

Court File No. T-514-10

FEDERAL COURT

BETWEEN:

FEDERAL COURT
 COUR FÉDÉRALE
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HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

Date _____
 Registrar _____
 Greffier _____

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

Defendants

REPLY TO STATEMENT OF DEFENCE OF ALNAZ JIWA

1. Save and except as may be hereinafter expressly admitted, His Highness Prince Karim Aga Khan ("the Plaintiff"), denies each and every allegation contained in the Statement of Defence of Mr. Alnaz Jiwa dated April 28, 2010 ("Defence").
2. The Plaintiff further repeats and relies upon the allegations set forth in the Statement of Claim.
3. The Plaintiff accepts the admissions set out in paragraph 1 of the Defence.

Defendant's Undertakings to Cease Infringing Activities

4. With respect to paragraphs 3, 4 and 77 of the Defence, the Plaintiff accepts the Defendant's undertakings, in principle, that he will cease publishing and distributing the Infringing Materials on the request of the Plaintiff. The Plaintiff,

however, has no knowledge of the Defendant's intent to cease the impugned activities. To date he has failed to do so and has continued to publish and distribute the Infringing Materials, notwithstanding the direct, personal intervention of the Plaintiff as set out below.

5. On January 16, 2010 and April 15, 2010 respectively, the Plaintiff authorized announcements by the Ismaili Leaders' International Forum to the Jamat. Both announcements clearly expressed that all publication and distribution of the Infringing Materials is a breach of the Plaintiff's copyright, and requested the cessation of all such unauthorized activities.

6. In addition, by letters dated January 24, 2010 and February 18, 2010, the Plaintiff has personally written to one of the Defendants, Mr. Nagib Tajdin, requesting that he cease publication and distribution of the Infringing Materials. It is believed that the Defendant has knowledge of this correspondence.

7. Finally by e-mail dated May 14, 2010, both Defendants, Alnaz Jiwa and Nagib Tajdin, were provided with a notarized statement signed by the Plaintiff indicating and confirming both his authorization of this lawsuit and the Plaintiff's wish that the publication and copying of the Infringing Works should cease.

No Implied or Express Consent

8. With respect to paragraphs 5, 52 and 53 of the Defence, the Plaintiff denies that he has ever provided his express or implied consent to the publication and distribution of the Infringing Materials, including on the occasion of August 15, 1992, as described by the Defendant, or at anytime thereafter.

9. With respect to paragraph 33 of the Defence, the Plaintiff admits that the Defendant has not been authorized by the Plaintiff, the Ismaili Tariqah and Education Board (ITREB) or the Ismaili Council, to publish the Farmans. The Ismailia Association referenced by the Defendant has not existed since 1986.

Proceeding Authorized

10. With respect to paragraphs 6, 54 and 58 of the Defence, the Plaintiff denies that this proceeding is unauthorized. The Plaintiff authorized the commencement of this proceeding. As the sole author of the literary works reproduced in the Infringing Materials, the Aga Khan is the only Plaintiff in the present action. All statements made in the Statement of Claim are those of the Plaintiff.

11. With respect to the last part of paragraph 5 and paragraph 59 of the Defence, the Plaintiff denies that this action was authorized on the basis of misleading information. The Plaintiff authorized the present action on the basis that the Defendants, both admittedly and knowingly, continue to reproduce, publish and distribute the Infringing Materials in a manner that infringes both the copyright and moral rights of the Plaintiff pursuant to the *Copyright Act*, R.S.C. 1985, c. C-42 ("*Copyright Act*").

The Applicability of the Ismaili Constitution and Other Religious Matters

12. With respect to paragraphs 7-24, 26, 31, 34, 35, 36, 39, 48, 49, 52, 60, 64, 72, 73 and 74 of the Defence, these paragraphs relate to the Defendant's personal interpretation of religious beliefs and activities, none of which are relevant to the legal matters that are solely and strictly at issue in this action.

