

Court File No T-514-10

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN
Plaintiff

And

NAGIB TAJDIN, ALNAZ JIWA
Defendants

RESPONDING AFFIDAVIT OF
NAGIB TAJDIN

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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 NAGIB TAJDIN

I, Nagib Tajdin, of the City of Nairobi, Kenya, make oath and say as follows:

1. I am a defendant in this action and as such I have personal knowledge of the matters to which I hereinafter dispose to, except where otherwise stated to be based on information and belief.
2. I have prepared this affidavit in response to the plaintiff's Motion for Refusal and I am also relying on my affidavit sworn on 2nd April 2012 in support of my Cross-Motion for Stay and for Confidentiality.
3. There is an on-going Appeal on matters which are at the heart of Mr Gray's Motion.

RELATION BETWEEN THE NAMED PLAINTIFF AND THE DEFENDANT:

4. His Highness The Aga Khan (His Highness, Imam or Aga Khan) is my Imam. In our faith, The Imam is considered as the "Mazhar" [Epiphany] of God.
5. I have sworn allegiance to the Imam and my love, respect, and obedience for the Imam has no bounds. The question of disobeying the Imam or to act against any of His wishes therefore has never arisen.
6. Because of this special relation with my Imam, I have maintained since the very beginning of this reference process that it will be my honor to remit any amount and in fact it will be an honor to maximize the amount going to the Imam.
7. This is not the typical lawsuit where there is a Plaintiff and a Defendant, both on opposite sides. On the contrary, in this lawsuit I am on the side of the Imam, I am his most obedient disciple.

8. My family and myself, being major donors of the H. H. the Aga Khan's Institutions, I would have been honoured to gather a larger offering payable directly to His Highness the Aga Khan, to end this reference.
9. Mr Gray knows that I have written on 4th January 2010, long before the lawsuit, to His Highness, that I wanted to send free Golden Edition Farmans book to each Jamatkhana of the world (according to Sachedina's cross-examination, there are up to 7,000 Jamatkhana)
10. When Mr Gray said he will not allow me to deduct any expenses unless I have an invoice, (Q.636) I replied that "it will be my pleasure to give as much as you want to the Aga Khan." My position on this point has always been consistently the same.

BOOK PUBLISHED AS A SERVICE TO THE COMMUNITY

11. I never contemplated making a profit in this project. I have given away thousands of free Farman books in the last two decades in the same manner as devoted Christians distribute the Word of the Lord out of their love and devotion for the Christ.
12. Mr Manji who directs Mr Gray with Mr Sachedina is involved in printing and he has publicly said that such a book can not be sold at \$50 unless it is sold at a loss. Mr Manji has not contradicted this.
13. Mr Sachedina is also involved in printing with Islamic Publication of which he is one of the Directors. Various books printed by Islamic Publications are sold in Canadian Jamatkhana at an average cost of \$10 per 100 pages proportionally to their size. At that rate, the Golden Edition without the MP3 electronic device would be sold by Sachedina for \$150. [Exhibit 13]

THE ACCOUNTING ISSUE & RELEVANCE:

14. 5,500 copies of the Golden Edition were printed and about one third were distributed for free. 193 more were gifted to the Aga Khan's ITREB institution in Kenya before the hearing in front of Justice Harrington in December 2010. About 302 were sold through PayPal for \$50 with a symbolic additional shipping cost, and the rest were sold in person for a maximum of \$50, inclusive of the electronic MP3 audio device and inclusive of cost of shipping. In some cases the cost of shipping was higher than what was charged for the book. (See Plaintiff's Motion Vol.3, page 660-661)
15. I am only submitting a small part of the real expenses incurred and I am leaving up to the Referee to decide at the closure of the reference whether a reasonable amount can be acknowledged or inferred and allocated as expenses for all of the

other items. Only information on the number of books printed and the cost from the printers and MP3 manufacturer's statements of invoices and payment are now relevant.

16. Opposing Counsel has now accepted that he is not asking information for expenses which I am not formally claiming. What remains now to verify is only:
 - a. The number of books printed
 - b. The cost of printing
 - i. The number of books gifted to ITREB (Plaintiff's Motion, Vol 3, pages 770-772)
 - c. The cost of the MP3 audio bookmark

17. In the matter of Expenses, I will release relevant available documents unredacted in order to have an appropriate calculation of the profit as follows. And I believe it will serve justice that an undertaking to keep them confidential should be asked by the Court before releasing them to Counsel or to a neutral person that will check the information. Safety of the printer is important.
 - a. Printing cost: The statement of invoices and payment with date and amount has been submitted and a letter from the printing press confirming that there were only 5,500 copies printed will be provided to the Referee unredacted on 14th May 2012 at the hearing. The unredacted document will be accompanied with a letter to the Printing Pres authorizing them to release to Counsel about number of books printed, invoiced amounts, date and amount of payments.
 - b. Cost of MP3 – invoices will be given in the same way to the Court on 14 May 2012 at the hearing.

