

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

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

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Defendants

STATEMENT OF DEFENCE OF ALNAZ JIWA

1. The defendant Alnaz Jiwa ("Jiwa") admits the allegations contained in paragraphs 4, 6, 7, first sentence of 9, 11 to 14, 19, 20, 24, 26, 27, 30 and 33 of the statement of claim.
2. Except as indicated herein, Jiwa denies the balance of the allegations contained in the statement of claim.
3. Jiwa accepts His Highness Prince Karim Aga Khan ("the Aga Khan" or "the Imam") as his Imam and hereby unconditionally reconfirms his oath of allegiance to his Imam and states that Jiwa has no desire to refuse to abide by his Imam's instructions.
4. If Jiwa is satisfied that the Aga Khan does not want His Farmans to be published and distributed to His Jamats undertaken by the co-defendant Nagib Tajdin ("Tajdin"), then Jiwa will immediately cease such activity and litigation will not be necessary to require Jiwa to abide by his Imam's wishes under any circumstances.
5. Jiwa states that the Aga Khan personally gave His consent and blessings to the publication of these Farman books on August 15, 1992, and also stated then to

“continue” the work. To Jiwa’s knowledge and belief, the Aga Khan has not revoked His consent, and if this action was or is authorized by the Aga Khan, it was authorized based on misleading information given to the Aga Khan by his advisors.

6. For the reasons set out herein, Jiwa believes that the Aga Khan is not in reality the plaintiff, and that this action has been initiated by Dr. Shafiq Sachedina (“Shafiq”), who works out of the Aga Khan’s Secretariat Office at Aiglemont, France.

### **Ismailis Community Background**

7. Ismailis are individuals who have given an oath of allegiance to the Aga Khan to be accepted as His Murids (disciples), and upon doing so are permitted to enter into any Jamatkhana (prayer hall) to participate fully in all activities of the Jamat (congregation), and to participate in all other social programs and activities undertaken by institutions for Ismailis residing in their jurisdiction.
8. The Aga Khan is the 49<sup>th</sup> hereditary Imam of the Ismailis. The Aga Khan is not just a religious leader in the ordinary sense, but is the bearer of the “Noor”, a word that means “The Light”, and the Noor has been handed down in direct descent from Prophet Mohamed (may peace be upon Him).
9. As Imam of the Ismailis, the Aga Khan has absolute authority in interpreting the faith for the Ismailis to practice according to the Time and Age, and such guidance is given by the Imam through his Farmans. Although in the Statement of Claim Farman is stated to be an address by the Aga Khan as Imam to his followers, it is much more than an address. 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.
10. The Aga Khan when responding to a question posed by the *Sunday Times* reporter on December 12, 1965, stated:

The Imam's word on matters of faith is taken as an absolute rule. ... The Community always follows very closely the personal way of thinking of the Imam. ... 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 (His followers).

11. Accordingly, it is incumbent upon Ismailis to follow closely every word of every Farman delivered by their Imam, and non obedience of Farmans with respect to religious matters have serious consequences to an Ismaili as noted above.
12. The Aga Khan's grandfather, Sir Sultan Mahomed Shah Aga Khan ("Sultan Mahomed Shah"), who was the 48<sup>th</sup> Imam of the Ismailis, formed the first Ismailia Committee in Karachi in 1900 with a set of rules to govern the Ismailis. Subsequently, Sultan Mahomed Shah established the first Ismailia Council in Bombay on April 6, 1906, whose first president, Varas Ibrahim Muhammed Rawjee, ordained the Constitution of the Ismailia Council on March 4, 1910.
13. As Ismailis migrated to East Africa from their Indian homelands, Sultan Mahomed Shah ordained the first Ismailia Constitution on September 9, 1905, which contained written rules and regulations, known as *The Rules of the Shi'a Imamia Councils of the Continent of Africa* for the Jamats living in Africa.
14. When ordaining the Constitution in 1905, Sultan Mahomed Shah stated that if any Ismaili disobeyed the Constitution, it was as if he or she directly disobeyed the Imam's Farman.
15. In 1972, after the then President of Uganda, Idi Amin, expelled Asians from Uganda, Ismailis commenced migrating to the Western countries. Upon arriving in these countries, Ismailis were initially governed by the Constitution of East Africa, and subsequently a Constitution was ordained for Europe, Canada and the United States of America, known as *Constitution of the Shia Imami Ismailis in Europe, Canada, and the United States of America*, in the year 1976.

