

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

RESPONDING AFFIDAVIT OF ALNAZ JIWA

I, Alnaz Jiwa, of the City of Toronto, in the Province of Ontario, MAKE OATH AS FOLLOWS:

1. I am one of the defendants in this action and as such have personal knowledge of the matters to which I hereinafter dispose to, except where otherwise stated to be based on information and belief, and where so stated I verily believe the same to be true.
2. I am responding to the motion for summary judgment brought by the plaintiff and have reviewed the affidavits of Shafik Sachedina ("Sachedina ") and Aziz Bhaloo ("Bhaloo").
3. Although both Sachedina and Bhaloo state in their evidence that the co-defendant Nagib Tajdin ("Tajdin") ceased distributing the Farman books in 1998, I know that that is not true, as I have obtained and distributed Farman books published by Tajdin after 1998 on a regular basis right to the time the new Farman book (hereinafter the "Golden Edition") was published. I still have a few of the initial Farman books (Red and Blue) remaining.
4. I also know that the Ismail institutions and institutions are receiving copies of posts posted to ilm-net, and they have known of us distributing the books openly. In addition to the Farman books, Tajdin has continuously provided me copies of

Farmans which were either not in the Farman books previously published, or Farmans made by the Imam on an ongoing basis after such Farmans were made by our Imam, and upon receiving same from him, I would distribute them.

5. The institutional leaders have known of us openly distributing Farmans, and they have periodically made announcements to the Jamats (Ismaili Community) urging them not to read or to distribute the "unauthorized" Farmans received by them.

D Attached hereto as Exhibit "B" are copies of some of emails posted or received by me, which is an email list restricted only to Ismailis, confirming the distribution of the Farmans for period after 1998. Attached hereto as Exhibit "A" is a copy of the index of the Farmans previously published in the Farman books. S

6. Sachedina and Bhaloo both seem to suggest that it is the Imam who is seeking to stop the publication and distribution of the Farmans, and specifically states that the Imam has "frequently" expressed His desire to stop the distribution of the Farmans. A review of the Imam's Farmans, Speeches, Talikas, and the Ismaili Constitution indicates conclusively that the Imam has not formally stated anywhere that such activity is prohibited, or that a certain institution is given the exclusive authority to publish Farmans.

7. I know that *if* the Imam wanted to stop these activities, He has very simple alternatives which would ensure that not only us (the defendants) but also the Jamats who have been copying and distributing Farmans to their friends and/or families to stop, and we would immediately stop distributing the Farmans.

8. The announcement made in the Jamatkhanas by Leaders International Forum ("LIF") on April 15, 2010, (purportedly authorized by the Imam) noted that the Imam brought this action as He had no other alternatives. This is untrue as well. This announcement is a blatant example of manipulation of the Jamats by LIF, and contains numerous factual misrepresentations. For example, one of the ways the Imam could have effectively ceased the publication, distribution, purchasing and/or

reading of "unauthorized" Farmans is by inserting an article in the Ismaili Constitution prohibiting such activities.

9. The Ismaili Constitution vests institutions with jurisdiction over specified subject matter, and any attempt by the institutions to assume powers over matters not enumerated by the Constitution is *ultra vires* and of no force and effect. The exhibits attached to Sachedina's affidavit give the impression that the Ismaili Tarika and Religious Education Board ("ITREB") is the designated institution with authority over the publishing of the Farmans, when in fact no such powers have been granted by the Constitution or by the Imam. I note that Sachedina has not given *any* evidence that the Imam has vested the necessary authority in ITREB to publish Farmans.
10. Furthermore, I note that the claim, the replies, the announcements made in Jamatkhana (purportedly authorized by the Imam), and the letters purportedly sent by the Imam to Tajdin all contain obvious factual errors. For example, the authority for the publication of the Farmans is given to "institutions", when clearly this is not the case at all, and confirmed by Sachedina's evidence.
11. I do not believe that our Imam would make such errors in His correspondence, and I am convinced that the letters purportedly written by the Imam, which contain factual errors, are not written by the Imam. For instance, the letter dated January 24, 2010, purportedly written by the Imam to Tajdin actually asks him to "respect the Constitution", the LIF announcement also refers to the Ismaili Constitution, and yet the Constitution neither prohibits the activities complained of, nor supports the evidence given by Bhaloo and Sachedina.
12. My review of all of the documents referred above showss that Sachedina's affidavit filed in support of this motion is the first time mention is made that the power to publish Farmans has been granted to ITREB.