18. As a result, I will withdraw my appeal of Justice Russell's Order because it will become irrelevant once the documents are given by the Court to Counsel or a neutral person to verify.

19. Accordingly – I will only formally claim \$\$199,357 as expenses, and will not seek to deduct formally the remaining expenses. I will accept any amount that the Referee or neutral third party will reasonable estimate for those items. [Exhibit 1]

WHAT IS NOT RELEVANT ANYMORE?

20. Since Mr Gray has removed from his spreadsheet some of the earlier questions pertaining to my business and other relations of many years ago, the issue on which questions needs to be replied is greatly simplified.

21. It is public knowledge that shipping of the 2.5 kg book could cost more than the price of the book in many cases. Rates for Canada Post and Courier services are common knowledge. For a 2.5 kg books rates can go up to \$100 per book to send to some countries. (Plaintiff's Motion, Vol 3, Tab 16, pages 660-661)
22. I am not formally claiming any shipping costs or customs cost, even not the one incurred to send books from Canada to Kenya to my own address or the cost of bringing by air books given free to ITREB in Kenya. Shipping information is therefore not relevant anymore.
23. I am not formally claiming neither costs of preparing the book nor the cost of free books given in the spirit of religious service to the community. Names of those who received free books are therefore irrelevant.
24. Asking for names of people who bought the book is also irrelevant because the price at which the books were sold has been confirmed by various documents in Exhibits within the Plaintiff's material, also more have been listed with my Affidavit in support of my cross-motion. I have listed those in my Affidavit sworn on 22 April 2012 at paragraph 17 (page 10 Cross-Motion)

CATEGORIES OF QUESTIONS BY MR GRAY:

25. Mr Gray has categorized his questions into 8 sections. I have given a reply for each question but in order to have a general view I have commented here each section and the detailed reply is in **Exhibit 2 and Exhibit 3** of this Affidavit:
 - a) Category 1: Searching Emails – I have already given to Mr Gray all relevant emails available.
 - b) Category 2: Distributor – I have explained at length that all of the people who bought books from me paid me immediately, no one was given books on consignment and as such I did not have distributors. In any case all the books were sold a long time ago.
 - c) Category 3: Bank information - Interest on loans is not claimed. Bank information is therefore not relevant as most transactions in my account are unrelated to the book and serious privacy issues should be considered.
 - d) Category 4: Printer Information – Questions on printer are relevant, in the same section, questions on shipping are not relevant. Printing information will be given to the Court on 14 May 2012 at the hearing. A letter

will be given for the printer to confidentially release all relevant information on the number of books printed and the cost of printing.

- e) Category 5: Shipping and MP3 cost - Shipping is no longer formally claimed. MP3 expenses information will be given to the Court on 14 May 2012 at the hearing. For the MP3 manufacturer which is in China, if Mr Gray wants to send someone there, I will also provide him with a letter for them to ascertain that the invoices I have provided for production costs are genuine.
- f) Category 6: Free Books – Only those given to Aga Khan ITREB will be claimed. Mr Gray already knows the number and has copy of the signed and stamped receipt from ITREB. All other free books are not claimed therefore related questions are irrelevant.
- g) Category 7: Miscellaneous – Once category 5 and 6 are replied, this whole section becomes irrelevant. Questions are more of the nature of a fishing expedition.
- h) Category 8: Undertaking – Since only printing and MP3 is claimed as expenses, all other undertaking are now irrelevant but still I have replied to each of the undertaking questions

COUNSEL REFUSES TO KEEP CONFIDENTIAL

26. I have proposed several times to Mr Gray to give him the information on the Printer and the manufacturer of the MP3 if he keeps it confidential. Each time he has refused. In my Discovery dated 8 November, I proposed to give all the information if Mr Gray would keep it confidential. Mr Gray unequivocally refused to keep it confidential. I therefore did not give him the names. [Q150-155, Q172, Q179-180, Q300-302, Q243-244, Q289-290, Q367]
27. Mtr Gray is directed by Manji and Sachedina. Sachedina has vouched on 17 February 2010, before the lawsuit was filed, that he would destroy me. The Email Exhibit of Sachedina's threatening call to me is in my cross-motion and Sachedina has not denied in his Affidavit this conversation or its content which was part of my Defense in April 2010 (See my Cross-Motion, Tab G, page 37)
28. On 31st August 2011, Mr Gray sent an email about this lawsuit to Mr Abdulla Dharamsey, who is founder of an Ismaili eForum, claiming over 32,500 worldwide email recipients. Mr Dharamsey widely circulated the email. Mr Gray wrote "However if you would like me to ask His Highness or Shafik Sachedina if I have permission to speak freely to you, I would be happy to do so, or of course you are free to make this request yourself." This clearly shows that Mr Gray is receiving permissions and instructions from Mr Sachedina in regards to this lawsuit. (Plaintiff's Motion, Vol 2, Exhibit 9J, page 340)