16. On December 13, 1986, after undertaking a three and one-half year review of all of the various Constitutions then applicable to His Jamats worldwide, the Aga Khan ordained a new Constitution, which was made applicable to all Ismailis, and The Rules and Regulations adapted for each country came into force on July 11, 1987.
17. The Constitution ordained in 1986 radically changed the organization of the institutions governing the Jamats, as well as the religious aspects of the Jamats and personal law relating to the Ismailis. The institutions were vested with clearly defined powers of operation, and the Aga Khan urged the institutions and all Ismailis to abide by the New Constitution and *The Rules and Regulations* applicable to their country as follows:

I am confident that the Ismaili Constitution will give stronger integrated identity to my Jamat worldwide, and that in abiding by it in letter and spirit, the Jamat will achieve greater peace, unity, happiness, security and well-being.

18. The Constitution of 1986 has been superceded by the Constitution ordained on July 11, 1998, which contains all of the amendments to 1998, and is the Constitution currently in force.
19. Therefore, ever since the first Constitution ordained in 1900, Ismailis have always been governed by a Constitution, and over time, the Constitution has been updated by the Imam as times and circumstances changed.
20. All aspects of an Ismaili's life concerning religious matters, personal law (an Ismaili can obtain a divorce from his own institution if the local law permits the exercise of such powers), etc. are governed by the Constitution. The powers and authorities of various institutional bodies are all governed by the Constitution. The Constitution also provides for taking disciplinary action (with rights of appeal) against any Ismaili, and provides for various forms of penalties, including a provision for an Ismaili to be excommunicated from the community.

21. The importance of the Constitution to the Ismailia Jamats was explained by the Aga Khan shortly after He had ordained the Constitution of 1986, in Gilgit, Pakistan, on November 21, 1987, as follows:

The Imam and leaders of the Jamat have worked for three and a half years on the new Constitution of the Jamat. The Constitution starts on the premise that every Murid, wherever he lives and wherever the Imam is, has a bond with the Imam-of-the-Time. And therefore the Constitution links every Murid to the Imam-of-the-Time. In the same way, the rules and regulations have been designed to take into account national law in various countries, old traditions and habits, new needs.

But basically, the new Constitution provides that every Murid has the same relationship to the Imam-of-the-Time in the administration of Jamati matters and that is, I think, a very important step. [Emphasis added] ...

The Constitution has not been designed as an instrument of uncaring direction. On the contrary, it is an instrument seeking to respond to the needs of the Jamat in a manner which will serve the purpose and the interests of the Jamat. The Constitution has been designed, therefore, to serve. And it is in that spirit that I would wish the leadership of the Jamat to conceive of this document. It is a document aimed at serving the Jamat.

22. The Aga Khan sternly reminded the Jamats and the leaders of various institutional bodies concerning the failure to abide the constitution as follows:

Secondly, in the new Constitution, I would like the new officers to remember that however much time we take to write out the Constitution to prepare it for My Jamats of East Africa, unless the officers and the Jamats themselves live by the Constitution, then there is no point in having one whatsoever. So I want officers in all the new councils to run the Constitution and to work within the spirit of the Constitution.

### **Regulations Relating to Farmans**

23. The Constitutions of various separate countries ordained in and after 1948 contained express Articles for the publication of Farmans (Jiwa has no knowledge if the Constitution in force prior to 1948 dealt with the powers for publishing Farmans). The previous Constitutions, prior to the new one ordained in 1986, contained the following articles:

**“HOLY FARMAN AND THE CONSTITUTION**

...

7. The Ismailia Association shall record, compile and certify Holy Farman.
8. The Ismailia Association in consultation with the Supreme Council shall be responsible for publication of Holy Farman.
9. Copies of Holy Farman shall be forwarded by the Ismailia Association to the Supreme Council.
- 10 Any Holy Farman certified by the President of the Supreme Council shall be conclusive evidence thereof.