13. The Plaintiff has not verified the accuracy or authenticity of the various quotations attributed to the Plaintiff, and contained in many of the above-mentioned paragraphs. In any event, none of these purported quotations are relevant to the legal matters at issue in this proceeding.

14. With respect to paragraphs 23, 24, 27, 29, 52, the second sentence of paragraph 55, 65, 68, and 69 of the Defence, the applicability of the Ismaili Constitution to the Defendant's religious and personal activities is not relevant to the legal matters at issue in this action.

The Defendant's Background and Activities

15. With respect to paragraphs 31, 33, 37, 38, 40, 41, 46 and 47 of the Defence, the Plaintiff has no knowledge of the Defendant's activities, including the motivation for distributing the Farmans or any dealings with Mr. Tajdin. In any event, the Defendant's intentions or motivations with respect to the Infringing Materials have no legal relevance.

16. With respect to paragraphs 40, 41 and 42 of the Defence, the Plaintiff has no knowledge of whether or not the Defendant profits, or has ever profited, from the publication, sale and/or distribution of the Infringing Materials. The Plaintiff otherwise denies the allegations made therein.

17. With respect to paragraph 42 of the Defence, the cost of other publications is not relevant to the legal matters at issue in this proceeding.

Allegations against the Ismaili Institutional Leaders

18. With respect to paragraph 33 of the Defence, the Plaintiff admits that the Defendant has not obtained permission from the ITREB or the Ismaili Council to publish or distribute copies of the Farmans. The ITREB and the Ismaili Council were, and are, acting on the express instructions of the Plaintiff.

19. With respect to paragraphs 44, 47, 66 and 67 of the Defence, the Plaintiff denies all allegations made against the Institutional leaders. The Plaintiff denies that there is a tradition of distributing or publishing copies of Farmans, and states that all Ismailis have access to Farmans at the Jamatkhanas. The Plaintiff has the right to review and edit his Farmans before they are published. In any event, the Defendant's belief in any allegations against the Institutional leaders, which the Plaintiff denies as unfounded, is irrelevant to the legal matters at issue in the present proceeding.

Admission of Infringing Activities

20. With respect to the last sentence of paragraph 37 of the Defence, the Plaintiff has no knowledge concerning the Defendant's admission that he "has been distributing the Farman books as they were periodically published by Tajdin since 1993". The Plaintiff has authorized requests that Mr. Tajdin cease publishing and distributing other Farman books in the past, and to the Plaintiff's knowledge Mr. Tajdin complied with these requests.

21. With respect to paragraphs 38, 39, 40 and 41 of the Defence, the Plaintiff accepts the Defendant's admissions that he distributes and sells the Infringing

Materials.

Editing is Permissible

22. With respect to paragraphs 25, 28, 44, 45, 47, 70 and 71 of the Defence, the Plaintiff reviews and edits his literary works as he sees fit and denies that he is not permitted to do so. With respect to the second sentence of paragraph 71 of the Defence, the Plaintiff denies that the only authentic versions of the Farmans are the actual words spoken by the Plaintiff without review and editing. With respect to the last sentence of paragraph 71, if the Plaintiff considers it useful and desirable, the Plaintiff does send the reviewed and edited Farmans to the ITREB to supersede the oral Farmans.

23. With respect to the last section of paragraph 57 of the Defence, the Plaintiff denies that prohibiting the Defendant's unauthorized distribution of the Infringing Materials will result in any wrongfully edited Farmans.

24. With respect to paragraph 62 of the Defence, the Plaintiff denies that the Defendant has not distorted, mutilated or otherwise modified the Infringing Materials. By reproducing, publishing and distributing the Infringing Materials, the Defendant has deprived the Plaintiff of the opportunity to edit his literary works.

Prior Complaints

25. With respect to paragraphs 43 and 63 of the Defence, the Plaintiff denies that he has not issued and/or authorized prior complaints against the Defendants' publication and distribution of the Infringing Materials. The Plaintiff issued and/or

authorized complaints against the publication and distribution of the Infringing Materials and other Farman books before the announcement made at the Jamatkhanas on January 16, 2010. The Plaintiff sent two letters to the co-Defendant and the Plaintiff's brother sent a further letter to the co-Defendant objecting to the publication and distribution of the Infringing Materials.