29. Justice Mainville said the Referee will be protecting me from my opponent and make sure there is not abuse of the court process.
30. Justice Russell said I could make a proposal to Mr Gray on how he would get the information and I did; but Mr Gray refused, saying his interpretation was different. [Exhibit # 4]
31. Prothonotary Milczynski has said that Counsel to discuss "for Counsel eyes only order" on Docket for 15-NOV-2011 and [Exhibit # 5]
32. I have proposed several times a discussion on confidentiality issue to Mr Gray after the instruction of Prothonotary Milczynski so that unredacted documents can be released to him in order to avoid wastage of time and money for everyone including for the Court. But Mr Gray has refused. [Exhibit # 6]

CONFIDENTIALITY NEEDED TO BE ORDERED BY THE COURT:

33. The reason I am requesting the Court to order confidentiality of the documents is because I believe Mr Gray can not be trusted with his deemed undertaking, there are 6 areas where Mr Gray has failed to act ethically as an Officer of the Court. I understand these are serious allegations with possible repercussion and I request the Court to look at them with great attention:

a) Not acting in the interest of Justice

- i. I believe that bad faith can be inferred by the Court when a counsel asks questions at Discovery and refuse to listen to the answers and then adds the question to the refusal list. The transcript is full of that kind of occurrences. For example Mr Gray on question 228-229 asked me to prove that I had a history of giving free books. I proposed to give him testimonials for the previously printed Farman books and he refused. He then added this to his refusals list. This has been the Modus Operandi of Mr Gray all along during my Discovery. Mr Gray's bullying can be seen during my discovery, asking question but refusing to let me answer so he can tell the court that I am not answering. Q. 387 to Q.389.
- ii. Mr Gray has misrepresented my refusal to answer accounting question in the cross-examination on my affidavit of the Russell Motion. That Motion was not for accounting or a discovery on any affidavit of documents. But Mr Gray went on and on to ask more then 200 questions before saying to me (this is in the transcript) that he would now start asking question on my affidavit for the motion. I was not bound to reply to any questions on subjects unrelated to the affidavit on which he was supposed to cross-examine me. He told Justice Russell that he asked accounting questions that he should have asked in Discovery because he though I will not present myself for the Discovery on my Affidavit of Document and the Discovery for the accounting issue.

- iii. Mr Gray has accused me during my Discovery also of redacting the email document of Sandrine Mongin. But the truth is that his own affiant Sachedina redacted it before sending to me as can be seen by the email itself. (Transcript question: Q163). (. [Plaintiff's Motion vol 3, Exhibit B1, page 682])
 - iv. And I want to remind this Court that in the hearing on 14th May 2012, Mr Gray made unsubstantiated and gratuitous very mean comments without any evidence on my character, that "Mr Tajdin lies all the time" and that Mr Tajdin is a very "cunning" person. I believe that if the law places the same obligations on self-represented parties as on the counsel, both should benefit of the same deference from the court and unsubstantiated comments should be equally frowned upon by the court regardless of who is making them.
- b) **Misleading the Court:**
- i. During the Appeal Court hearing on November 14, 2011, I noticed that in the Memorandum submitted by Mr Gray at two occasions he had misquoted from the Affidavit of Mr Karim Alibhay (our Affiant) and in the crucial quote where Mr Alibhay reports what was told to him by the Imam about continuing to publish his Farmans, Mr Gray redacted or omitted in the quote/unquote a crucial word pronounced by the Imam while giving instruction for the continuation of the publication: "Réussissez!" which changed the whole meaning of the instruction received from the Imam.
 - ii. Mr Gray was asked by the Court of Appeal why His Highness did not sign an Affidavit instead of an Affirmation attached to third party's Affidavit and Mr Gray replied that he did not know. I believe this Court can ask him again and see by itself that Mr Gray still does not have any credible answer to this question for which the forensic expert has clearly said that His Highness did not sign the Affirmation.
 - iii. Various emails to the Court are witnesses that the aforesaid is not an exception - Mr Gray had at one point changed the order sought in his representations without informing the parties or informing the Court. Mr Jiwa found out and pointed this to the Court: (Docket entry for 23rd November 2010) " *Mr. Gray has often commented on his being an Officer of the court and yet he deliberately breached your direction concerning this issue. His memorandum must be ordered expunged from the court file*". Prothonotary Tabib ordered Mr Gray subsequently to remove the changed order sought and restore it to the original formulation (Docket entry 25th November 2010). [Exhibit #7]
 - iv. In the same way, the misrepresentations of Mr Gray to the Court on why His Highness did not cash the \$30,000 cost awarded to him were contradicted by the Judgment of Justice Harrington itself.

v. This shows further, that in this particular lawsuit, Mr Gray can not be trusted to act as is expected normally of an Officer of the Court which is to act with accuracy, with respect of his undertaking and confidentiality, deemed or not deemed.