**HOLY TALIKA**

11. Holy Talika received from Mowlana Hazar Imam shall be read in Jamatkhana only.
12. Holy Talika shall not be displayed, published or circulated without the consent in writing of the President of the Supreme Council.”

Articles 7 to 12 above reproduced from the *Constitution of the Shia Imami Ismailis in Europe, Canada, and the United States of America* (incorporating recent amendments), July 1976, published by His Highness the Aga Khan Shia Imami Ismailia Supreme Council for Europe, Canada, and the United States of America.

24. The Ismailia Association referred to in paragraph 23 above, was renamed *Tariqah and Religious Education Boards* (“ITREB”) when the New Constitution was ordained in 1986. Notably, unlike all previous Constitutions, the New Constitution did not vest the responsibility of recording, compiling, certifying and publishing Farmans to ITREB, the institution vested with powers over religious matters, or to any other institution. Furthermore, the Aga Khan did not reserve this power for Himself.
25. Contrary to the allegations contained in paragraph 23 of the Claim, the Aga Khan does not annotate or edit His Farmans. None of the Constitutions in existence

between at least 1948 and 1986 provided for any editing of the Farmans. The Articles of the 1976 Constitution set out above did not grant the Ismailia Association the power to edit Farmans, nor did it require approval by the Aga Khan before publishing the Farmans, nor did it provide for any prior editing by the Aga Khan.

26. In 1950, the Ismailia Association for Africa published *Code of Conduct for the Followers of Imam* given by the famous Ismaili jurist and scholar of the Fatimid Court, Qadi Noman, who stated in Majalis 19 as follows:

The Imam never utters a word which is light, superfluous or meaningless. God has made the Imams free from these defects. If we imagine that a particular word uttered by the Imam is not fruitful, the fault lies with us. We are too dull to detect the proper meaning of the words uttered by the Imam. The signs and symbols used by the Imams, in the course of their conversation with us and hints dropped by them, are a fathomless ocean.

27. Jiwa states that the 1986 Constitution in not granting any institutions the authority for recording, compiling, certifying, and publishing Farmans as granted by the previous Constitutions was not an accidental omission, but was purposely omitted by he Aga Khan because the institutions had failed to fulfill the mandate previously given to them for the publications of the Farmans.
28. Jiwa further states that the Aga Khan in not retaining or reserving the power or authority for editing, certifying, and/or publishing Farmans to Himself or to His Secretariat in the New Constitution was not an omission.
29. Had the Aga Khan either amended the Constitution to restrict or prohibit the publication of His Farmans, or sent a Talika to the Jamats prohibiting such an activity, Jiwa would have immediately complied with the directions without question or reservation.

### **Jiwa's background**

30. In the year 1977, Jiwa commenced searching for Farmans made by the Aga Khan in order to better understand the Ismaili faith and to undertake to abide by the

Farmans made by the Aga Khan to His followers.

31. One peculiarity of the Ismaili faith is that a Farman made by the Imam-of-the-Time remains effective and valid until that Farman has been superceded by a new Farman. On December 13, 1973, in Nairobi, Kenya, the Aga Khan said as follows:

And remember that if I have said to you to, from time to time, do such and such a thing, for example participating in national development, then unless I have given you a different Farman, continue on the Farman which I have made.

32. The Aga Khan demands and expects Ismailis to abide by His Farmans, but without access to His Farmans it is practically impossible to abide by them, or to obtain a timely benefit of His guidance. Although the Aga Khan gives Farmans to the Jamats he visits, such Farmans are also applicable to other Jamats residing in other countries (unless He restricts His Farman to that particular Jamat or country), and yet the institutional leaders refuse to provide access to these Farmans to Ismailis in their jurisdiction.
33. Since 1977, Jiwa has sought from both the Ismailia Association and the Ismaili Council, as well as from other sources, including religious lecturers and teachers, to obtain copies of Farmans, and was told that the Aga Khan did not authorize the publication of the Farmans made by Him, and as such they could not give copies of Farmans to Jiwa.

