

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

STATEMENT OF ISSUES

1. These proceedings concern the Plaintiff's copyright in the Farmans and Talikas authored by the Plaintiff and reproduced in whole or in part in a book which was published and distributed by the Defendants entitled, "Farmans 1957-2009-Golden Edition Kalam-E Imam-E-Zaman" (the "Golden Edition") and in the Farmans and Talikas contained therein (the "Farmans and Talikas") (hereafter, the "Infringing Materials").
2. In his Reasons for Judgment dated January 7, 2011 and amended on January 13, 2011 (the "Reasons for Judgment"), and his Judgment dated March 4, 2011 (the "Judgment"), The Honourable Mr. Justice Harrington declared the Plaintiff to be the owner of the copyright in the Farmans and Talikas and found that the Defendants had infringed the Plaintiff's copyright. Amongst the various relief granted to the Plaintiff, was an interlocutory and permanent injunction restraining

the Defendants from further infringing activities, and order for delivery up of infringing materials and an order directing that a reference for the determination of damages or profits be held.

3. Pursuant to the Order of the Chief Justice dated March 16, 2011, Prothonotary Martha Milczynski was designed as referee (the Referee) for the purpose of determining the quantum of damages referred to in the order of Justice Harrington.
4. This Statement of Issues is delivered in respect of the reference to be constituted pursuant to the Judgment and the Order of the Chief Justice.

The Parties

5. The Plaintiff, His Highness Prince Karim Aga Khan (the “Plaintiff”), is the 49th hereditary Imam of the Shia Imami Ismaili Muslims and the spiritual leader, or Imam, of the Shia Imami Ismaili Muslims. He is a citizen of the United Kingdom and a resident of France.
6. The action was brought in connection with the Plaintiff’s “Farmans” (addresses given by the Plaintiff) and “Talikas” (brief written religious messages) by which the Plaintiff gives advice and guidance to his followers (“Jamat”) on both religious and temporal matters.
7. The Defendant, Nagib Tajdin (“Tajdin”), is an individual residing in Montreal, Quebec and in Nairobi, Kenya.
8. The Defendant, Alnaz Jiwa (“Jiwa”), is an individual and lawyer at Jiwa & Associates located in Scarborough, Ontario.
9. In his Reasons for Judgment, Justice Harrington found that in, or before, 1992, Tajdin began collecting, publishing and disseminating the Plaintiff’s Farmans to Ismaili communities and that more recently, Tajdin has been assisted by Jiwa. Together they have reproduced, published, promoted and/or authorized the

reproduction and promotion of the Golden Edition and the Farmans and Talikas contained therein.

Procedural History

10. By Statement of Claim dated April 28, 2010, the Plaintiff commenced this action against the Defendants and “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” (hereafter the “John Doe Defendants”).
11. The Defendants brought motions for summary judgment dismissing the Plaintiff’s action.
12. The Plaintiff brought a cross motion for summary judgment.
13. A two-day hearing on the parties’ motions for summary judgment was held before Justice Harrington on December 7 and 8, 2010.
14. Justice Harrington delivered Reasons for Judgment on January 7, 2011 in which he granted the Plaintiff’s motion for summary judgment and dismissed the Defendants’ motions for summary judgment.
15. Judgment issued on March 4, 2011 (the “Judgment”).
16. In his Reasons for Judgment and Judgment , Justice Harrington declared that:
 - a) Copyright subsists in the Farmans and Talikas authored by the Plaintiff and reproduced in whole or in part in the Golden Edition..
 - b) The Golden Edition, published in December 2009, is accompanied by an MP3 audio bookmark, preloaded with 14 audio extracts of recordings of Farmans personally read by the Plaintiff which reproduce in substantial part a series of 189 Farmans and 77 Talikas and messages authorized by him and delivered in various countries from 1957 to 2009.

- c) Copyright subsists in the MP3 audio bookmark accompanying the Golden Edition, being an audio reproduction of a reading of certain of the Farmans or Talikas (the “MP3”).
 - d) The Plaintiff is the owner of the copyright in the Golden Edition and the Farmans, Talikas and the MP3.
 - e) The Defendants have infringed copyright in the Plaintiff’s Farmans and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and the Farmans and Talikas contained therein.
17. Justice Harrington also issued an interlocutory Injunction dated January 7, 2011, in which he ordered that the Defendants and the John Doe Defendants, were prohibited, restrained and enjoined from producing, reproducing, copying, publishing, selling, giving away, promoting, translating, making any sound or video recording of, performing, communicating electronically, telecommunicating, making available or distributing any work that infringes the Plaintiff’s copyright in the Golden Edition and accompanying MP3.
18. Pursuant to the Order of the Chief Justice dated March 16, 2011, Prothonotary Martha Milczynski was designed as referee (the Referee) for the purpose of determining the quantum of damages referred to in the order of Justice Harrington.