c) **Inciting violence against the defendants in the press:**

i. On 12th of October 2010, I was assaulted on Spark Street in Ottawa by one Mehboob Kamadia who regularly posts derogatory material against the defendant on lawsuit2010.com. As a coincidence, I saw Mr Kamadia talk with Mr Gray after the hearing and minutes before he assaulted me. I don't know if Mr Gray told him something that infuriated him against me but facts speaks for themselves. Mr Jiwa, my co-defendant was also assaulted in a Jamatkhana in Toronto by the same group and somehow the same Mr Kamadia became the main witness of the person who assaulted Mr Jiwa. (Plaintiff's Motion vol.3, tab 2, pages 673-674)

ii. Mr Gray has enlisted the help of websites such as Vancouverite.com and lawsuit2010.com to make inflammatory comments about the defendants, thereby triggering threats of harm, petitions for our excommunication from the community and death threats.

iii. Mr Gray's words are quoted in Vancouverite.com, a tabloid web site. Hate provoking words such as "perverse personal vendetta" were used by Mr Gray and quoted by Vancouverite to provoke in the Ismaili community a reaction strong enough to encourage actions to excommunicate the defendants, to harass them and even murder them. Articles written by Salim Jiwa in Vancouverite.com all of which are condemning the defendants in this lawsuit and all of which are public material quoting Mr Gray have never been contested or corrected by Mr Gray:

iv. Here are few examples of what the Editor Salim Jiwa of Vancouverite has regularly written of his close relation with Mr Gray: (**Exhibits 8-8e**)

- "Gray said on Friday morning in a telephone call from Toronto" - Vancouverite.com 14 May 2010 [also on lawsuit2010.com a website under Mr Kamadia's control] [**Exhibit # 8a**]
- "His lawyer told Vancouverite in an exclusive interview" Vancouverite.com May 14, 2010 [Mr Gray sent the Boston forged Affirmation to Vancouverite on the very same day Mr Gray sent it to us] - there are two different articles published the same day. [**Exhibit # 8b**]
- "Vancouverite has received the document exclusively following a request to

his lawyer" May 20, 2010. [Exhibit # 8c]

- "Lawyer Brian Gray said in a note to Vancouverite" 20 May 2010 [Exhibit # 8d]
 - "One of two men who continue to challenge the Aga Khan's copyright on his works is engaged in a "perverse" personal vendetta against leaders appointed by the Ismaili spiritual leader, the Aga Khan's lawyer has stated." Vancouverite 14 June 2011. [Exhibit 8e]
- v. Mr Gray's and Sachedina's real battle is not in this Federal Court, it is in the court of public opinion. Documents are only used to trigger animosity and hate against the Defendants especially within and by the members and Leaders of the community who Sachedina is using to fulfill his promise to destroy me.
- vi. During my cross-examination Mr Gray did not agree to keep information confidential. In view of the precedent where he circulated recklessly the forged Affirmation, I was not comfortable to trust him by giving him the name of the printing press. There are fanatics, likes of Mr Kamadia, who could retaliate by burning the place.
- d) **Mr Gray involved in circulating forged documents:**
- i. In May 2010, Mr Gray emailed us a scanned copy of an "Affirmation" purportedly signed by His Highness against us, and he accompanied it with an email threatening to circulate it widely. Mr Gray in fact circulated it to Vancouverite.com "in exclusivity" the same day, this was deliberately intended and created a lot of animosity and disaffection in the community. However, this "Affirmation" of which Mr Gray said he had 3 copies, was proved by Forensic Expert Graham Osprey to be a forgery. Mr. Gray refused to show his 3 original copies to his own forensic expert. To date, there is not a single Affidavit from His Highness in any of the Court proceedings, even not an Affidavit of documents. Nothing! [Exhibit 9]
 - ii. Furthermore Mr Gray himself told me and Mr Jiwa, in August 2010, that circulating the (forged) Affirmation was his own idea, not that of His Highness. I have reason to believe that he did this in order to harm us, to defame us and to incite our community against us and to cause disaffection. The forged affirmation was instrumental in encouraging hate propaganda against the defendants and massive calls for excommunication and other physical threats which were also posted on web sites. [My Cross Motion Exhibit G, page 39-40]

e) **Lack of ethics**

- i. Neither I nor Mr Jiwa (who is a Counsel) was ever given a notice before action prior to filing the lawsuit.
- ii. The Statement of Claim was circulated by mass email and to the news outlets long before it was served to me. In fact it was served to me almost a month after the filing and was served only after I had already filed my Defense. My address was not an issue as Mr Sachedina did not have any difficulty sending to me at my Nairobi address, two forged letters few weeks before the lawsuit. [Forgery of the signature of His Highness was already confirmed by 3 independent American and Canadian forensic experts]