34. The Aga Khan specifically states that His Farmans are for the Jamats. On November 29, 1964, in Karachi, Pakistan, the Aga Khan said:

I have given you Farmans which I urge you to follow, because these Farmans I make are made for My Jamats.

35. On March 4, 1981, in Nairobi, Kenya, when addressing the student Jamats, the Aga Khan said:

I have a feeling I may have been speaking at a level which is difficult for some of you to comprehend. If this is the case, I simply ask you to listen to this Farman at your own time more peacefully, and try to understand what I have been saying to you.



36. During His visit to Bombay in 1992, the Aga Khan said:

This is a complex Farman. ... think about it, discuss it with your children, discuss it with your grandchildren, if they are old enough to think in these terms, and prepare them to see the way ahead, wisely and properly...
37. While searching for Farmans made by the Imam, Jiwa came across Tajdin, who provided Jiwa with copies of Farmans made by the Aga Khan, copies of which he could not obtain from any institutional body. The first books were obtained by Jiwa in 1993 for personal use. Shortly thereafter, Jiwa obtained more Farman books to distribute to friends and family members and has been distributing the Farman books as they were periodically published by Tajdin since 1993.
38. Jiwa undertook the distribution of the Farman books to encourage other Ismailis to become better acquainted with their faith, and to becoming "true" Ismailis by enabling them to have access to the Farmans made by their Imam. Jiwa distributes these Farman books at the same price he paid for them, without keeping a cent in profits.
39. Jiwa states that in distributing Farman books obtained from Tajdin to his families, friends, and other Ismailis, Jiwa has not violated either the Ismaili Constitution or any Farmans of the Aga Khan, and these are primarily the two sources that all Ismailis are obliged to abide by.
40. Sometime in the year 2005, when Jiwa obtained more Farman books from Tajdin, Tajdin informed Jiwa that the monies collected thereafter from the sale of the Farman books were to be delivered to the Jamatkhanas (for the benefit of the Aga Khan) and not to be paid over to Tajdin. All monies collected by Jiwa from the distribution of the Farman books thereafter were delivered to Jamatkhanas.
41. The Golden Edition was received by Jiwa in late December of 2009, for C\$50.00 for each book, and Jiwa has been selling these books at the same price of C\$50.00, without making any profit. Jiwa has devoted his own time in picking up, storing, and distributing these books on a voluntary basis and has also given away some Farman

books over the years without any charge whatsoever. All of these activities were undertaken by Jiwa due to his love and affection for the Aga Khan, and His Jamats.

42. As to the allegations that the publication of the Golden Edition is in the nature of trade, Jiwa states that the Golden Edition contains 1,513 pages, with a detailed index, hardcover, along with a cover box and an audio bookmark with a few Farmans in the Aga Khan's voice, is sold only for C\$50.00, and is being sold not for profit at all, but being distributed to make it affordable to all. By way of comparison, the Ismaili Council sells the Ismaili Constitution, which consists of 44 pages, for C\$20.00 to the Jamats. By way of further comparison, the *Bankruptcy in Canada*, Fourth Edition (ISBN 978-0-88804-491-4) which consists of 912 pages, Hardbound, is being sold for C\$225.00.
43. Contrary to the allegations set out at paragraph 21 of the Claim, there has never been any "complaint" by anyone prior to the announcement made at Jamatkhans in Europe, Canada, Africa, and United States of America, on January 16, 2010, concerning the distribution and selling of the Golden Edition Farman book ("Golden Edition"), and Jiwa has been openly distributing these Farman books since 1993.
44. Although traditionally Farmans were made available to the Jamats, in recent years the institutional leaders have not only failed to make the Farmans available to the Jamats, but they also insist on editing the Farmans.
45. In recent years, some institutional leaders, notably Shafiq and others, maintain that as the Imam speaks in French and delivers His Farmans in English, His Farmans contains errors and such errors are corrected by them. Jiwa states that the Articles of the Constitution set out above at paragraph 23 did not authorize these institutions to edit the Farmans, nor to seek the Aga Khan's approval before publishing Farmans. Notably, it did not require any prior editing by the Aga Khan.
46. Jiwa pays very careful attention to the Farmans made by the Imam and seeks to abide by them as far as possible and also seeks to encourage all other Ismailis to abide by the Farmans made by the Aga Khan.

