either party."

29. On March 4, 2011, Justice Harrington did not award such a discovery, and wrote that "The declaration sought is broader in scope than the injunctive relief sought".
30. With respect to paragraph 25 of the Plaintiff's Statement of Issues, attached is a copy of the cheque showing that the Defendants had complied with the costs order. [See Schedule C]. The Defendants complied with the costs order as well and on May 27, 2011, sent a cheque for 19,000, British Pounds, equalling C\$30,300, payable to the Aga Khan, but seven weeks later (to date), although a stay pending appeal was refused by the Plaintiff and a requisition is being actively pursued, the cheque still has not been cashed. The reference and discovery should not be pursued in order to get information rather than money.
31. With respect to paragraph 24 of the Plaintiff's Statement of Issues, Tajdin states as follows:
  - a. What is the total number of books and mp3 audios that were printed and produced?
    - the total number of books ordered is 5,000; the total number of books printed and charged by the printer is 5,500.
  - b. What sales did the Defendants make of the Farmans and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and



the Farmans and Talikas contained therein (the "Impugned Sales")?

- A spreadsheet is attached with the sales numbers and the expenses associated. The book was either sold for \$50CDN in Canada, \$50USD in the US or given away for free. There was no other price. [See Schedule B]

c. What revenues were made by the Defendants from the Impugned Sales?

- A spreadsheet is attached with the sales numbers and the expenses associated.

- Shipping Costs: Only the Paypal orders paid a subsidised rate for part of the shipping cost (average \$9/book which weighs 2.5kg and which was sometimes sent overseas where shipping can cost close to \$50 per book) None of the books ordered in person or distributed in person was charged for shipping. All other books were shipped at no cost to the purchaser according to the Fedex published rates. Receipts were not kept.

d. What costs are properly deductible by the Defendants from the revenues made in respect of the Infringed Sales?

- Total cost = Shipping costs + Printing Cost + Cost of designing and formatting + Cost of data processing and automation + Cost of transcribing, proofreading, travel for meeting, meeting arrangements over 15 years + Cost of hardware over 15 years dedicated to this project + Cost of Travels (52 trips around the world) to collect material over many years, these trips only covers material not in the other books published by Tajdin.

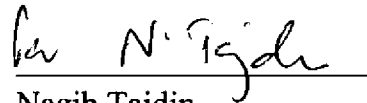
- Looking at the calibre and quantity of work done over 15 years to bring this book to light, even without any documents, a realistic estimate would puts the costs at \$500,000.

e. What award of pre-judgment and judgment interest under section 36 and 37 of the Federal Courts Act are applicable?

- This does not apply because there is no profit

32. In Reply to Paragraph 26 of the Plaintiff's Statement of Issues, Tajdin states that the documents produced show enormous costs and deficit of this project; therefore, oral discovery of the Defendants is not necessary, and the matter proceed to a hearing, if the named Plaintiff's still desires to pursue to recover non-existing profits.

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Nagib Tajdin

805 Middlefield Rd., Suite 215

Toronto, Ontario

M1V 4Z6

Tel: (416) 494-2484

Fax: (416) 494-3907

nagib@tajdin.com

Defendant