f) **Not following His Highness' instructions.**

- i. Mr Gray continued with his motion for summary judgment in front of Justice Harrington though he was ordered by His Highness to put the matter to rest. He misrepresented at the hearing that the Imam did not remember the consent he gave in 1992 while he knew from the Discovery that His Highness said he remembered "very well".
- ii. Mr Gray told the Court during the Summary Judgment hearing that both me and Mr Jiwa have "infringed" and we had no consent to publish when he knew that during the Discovery His Highness explained at length to Mr Gray and Mr Gray's guests Sachedina and Manji that he knew Mr Jiwa was never involved in the publication and His Highness had given instructions at Mehmani for us to continue publishing. This was more than consent; it was an instruction which, set in a Mehmani context, is prescribed by H.H. as being a divine and binding instruction.
- iii. I understand that Mr Gray can not be asked to give his affidavit of what happened during Discovery of His Highness but I believe that Mr Gray is free to bring the Affidavit of Sachedina and Manji, whom he brought to the Discovery, to contradict me and the Court can find out from His Highness who travels very often to Canada who is defrauding the Court and take appropriate actions against whoever is found to do perjury and to defraud the Court.

DISCOVERY OF HIS HIGHNESS:

34. On 15 October 2010, H.H. the Aga Khan attended a Discovery in Mr Gray's office. Questions were given in advance the previous day at the telephone conference with Prothonotary Tabib and it was decided that His Highness would be free to answer or not in a respectful setting and that he would not be required to attend the Discovery for more than 15 minutes.

35. I trusted Mr Gray to arrange for the time and place and arrange for the Court reporter. A Court reporter known personally to Mr Gray and close to him, was arranged by him as we later learned.
36. I attended the discovery in the mindset of complete deference and respect to His Highness, and Mr Gray took advantage of this in the first couple of minutes by shouting loudly, intimidating and bullying not only me, but by also forcefully snatching away, from His Highness's hands, the first piece of evidence that His Highness had started reading after putting his glasses.
37. I desperately wanted this insult to stop; I could not fathom anyone acting so abruptly in front of the Imam. At this point, His Highness surprised Mr Gray by interrupting and starting with a suggestion. Mr Gray immediately took advantage of my leniency to place his desired version of a consent judgment on the record and put the transcript off-record without my accord. All this happened within the first couple of minutes.
38. However, the discovery lasted a half-hour from 10:40 to 11:10 and His Highness spoke at length, and immediately rejected the contents of the statement of claim and of the forged letters and forged Affirmation, as well as the version of the consent asked by Mr Gray. His Highness elaborated on all of my questions given in writing before hand. He also gave instructions on the way forward, to all of those involved in this litigation.
39. His Highness came because of the court order and also because there was a dispute between me and Sachedina and Manji who had initiated the lawsuit in his name. Sachedina is a personal assistant to His Highness. My family is also very close to His Highness since decades; His Highness has sent us periodically letters, messages even gifts and invited us on select events that he has attended. He has given audience to several members of my family on various occasions.
40. At the Discovery, Mr Gray sneaked-in both Sachedina and Manji. I was not told upfront that by Mr Gray that he will bring these 2 people with him, in fact at the previous discovery I conducted of his affiants, I had told him that only parties to the lawsuit should be present. Mr Gray later confirmed that these people were brought by him, not by his Highness as I had wrongly assumed when they entered the conference room.
41. I started addressing His Highness by telling him that I begged forgiveness for calling him for Discovery and I never wanted it to be like that. He replied with a smile and welcoming gestures of both hands saying "It's all forgotten". I told him that I had come to take his instructions for the way forward.
42. At the onset, His Highness asked Mr Gray to put the matter to rest. He suggested a commonly acceptable consent judgment that would secure each party's dignity and end the lawsuit immediately in a very diplomatic manner confirming our

confirming our suspicions that the letters and affirmation circulated in his name were completely fraudulent.

43. Although fraud had been committed, he requested that I did not pursue the matter of fraud so the litigation could be ended and all could restart working together. I knew that His Highness was a man of consensus, not of confrontation.
44. His Highness explained that contrary to the forged Affirmation attributed to him and contrary to Mr Gray's reply to our Defense, in which Gray wrote that the Imam did not remember the Mehmani of 1992 and that he was editing his Farmans, in fact, the Imam said that he was not editing his Farmans but only annotating and he said he remembered very well the Mehmani of 1992.
45. His Highness explained that when my first Farman book (titled Kalam-e Imam-e Zaman Farmans Volume 1) was presented to him during the 1992 Mehmani, he gave us these instructions to continue publishing these Farmans books because at that time he was looking for "competent people" and he also wanted the Farmans to be translated in "French, Farsi (Persian) etc." So there was no "infringement".
46. He confirmed several times that he wanted everyone that bought or received the Farman book to keep it, not to return it, though Sachedina insisted loudly to the contrary but to his dismay the Imam kept repeating that those who had the book should keep it.
47. Mr Manji tried to impose upon His Highness rather roughly and with disrespectful gestures (pointing finger) that His Highness should tell me to close my web site www.ismaili.net and His Highness said he was not aware of any issue with my web site and on the contrary Manji should work with us.
48. His Highness offered to give us all of his annotated Farmans if we wished and said that "we will work together", he said again he will meet us again. He put his hand on his heart and said "Khuda Hafiz" – meaning "May the protection of God be with you" – the traditional salute in Farsi language.