47. Therefore, the only dispute between Jiwa and some of the institutional leaders is that Jiwa insists that the Farmans read by the institutional leaders in the Jamatkhanas not be edited by them, and that the Farmans be made available to the Jamats to read and understand the actual guidance given by the Aga Khan as their Imam. Both of these demands are in accordance with over 1,400 years of the Ismaili traditions, which traditions the Aga Khan urges the Jamats to maintain. Some institution leaders have failed to abide by the Constitution and the traditions of the Jamats.

### **Copyright Infringement**

48. Jiwa denies that he has infringed the *Copyright Act* in any manner and form. The Farmans are made by the Aga Khan for His Jamats, with the intention the Jamats to follow each word of His closely and to abide by the guidance given by Him.
49. Only after a person gives his Oath of Allegiance to the Imam of the Time (through His representatives appointed by Him for conducting religious ceremonies) he or she becomes an Ismaili. In exchange, the Imam (through His representatives) reciprocates by promising to protect and guide the Murid (Ismaili/disciple), and implicit in this Oath is that all Ismailis have an inherent right to the Imam's Farmans to enable them to govern themselves in accordance with their Imam's guidance.
50. Accordingly, when an Ismaili distributes the Farmans of the Imam to other Ismailis, the distribution is an activity that has been encouraged by all the Imams. Indeed, the Farmans are made with the express intention of being available for the Jamats worldwide in order that the Ismailis may lead their lives according to guidance given by their Imam.
51. The Aga Khan urges His Jamats to abide by His Farmans, to "listen" to His Farmans, to remember His Farmans, and the Farmans have traditionally been made available to the Jamats. Jiwa states that by doing so, the Aga Khan has impliedly given His consent to the Ismailis to have access to His Farmans, including audio recordings if an Ismaili chooses to listen to His Farmans (see paragraphs 34 and 35 above).

52. Jiwa states that the Ismailis are governed by the Constitution ordained by the Aga Khan, and the Aga Khan urges Ismailis to abide by the Constitution in “letter and spirit”. Jiwa states that he has not violated the Ismaili Constitution with respect to the distribution of the Farman books, and as the Constitution governs matters with respect to their religious and personal activities, the Constitution supercedes the *Copyright Act* as any acts done with the consent of the owner, including implied consent, is not an infringement of the *Copyright Act*.
53. In 1992, Tajdin had just published the first batch of Farman books containing Farmans made to the Western countries, and wished to obtain the blessings of the Aga Khan before commencing distribution of the books. On August 15, 1992, in the City of Montreal, the Aga Khan was presented with a Farman book during a *mehmani* ceremony, which is an occasion whereby the Aga Khan personally meets His murids on a one-to-one basis, and gives personal guidance to such murids. The Aga Khan looked at the Farman book, then gave His blessings, placed His hand on the book, and said to “continue” the work. Jiwa, therefore, states that the publishing and distributing of the Aga Khan’s Farmans to Ismailis is not an infringement of the *Copyright Act* as it has been undertaken with the Aga Khan’s express consent and authorization.
54. The allegation that the Aga Khan has not been able to “verify the verbatim accuracy or authenticity of all of the Infringing Materials” is an allegation, which is not actually made by the Aga Khan, but by Shafiq. Notably, the Claim does not allege that Farmans published by Tajdin have not been transcribed accurately.
55. These Farman books have been distributed since 1992, and since these books went on sale, there have not been any complaints by anyone alleging that the transcribing of the Farmans is inaccurate. The Constitution gives the institutions (indeed any other Ismaili as well) the right to bring a disciplinary action against Jiwa and others if the published Farmans were not accurately transcribed.