26. With respect to the last sentence of paragraph 54, the first sentence of paragraph 55 and paragraph 63 of the Defence, the Plaintiff has no knowledge of whether or not the Farmans have been accurately transcribed as the Plaintiff has not yet had the opportunity to verify the accuracy of the Infringing Materials. In any event, the Plaintiff does not authorize the transcription of his works without having the opportunity for further editing and review.

27. The Infringing Materials represent, and have been admitted by the Defendants to represent, a substantial copy of the Plaintiff's original literary works. Whether or not the Infringing Materials have been accurately transcribed, and whether or not there have ever been prior complaints concerning the accuracy of the transcribing is entirely irrelevant to the legal matters at issue in this proceeding.

Prior Publications

28. With respect to paragraph 56 of the Defence, the Plaintiff admits that the Farmans of the 48th Imam were published by the Ismailia Associations of several countries. This allegation, however, has no relevance to the legal matters at issue in the present proceeding, which relates solely to the literary works of the Plaintiff, the 49th Imam.

Access to Farmans

29. With respect to the first sentence of paragraph 50 of the Defence, the Plaintiff denies that the distribution of Farmans in a manner that infringes his copyright is encouraged by the Plaintiff. With respect to the second sentence of paragraph 50, the Plaintiff admits that Farmans are "available" for the Jamats. The permissible availability of Farmans is governed by an approved process of dissemination. Providing access to Farmans is distinguished from the unauthorized and wrongful distribution of copies.

30. With respect to paragraph 51 of the Defence, the Plaintiff admits that he consents to Ismailis having access to the Farmans. The permissible access to Farmans is distinguished from the unauthorized and wrongful distribution of copies.

31. With respect to the first section of paragraph 57 of the Defence, the Plaintiff denies that the effect of prohibiting the Defendants' distribution of the Infringing Materials will deny the Ismaili Jamats from having "access" to the Imam's Farmans. The permissible access to Farmans is distinguished from the unauthorized and wrongful distribution of copies.

32. With respect to paragraph 74 of the Defence, the Plaintiff denies that Farmans have not been "available" to the Jamats in recent years.

No Limitations Defence

33. With respect to paragraph 61 of the Defence, the Plaintiff denies that any limitations period in the *Copyright Act* is applicable to this proceeding. This

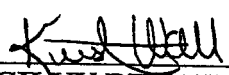
allegation is wrong in law. The Defendant, by his own admission, only began distributing the Infringing Materials in December of 2009. In any event, the continued wrongful distribution of copies, whenever such distribution began, is a continuing actionable breach of the *Copyright Act*.

34. The Defendant's involvement in any previous attempts to distribute and publish other infringing materials is unknown to the Plaintiff and irrelevant to the present proceeding.

January 16, 2010 Announcement to the Jamat

35. With respect to paragraphs 75 and 76, the Plaintiff denies the Defendant's characterization and interpretation of the January 16, 2010 announcement made by the Institutional leaders regarding the publication of the Infringing Materials. The Plaintiff authorized all statements made in the January 16, 2010 announcement. As the copyright holder, the Plaintiff has established a procedure by which the ITREB is the sole entity authorized to receive requests for publication of the Plaintiff's Farmans and other works. The Plaintiff thus receives requests for publication from the ITREB and if approved by the Plaintiff, the ITREB is the sole entity authorized to publish and distribute the Plaintiff's Farmans and other works. If ITREB has not printed or published the Plaintiff's Farmans and other works, it is because the Plaintiff has not thought it desirable to do so.

Dated at Toronto, in the Province of Ontario, this 25th day of May, 2010.



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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

**REPLY TO STATEMENT OF DEFENCE OF
ALNAZ JIWA**

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