MANIPULATED TRANSCRIPT OF HIS HIGHNESS DISCOVERY:

49. After many attempts during 10 days after the discovery, to get the contact information of the Court Reporter that Mr Gray had arranged for, I received by email on 26th October at the same time as it was sent to Prothonotary Tabib the only one page disputed and a manipulated out of context transcript, with nothing said by His Highness in it and it took few more days to find out that there was no tape of the half hour discovery except for a little which also contained nothing from His Highness (Exhibit B of the Affidavit of Landeta)
50. There was no reason to include it on the docket except for it to be circulated widely. No occasion was given to me to review or correct the transcript before it

was circulated in haste. The transcript did not even contain timestamp when the reporter went on and off the record and the result was an out of context inaccurate and manipulated transcript.

51. From the transcript tape, the part where His Highness vindicated the defendant for 20 minutes or so was not audio-recorded, this is what we were told two weeks after the Discovery. The fact that Mr Gray was not cooperating in giving the Court reporters' contact information for many many days and the fact that he did put off-record, without my consent as soon as His Highness started talking, everything that His Highness said, is, I believe, proof enough that he knew that His Highness would strongly support the Defendants.
52. Prothonotary Tabib gave directions on 2nd November 2010 [On Docket] as follow: *"To the extent any party were to raise, at the hearing of the motion for summary judgment, anything of what occurred at the attendance on discovery, they would be precluded from so doing unless admissible evidence of those facts were put before the Court. The motions for summary judgment are now fully briefed... No further evidence may be filed for use at the hearing of the motions without leave of the Court, to be sought by way of motion."*
53. There was no possibility to introduce any of my evidence from the Discovery as I had to fly back urgently to insecure Kenya where I had left my wife and child alone, again leaving no time to make a Motion in this regards. 6 weeks later I had to come back to Canada as the Motions for Summary Judgment were to be heard in by Justice Harrington.
54. As can be seen from Justice Harrington's Reasons, most of his Judgment is based on speculations of what may have happened at the Discovery of His Highness and in the absence of full transcript Mr Gray did make misrepresentations in regards to the forged Affirmation and said His Highness did not remember the Mehmani of 1992. This was a blatant lie but I wrongly assumed that because of the order of Prothonotary Tabib precluding parties from using the Discovery of His Highness, whatever Mr Gray said would not be given any weight by the Court.

AFFIDAVIT OF LANDETTA AND MR GRAY'S RELATION TO VANCOUVERITE

55. The minutes of the hearing on 18 November 2010 in front of Prothonotary Tabib say "The parties do not agree the transcript should be filed." (My Cross-Motion Exhibit E, page 32)
56. Discovery transcripts are not public documents and should not be publicly circulated while they have not been reviewed and approved. Mr Gray made the manipulated transcript public without letting me review it, and without allowing any of what His Highness said to remain on the record.

57. Mr Gray who had the disputed one page transcript sent it to Prothonotary Tabib on 26th and to defendants in CC; and had I believe immediately sent a copy to Vancouverite.com who publicized it on the web and there was a mass circulation of the same by email prompting calls for defendants excommunication.
58. The transcript sent to the Court on 26th October was sent by email not by fax and is reported on Docket the next day. [Exhibit #10a]
59. Mr Gray's next email to the Court on 29th October 2010 [Exhibit #]. says that his fax was sent to Court the previous day which means he faxed on 28th October 2010 (not 27th October as purported by Mr Gray). [Exhibit #10b]
60. Furthermore, The Landeta Affidavit says the fax was sent to the Court with copy to Mr Jiwa. I have been informed by Mr Jiwa and I have no reason to disbelieve him, that he did not receive any copy of that fax on 27th October 2010.
61. In the Landeta Affidavit Exhibit "C" page 2, the words "on the record" are showing while in the letter sent to Court on 29th October 2010, Mr Gray says the words were missing on the fax sent on 28th October and he resent the document on 29th. If these words were already in the fax sent to Court on 27th October as purported by Mr Gray's Affiant, what is the purpose of sending a third time a fax on 28th October where the words "on the record" are missing and then again a correction on 29th October for the fourth time the same document to the Court?
62. Mr Landeta does not say who faxed or emailed to the Court. But if Me Gray maintains that he or Mr Landeta has emailed or faxed the transcripts for each of these 4 days he should have an explanation on why he needed to send it 4 times to the Court the same document.
63. Whether Mr Gray faxed to Vancouverite.com or faxed it to the Court on 27th October or whatever date and informed Vancouverite to get a copy from there is not the point. The point is Mr Gray does not understand properly the concept of confidentiality and has all along been actively using Vancouverite.com by phone and by fax against the Defendants. Vancouverite.com shows that Mr Gray communicate with them regularly, has given exclusive interviews, given exclusive documents, sent notes etc...
64. I have used my website to defend myself in a small way against a powerful international propaganda machine wielded by Sachedina that has aimed at affecting my religious practice, my social relationships, as well as my livelihood.