56. During Sultan Mahomed Shah's time as the 48<sup>th</sup> Imam of the Ismailis between 1885 and 1975, a period of about 72 years, all or most of His Farmans were published and distributed to the Ismailis, even Farmans made to private gatherings.
57. If the activities of Jiwa and Tajdin are prohibited, the effect of such prohibition would mean that the Ismaili Jamats would no longer have access to the Farmans, and the Farmans read to the Ismailis in their Jamatkhanas would be the edited version, wrongly edited by the institutional leaders working at the Aga Khan's Secretariat.
58. Jiwa states that this action does not appear to have been authorized personally by the Aga Khan, as it is contrary to His own authorization given in August 1992; contrary to the Constitution ordained by Him in 1986, which does not prohibit such activity; contrary to His own Farman whereby He states that He makes Farmans for the benefit of the Jamats; contrary to the traditions of the Ismailis He urges be maintained.
59. In the alternative, if this action has been authorized by the Aga Khan, then it has been authorized by the Aga Khan based on misleading information given to Him by His advisors. Jiwa expressly denies:
  - a. that he has a website through which the Farman Books are offered for sale;
  - b. that these books are being sold in nature of trade;
  - c. that these books are sold to derive any profits;
  - d. that these books are sold to any non-Ismailis;
  - e. that any traditions of the Jamat have been violated;
  - f. that the Imam's morals rights have been infringed upon;
  - g. that any Farman of the Aga Khan has been violated; and
  - h. that any articles of the Constitution has been violated.
60. Jiwa concedes that activities such as distributing these books to non-Ismailis, or through the internet without adequate controls to ensure that only Ismailis have

access to these books, or commercializing these books would be an infringement of the *Copyright Act*, as the Imam's expectation is that only those who are Ismailis have access to His Farmans, and that these Farman books be handled in a dignified manner.

61. Jiwa pleads that the limitations period provided for by the *Copyright Act* bars this action, as the publication of the Farman books was commenced in 1992 and continues to the present time. The Golden Edition was published in December 2009, and is a consolidation of all the previous Farman books published by Tajdin, updated with new Farmans.
62. Jiwa denies that he has in any way of form distorted, mutilated or otherwise modified the Farmans or any of the reproductions, including the audio bookmark to the prejudice of the Aga Khan.
63. Jiwa states that during the period he has been distributing the Farman books, he has never been informed by anyone, including the Aga Khan, any of His family members, or any of the institutional leaders to date, that he should not be distributing these books, or that the Farmans published therein have not been transcribed accurately.
64. In an interview given by the Aga Khan reproduced in *Paris Match*, December 15, 1994, the Aga Khan stated:

PM: Your Highness, what pride do you get from your work?

AK: I am proud of two things. The first is the creation, in a variety of countries, or institutions of the community which posses real autonomy, which do not depend on the intervention, nor the thinking, nor the support of the Imam.

65. As noted above, upon having ordained the new Constitution in 1986, the Aga Khan has allowed the various institutions to operate without any direct input for its day to day affairs by Him, and many decisions are made by the institutional leaders, and such decisions are expected to be made by guidance and powers granted by the Constitution.

66. However, some of the institutional leaders do not abide by the Constitution and are also resisting to abide by the Imam's Guidance. Jiwa was appointed by the Imam to represent Him in conducting religious ceremonies in the Jamatkhanas (there are two types of officers appointed, one for institutions that are administrative leaders, and the second branch is concerned with religious matters). During that time, some leaders gave instructions to Jiwa (and other religious leaders) to obey certain orders as "Farmans" stating that the Imam had ordered such actions, even though those orders were contrary to the Farmans of the Aga Khan, contrary to the traditions of the Jamat, and contrary to the Constitution. Jiwa challenged such orders and discovered that the institutional leaders were promoting their own rules as "Farmans" of the Aga Khan.
67. Accordingly, Jiwa has grave reservations when some institutional leaders state that the Aga Khan desires certain steps to be taken (editing Farmans) or not to be taken (not publishing Farman books) when these statements are in direct contradiction to the Constitution, the Farmans made by the Aga Khan and the Ismaili traditions going back to hundreds of years.
68. Jiwa states that the New Constitution made significant changes in the manner of operation of various institutional bodies as set out in paragraph 21 above. Furthermore, the Aga Khan made a Farman, after the New Constitution was introduced at Bombay, India, Sunday, November 23, 1992 as follows:
- Secondly, expect competence, expect ability, expect answerability, expect quality control, expect that if matters are going wrong they should be put right without shame, without shame. There is no shame in saying this has gone wrong let us put it right. There is no shame in saying this has gone wrong, let us put it right. ... Therefore in the years ahead as we build institutions, let these institutions have a clear direction to serve the Jamat well ... [emphasis added]
69. By making the above Farman, the Imam has significantly changed the manner in which the Jamats are to relate to the Institution leadership in that before the 1986 Constitution, the Jamats were ordered to obey their institutional leaders, but by

making the above Farman the leadership has become accountable and answerable to the Jamats.