13. As stated in my Statement of Defence and previous affidavit sworn in this matter our Ismaili Constitution does not prohibit the activities complained of, and there are no Farmans prohibiting such activities, on the contrary, there are Farmans noted in my earlier affidavits which indicates otherwise.
14. Furthermore, expert's reports obtained by us confirm that the Affirmation and correspondence purportedly signed and/or written by the Imam is not actually signed and/or written by the Imam. I am not at all surprised by the expert's conclusions, as I know that some very senior Ismaili institutional leaders have misused the Imam's name to achieve what they want whether or not they are authorized to do or not.
15. The Ismaili Jamat is organized into two separate and distinct branches: one administrative and the other religious. The religious branch is led by is a *Mukhi*, who is supported by an assistant, *Kamadia both of whom are vested with authority over religious matters*. The administrative branch has various distinct institutions, such as ITREB, councils are established by the Ismaili Constitution, and are governed by a president/chairman, and members for specified areas of functions, such as sports, educations. The Ismaili Constitution has specified the powers granted to these institutions but do not include powers to "control" *Mukhi/Kamadias (includes a Jamati (main) Mukhi/Kamadia, and Majlases (special gatherings) Mukhis / Kamadias)*.
16. The Imam has made many Farmans on the importance of the Ismaili Constitution, and the need to abide by it. I have quoted various Farmans in my earlier affidavit and will not repeat them here.
17. I was appointed a *Majlas Kamadia* of Don Mills Jamatkhana. ITREB sought to exercise control over us (*mukhis/kamadia* of Don Mills). The *Jamati Mukhi/Kamadia* agreed to remain under the controlled of ITREB, but we, *Majlas Mukhis/ Kamadias*,

refused to abdicate our responsibilities and obligations imposed on us by the Imam.

18. Without naming individuals, the Ontario ITREB's Chariman and the Coordinator for Jamati Affairs demanded that we abide by their directions in the performing our duties and the Imam had made specific Farmans requiring Mukhis/Kamadias to abide by ITREB's directions, and not doing so was to disobey the Imam, they insisted. We refused to accept their words until we were given the Farmans referred by them for our review, and finally when the Farmans were given to me for review, it turned out that the "Farmans" were not made by the Imam but were actually their own "rules". In fact, their rules were being forced upon us as Farmans.
19. Mohamed Manji ("Manji"), the then President of Ontario Council, who is currently in second term as the President of National Council for Canada, presided over a meeting to deal with the "serious" matter of misleading us (mukhis/kamadias). At the meeting, the Chairman of ITREB not only denied that he ordered us to accept their rules as Farmans, but he produced contrived Minutes of the previous meeting (when he told us to abide by Farmans) as evidence that he never told us that their Rules were to be taken as Farmans. Instead of showing remorse, the Chairman lied shamelessly, and then prepared a fraudulent document (Minutes) to support him.
20. I brought this serious misdeed to the attention of both the President of the National Council and Bhaloo (who was then vice president of National Council), however, they ignored the seriousness of the misdeeds and condoned the misconduct. They continued to mislead Mukhis/Kamadias. I then brought my concerns to the attention of the then Chairman of LIF about the failure of these institutions to abide by the Ismaili Constitution without any response.
21. To date, many people working for the Ismaili institutions still do not comply with the Ismaili Constitution ordained by the Imam in 1986, and who has repeatedly urged

the Jamats and the Institutions to abide by the Constitution, saying that if the Jamats and the Institutions did not comply with the Constitution, then "there is no point in having one whatsoever."

22. On one occasion, Bhaloo did call me to discuss the issues raised by me and set an appointment to meet me, but then a day before the appointment, he cancelled the meeting with a promise to set another appointment and never called again to review the concerns expressed by me.
23. My experience with many of these leaders is that they are not concerned about abiding by our Ismaili Constitution, nor follow the Ismaili traditions, or fulfilling the expectations of the Imam, or abiding with the Farmans made by the Imam.
24. Considering that many of the same leaders are rotating in different chairs, I have no confidence that these leaders would tell the truth or that they would abide by the Imam's Farmans or expectations, our traditions, or the ismaili Constitution, and I know that they will use the Imam's name wrongfully to promote their desires.
25. In responding to the affidavit of Bhaloo, I note that he says that the Imam only spent seconds with Karim Alibhay ("Alibhay"), implying that Alibhay's affidavit is a lie. However, I note that he has not produced the list of the *Mehmanis* that were presented to the Imam to support his evidence, nor he has failed to produce the video of the *Mehmani*, which would conclusively show what exactly happened when Alibhay presented his *Mehmani*. I believe that he will not produce it as it will not support the version he wishes the court to accept rather than what exactly happened.
26. It is true that when accepting *Mehmanis* (be in Canada, U.K., Pakistan, etc.) the Imam usually is pressed with time, but to say that He spends just seconds with everyone is distorting the truth. The Imam does not spend much time with every

couple (two people generally go to present *Mehmani*, either spouses, siblings, etc.) presenting a *Mehmani* but He does take time to speak with certain people, either when they ask for Guidance or Blessings, or when He, of His own will, desires to Guide that person or his family.