THREATS TOWARDS THE DEFENDANTS AND THEIR SUPPORTERS

65. Mr Chatur has been threatened following misrepresentation by Mr Gray that cost he paid should have been paid into the court or in Trust. Such declarations by Mr Gray were immediately interpreted in the Ismaili community as an attempt by Chatur to embarrass His Highness by paying him the costs.

66. Defamatory and highly inflammatory writings and threats against Mr. Chatur appeared immediately on websites such as lawsuit2010.com where a whole section [http://www.lawsuit2010.com/chatur_1.html] has been dedicated to depict him in the most offensive way, just because he volunteered to pay the \$30,000 of cost to His Highness on behalf of the defendant.
67. This has also been circulated by mass emails and despite attempt to hide the name, the author of the article Mehboob Kamadia just forgot that hundreds of people receiving his email could just click into the properties of the pdf file and see his name as author, which he forgot to remove from the file attached to the email circulated though since few weeks now, he has removed it from the property of the pdf document computer file in his website.
68. The lawsuit2010.com lists names of my friends and family members as part of the Farman dissemination. The comments are highly inflammatory and aimed at provoking hate towards my family and friends. This website has opened a page on Facebook and the title of the page is "Excommunicate Alnaz Jiwa and Nagib Tajdin". (See my Cross-Motion Exhibit G, page 39-40)
69. As a result of the campaign against the Defendants, there have been mass emails, insulting and defamatory web pages such as Vancouverite.com and lawsuit2010.com, death threats and assaults which are all on record.
70. The forged letters and announcements in Jamathanas by Sachedina have inflamed Ismailis and caused disaffection and many death threats and marginalization of the defendants, as well as of other persons who have been associated with us or in commenting on their lawsuit. This can also happen to people whose name may be disclosed
71. I have shown some examples of threats towards the defendants in my cross-motion Affidavit in Exhibit "F" page 35.

HIS HIGHNESS DOES NOT WANT ANY MONEY FROM DEFENDANTS:

72. The court had ordered costs of \$30,000 on consent. Because the money was going to the Aga Khan, we did not argue for a reduction or an assessment of costs, whatever was asked, we agreed upon. The relation I have with His Highness the Aga Khan, my Imam, is not about money, it is about love, respect, obedience and spiritual salvation. Whatever I have belongs to my Imam.
73. On March 28, 2011 Mr Gray wrote to me asking about when I could pay the \$30,000 of cost and reminding me that the Court ordered that the amount should be paid forthwith. [Exhibit 11a]
74. We decided that we would make payment of \$30,000 to His Highness. On May 27th 2011, Mr Maheeb Chatur, who is not associated to the Golden Edition in any way, and who has never met any of the Defendants, came forward and sent

on behalf of the defendants a cheque of \$30,000 (written in equivalent British Pound currency) to H.H. the Aga Khan as the named Plaintiff in this case. To date, that cheque has not been cashed and is now out of date. [Plaintiff's Motion Vol1, page 174 and Vol 3, page 757-761]

21. Mr Gray wrote to the Court on 29 July 2011 the reason why the cheque was not cashed and we replied to the Court quoting the Judgment of Justice Harrington to show how much Mr Gray tried to mislead the Court when he claimed that His Highness did not cash the cheque because he pretended that the order said we should have paid money into the Court. [Exhibit 11b and 11c]
75. I know first hand from the Discovery that His Highness does not approve these demands for costs. I do believe that the demand for cost and the reference are pursued by the parties that are directing the Plaintiff's counsel, but not by H. H. The Aga Khan.
76. From the price of the book and the size, it is apparent that this project over 15 years of sustained work was not motivated by profit and is a deficit project.

DISPUTE IS BETWEEN TAJDIN AND SACHEDINA.