70. Jiwa states that a Farman made by the Imam remains valid until a new Farman supercedes the previous one (see paragraph 31 above). Therefore, the Farmans orally made by the Aga Khan remain valid and effective until a new one is made to replace the earlier one. Therefore, all the Farmans in the past twenty or so years, which have been edited by the institutions have not been delivered to the Jamats as "Farmans" by the Aga Khan, and hence the edited version of the Farmans cannot supercede the oral Farmans originally made by the Imam.
71. Jiwa states that the Jamats remain duty bound to abide by the Farmans made by the Imam. Hence, the only authentic versions of the Farman binding on the Jamats are the Farmans reproduced in the Farman Books published by Tajdin, as these Farmans are the actual words spoken by the Aga Khan without any editing. Farmans edited by the institutional leadership and read in the Jamatkhanas cannot supercede the oral Farman given by the Aga Khan. Had editing been undertaken by the Aga Khan, the Aga Khan would have sent the edited version as "Farmans" in order for the edited version to become the Farmans capable of superceding the previously made oral Farman.
72. In 1978, when the Aga Khan visited His Canadian Jamats for the first time, he warned the Jamats as follows:

These traditions, this unity, the strength of the practice of our faith is something which must continue in Canada, and there is no reason which from within our jamat nor from outside can make any changes in the maintenance of these traditions. [Emphasis added]

73. On December 13, 2003, in Dubai, the Aga Khan said:

My Jamat would know that during the past decades much time and effort has been taken to reconcile our knowledge of our own history. Knowledge which had been buried by time, which has sometime been buried on purpose by others, but which it is essential that we should reconstitute and use in order

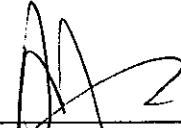


to inform ourselves as to the practices and beliefs and the ethics of the past within the Jamat, the guidance that was given by the Imams of the Time, and to inform ourselves so as better to project into the future a number of important decisions. [emphasis added]

74. By seeking to reconstitute “the guidance that was given by the Imams of the Time”, the Aga Khan is seeking to have the Farmans made by previous Imams to be “reconstituted”. Farmans made by the Imams were always available to the Jamats, except in the recent years.
75. On January 16, 2010, an announcement was made by institutional leaders regarding the publication of the Golden Edition. Notably, the announcement did not state that the Imam had indicated or made a Farman that such publications by private initiatives are prohibited. On the contrary, the announcement misled the Jamats by stating that the Imam has “entrusted the responsibility for printing Farman texts and other Tariqah and Jamat related materials, to relevant Jamati institutions.”
76. The announcement further stated that this activity (of publishing the Farman book) “constitutes a breach of the Ismailia Constitution...”. As set out above, the Aga Khan has not made any Farmans respecting the printing of the Farmans, and the Constitution does not prohibit such activity. On the contrary, if the announcement was correct in that relevant institutions have been “entrusted” with responsibility, then such relevant bodies have failed to comply with the mandate to publish Farmans, as they have not published Farmans in the past about thirty or so years.
77. Jiwa seeks to carefully abide by His Imam’s Farmans and the Constitution, and will not knowingly refuse to abide by the Imam’s Farmans. Accordingly, if this action is actually brought by the Imam, and if the Imam does not desire His Farman books to be distributed to the Jamats as has been done since 1992, then Jiwa, despite any legal or factual defences available, such as limitations period, consent, implied consent, etc., will submit to the instructions of his Imam without reservation whatsoever.

78. Jiwa states that, subject to paragraph 77, the claim be dismissed without costs.

Date: April 28, 2010



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**FEDERAL COURT**

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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

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**STATEMENT OF DEFENCE**

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