27. For example, on one occasion, when I attended before the Imam to present my *Mehmani*, He blessed us but did not speak about anything specific. But as left after the *Mehmani* was completed, the Imam stretched His arms and pulled me back to Him.
28. At that the Imam and I were alone, my cousin who was with me had left, the Imam asked what I was doing, to which I replied that I was working in a business. He then gave me Guidance to go for further education, and gave me Special Blessings. I do not recall how much time He spent with me, possibly just under a minute, but that minute was *the* minute of my life to cherish for life and was enough to change the direction of my life. Similarly, the minute or so that Alibhay was blessed is enough for the Imam to give His Guidance.
29. Bhaloo's evidence in this regard is not an accurate description of presenting a *Mehmani to the Imam*, and I know that all families, including Bhaloo himself, know that the Imam's Guidance at *Mehmani* is cherished and followed by Ismailis, and anything said by the Imam, in fact, changes that person's and/or his families lives forever.
30. I also note that Bhaloo states that he was President of National Council from (July) 1993 to (July) 1999. The *Mehmani* as described by Alibhay took place on August 15, 1992, during the period Tajdin commenced distributing Farman books in Canada, and elsewhere. Bhaloo had also bought these books, and was very well acquainted with Tajdin.

31. As President of National Council for Canada, Bhaloo met the Imam on number of occasions between 1993 July and December 1996 (when Sachedina commenced working for the Imam), yet I note that the Imam did not tell him between July of 1993 and December 1996 of His desire to stop Tajdin from distributing the Farman books.
32. I have no confidence that Bhaloo (or any other institutional or religious leader) could or would stand up against Sachedina. In fact, Bhaloo's evidence further enhances my conviction that it is Sachedina, who is seeking to stop Tajdin, and not the Imam.
33. Sachedina' affidavit contains self-serving statements, without giving any supporting evidence. At paragraph 10 of his affidavit he says, "process that he has established". when there is no such process established by the Imam, as He did in the previous Ismaili Constitutions. I also note that Exhibit "B" attached to his affidavit purporting to show that a procedure is in place for the Farmans is dated March 17, 2010 - just a couple of few weeks before he initiated this action and long after the publication of the "Golden Edition". Also there is no indication at all the procedure was *established by the Imam*.
34. Furthermore, Sachedina has not identified any Farman, or any Article in the Ismaili Constitution, or any pre-existent credible document showing that *the Imam* had established a procedure for the publication, or approval, or authorization of Farmans in favour of ITREB, nor anything that shows that the activities undertaken by us is prohibited, or even denounced by the Imam. He has not provided anything as none exists.
35. Sachedina states that Jamats have access to Farmans in the Jamatkhanas, which is not true. Some institutional leaders, including Manji and the Ontario ITREB Chairman, prohibited the student members of our Jamats, who attend universities to read Farmans in their student Jamatkhanas, along with prohibiting other ceremonies. This was undertaken by them with deceit and by misusing the Imam's

name in that the student Jamats were led to believe that Imam has authorized the prohibition. Therefore, the student Jamats are being denied access to the Farmans, and they have to rely on Tajdin and ilm-net to obtain access to the Farmans.

36. Furthermore, the institutions were not reading new Farmans in Jamatkhanas once the Imam made them. I have been posting Farmans on ilm-net to give access to the Jamats at large. The institutions, instead of reading the Farmans, made announcements to the Jamats not to read the "unauthorized" versions of the Farmans.
37. However, the Jamats simply ignored the announcements and the Farmans distributed by ilm-net were accepted by them, and immediately forwarded to their families and friends, and it was only then that the institutions started reading the newly made Farmans to the Jamats shortly after the Imam made it.
38. I also note that Sachedina states that they have not verified the accuracy of the Farmans or excerpts noted by us in our pleadings and affidavits. I consider it as confirmation that we have not misquoted any Farmans, Speeches, or the Ismaili Constitution, and I note if there were inaccuracies, they would have been brought to light.
39. As noted earlier, my Imam has a number of very simple ways to require all of us to abide by His wishes, and until he does that, I will not accept statements from Sachedina and Bhaloo, as their demands, statements, evidence, are not supported by any Farman, any articles of the Ismaili Constitution, and on the contrary it is against long standing traditions our Imam urges us to abide by.
40. I am, therefore, making this affidavit to oppose the plaintiff's motion for summary judgment.

SWORN at the City of Toronto
in the Province of Ontario
this 15th day of July, 2010



HELEN PETROULAKIS

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Alnaz Jiwa