The Defendants’ Infringing Activities

19. The dates and quantities of the Defendants’ sales of the Golden Edition and the Farmans and Talikas contained therein, are not known to the Plaintiff, but are known to the Defendants.
20. The identities and names of the John Doe Defendants who assisted the Defendants in the reproduction, promotion, sale and distribution of the Golden Edition and the Farmans and Talikas contained therein, is not known to the Plaintiff, but is known to the Defendants.

21. The identities and names of the persons who purchased the Golden Edition and the Farmans and Talikas contained therein from the Defendants and/or the John Doe Defendants, is not known to the Plaintiff, but is known to the Defendants.

The Remedies Granted

22. In his Judgment dated March 4, 2011, Justice Harrington granted the following relief:
- a) A declaration that:
 - i) Copyright subsists in the Farmans and Talikas authored by the Plaintiff and reproduced in whole or in part in the Golden Edition and in the Farmans and Talikas contained therein;
 - ii) Copyright subsists in the MP3 audio bookmark accompanying the Golden Edition, being an audio reproduction of a reading of certain of the Farmans or Talikas (the MP3);
 - iii) The Plaintiff is the owner of the copyright in the Golden Edition and the Farmans, Talikas and the MP3; and
 - iv) The Defendants have infringed copyright in the Plaintiff's Farmans and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and the Farmans and Talikas contained therein.
 - b) A permanent injunction prohibiting, restraining and enjoining the Defendants and the John Doe Defendants from producing, reproducing, copying, publishing, selling, giving away, promoting, translating, making any sound or video recording of, performing, communicating electronically, telecommunicating, making available or distributing any work that infringes the Plaintiff's copyright in the Golden Edition and accompanying MP3.

- c) An order for delivery up of all copies of the Golden Edition and the Farmans and Talikas contained therein, and MP3 audio bookmark in the possession, care or control, of the Defendants, and all other wares, labels, packages, signage, advertising materials, plates or moulds or other materials or things in their power, custody or possession, which refer to all or any part of, or which are used to produce, the Golden Edition and the Farmans, and Talikas and MP3 audio bookmark contained therein; such delivery up to be made to the appropriate ITREB authority as identified in the *Ismaili Constitution* in whatever country the Golden Edition and Farmans, Talikas and MP3 audio bookmark contained therein are located or as agreed by the Defendants with the Plaintiff's representatives or solicitors.
- d) An order directing a reference to a judge or other person designated by the Chief Justice of the Federal Court for the determination of damages or profits owing to the Plaintiff, with any such damages or profits to be payable to the plaintiff for use by the Aga Khan Development Network (AKDN) Foundation, or such other non-profit organization or purpose as he may see fit. Directions regarding the conduct of the reference were ordered by Justice Harrington to be made by the referee designated by the Chief Justice.
- e) Pre-judgment and post-judgment interest on any amount awarded in the reference for damages or profits were ordered to be paid to the Plaintiff as determined in accordance with the reference.
- f) An order that costs of the proceedings to date, including the costs of the motion under rule 394 of the *Federal Courts Rules*, be fixed at C\$30,000.00, all inclusive, and paid to the Plaintiff forthwith.

Issues for Determination on the Reference

23. The Plaintiff hereby elects and claims an accounting of the Defendants' profits made in respect of their infringement of the Plaintiff's copyright in the Farmans

and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and the Farmans and Talikas contained therein.

24. In this respect, the Plaintiff states the following issues for determination on the Reference:
- a) What is the total number of books and MP3 audios that were printed and produced ?
 - b) What sales did the Defendants make of the Farmans and Talikas and the MP3 audio bookmark by the reproduction and distribution of the Golden Edition and the Farmans and Talikas contained therein (the “Impugned Sales”)?
 - c) What revenues were made by the Defendants from the Impugned Sales?
 - d) What costs are properly deductible by the Defendants from the revenues made in respect of the Impugned Sales?
 - e) What award of pre-judgment and judgment interest under sections 36 and 37 of the *Federal Courts Act* are applicable?
25. The Plaintiff claims his costs of the within proceeding, such costs to be made payable to the Aga Khan Development Network (AKDN) Foundation or such other charitable organization as may be designated by him.

Discovery and Hearing

26. The Plaintiff proposes that documentary and, if necessary, oral discovery of the Defendants take place in the within proceeding followed by a hearing to take place in Toronto, Ontario.

March 29, 2011

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**TO: THE ADMINISTRATOR
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AND TO: NAGIB TAJDIN
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Plaintiff

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