77. The dispute is not between me and the Imam but between me and Sachedina. This has been recognized by Justice Harrington in his Reasons, and Mr Gray in his Reply to our Memorandum of Appeal in reference to Justice Harrington's order and his comments printed in Vancouverite tabloid.
78. However, The Copyright is personal to His Highness and has not been transferred to any institution or person such as Sachedina.
79. I found from various forensic experts (before the lawsuit) that documents originating from Sachedina concerning the book had a forged signature purported to be from His Highness. I asked Sachedina to confess to His Highness that he had sent letter bearing forged signatures. Sachedina vowed to humiliate and destroy me because I found out. Thereafter this lawsuit was started by him. [My Cross-Motion, Exhibit G, page 35]
80. Justice Mainville found that there was no need to stay the Reference because the Referee would protect us from the "opponents". Mr Sachedina is personally one of our opponents, and the record shows that two of the forged documents in this lawsuit originate from him.
81. There is evidence that Mr Sachedina is instructing Mr Gray and through him tries to harass me in this reference because:
 - a) When Mr Sachedina first approached me to stop the Kalame-Imam e-Zaman Golden Edition Farman book on new years' 2010, Sachedina admitted in cross-examination that he had not yet consulted H. H. The Aga Khan;

b) Well before the lawsuit, when I discovered the forgery and challenged Sachedina on this criminal act, he vowed and threatened to ruin me and my reputation in our "Jamat" (community) worldwide which he try to accomplish through announcements in Jamatkhanas and by initiating this lawsuit. His threat is believable because he is doing so, and, he has the means, the power, and opportunity to do so;

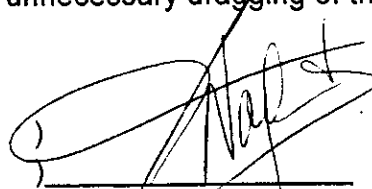
c) Sachedina also admitted on cross-examination that he never verified his affidavit with His Highness the Aga Khan. He also admitted that neither he nor Aziz Bhaloo the other affiant, were asked by His Highness The Aga Khan nor did they discuss with His Highness the matter of their giving evidence in this litigation.

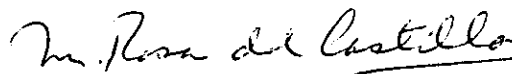
WHY IS THIRD PARTY NEEDED TO VERIFY PROFIT?

82. On August 29, 2011, Mr Gray wrote to the Referee: *"I pointed out that we would need to be free to discuss these documents and information with our client. This necessarily implied discussion with advisers and staff and Ismaili personnel that our client has designated. We may also need to employ accounting expertise to assess the financial information."* Gray added: *"We may need to bring motions to receive documents from third parties."*
83. This further confirms that the reason for refusing to settle is unrelated to the Reference but targets the harassment of all persons who may have been linked to the defendants directly or indirectly: families, friends, business partners, suppliers. Mr Gray is not in a hurry to end the Reference.
84. I have attempted many times to settle the issue of Profit to the benefit of His Highness. I truly believe that by appointing a neutral party to verify the accounting information related to profit in the publication of the Golden Edition, the reference can be resolved very fast while keeping a perfect balance between the respect of privacy and public interest and the protection from harm of any person whose names would be found in the documents.
85. The reference is strictly to resolve the issues of monetary nature (profits, revenue, and expense) not to extract information about defendant's clients or suppliers or business partner or social friends or others who they have come in contact with. No breach of privacy should be allowed. No additional documents containing any names should be divulged nor any information which can be verified through neutral qualified or independent person.
86. The Plaintiff Counsel should not be permitted to pursue further open-ended discovery, such as discovering the names and addresses of the purchasers. At this point, all the document that could show that here is no profit are already in Mr Gray's possession, only the redacted names of printer and MP3 manufacturer need to be verified by a neutral party.

87. On the issue of confidentiality, Mr Gray has previously represented that he would not share the information he receives with anyone except with named plaintiff His Highness the Aga Khan. However later, in writing to the Referee, Mr Gray confirmed that he would share with others. [Exhibit 12]
88. And it is known that Mr Sachedina, who directs this Counsel, has an international large circle of friends, living in countries out of the jurisdiction of this court and has the means to conduct a witch hunt against all of the relations of Tajdin as he had threatened to do
89. Mr Gray has recognized in his email to Dharamsy that he receives instructions from Sachedina. There are other compelling reasons why Mr Gray himself should not be receiving any document requiring confidentiality. Though he is an "Officer of the Court" his behaviour during this lawsuit has been far from exemplary.
90. If this is left to Mr Gray, the reference will go on forever and never come to fruition
91. I believe that appointment of a third party, possibly a certified accountant, acting for the Court or chosen by the accountants of the parties could end the process in less than a week.
92. Even if many of the book expenses are not accounted for, and cannot be independently verified or reasonably and commercially estimated or justified, by the neutral party, then whatever is the remaining amount I will be happy to pay or arrange to pay, and there are many well-wishers in our community who have offered to pay the amount on our behalf to His Highness the Aga Khan, the named plaintiff. I repeat that whatever I have in material funds and possession is at the disposal of my Imam
93. I believe at this point the Court should look at the available documents and the evidence and decide of the Revenue and Expenses on this project and whether there is reasonably any profit to be paid. If this done, it will close the door for abuse of the court process and unnecessary dragging of the matter.

SWORN in Montreal,
In Canada,
This 8th day of May, 2012


Nagib Tajdin


Commissioner for oaths.

