

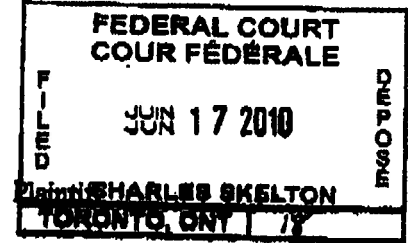
Court File No. T-514-10

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

Defendants

AMENDED REPLY TO STATEMENT OF DEFENCE OF NAGIB TAJDIN

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. Nagib Tajdin dated April 25, 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.

The Applicability of the Ismaili Constitution and Other Religious Matters

4. With respect to paragraphs 3, 6, 7, the last sentence of paragraph 11, the last sentence of paragraph 17, the first part of paragraph 20, the first sentence of paragraph 21, paragraphs 23, 24, the first sentence of paragraph 25, paragraphs 26,

36, 60, 65, 66 and 67 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.

5. With respect to paragraph 16 and the first sentence of paragraph 42 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.

6. With respect to the first sentence of paragraph 58 of the Defence, the Conciliation and Arbitration Board for the Ismaili Community is not relevant to the legal matters at issue in this action.

Proceeding Authorized

7. With respect to paragraphs 4, 5, 8, 53, 56, the second sentence of paragraph 58 and paragraphs 62 and 63 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. The Plaintiff denies that the Statement of Claim contains any "misperception, inaccuracies and fabrications".

8. 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.

9. With respect to the above-mentioned paragraphs, the Plaintiff denies that his signature has been forged in any correspondence sent to the Defendant and further denies that the Statement of Claim is based on any kind of forged document.

The Defendant's Activities

10. With respect to paragraph 8, the last sentence of paragraph 9, paragraph 12, the first sentence of paragraph 27, paragraphs 30, 31, 32, 33 and 34 of the Defence, the Plaintiff has no knowledge of the motivation for the Defendant's activities, including the publication and distribution of the Infringing Materials. In any event, the Defendant's intentions or motivations with respect to the Infringing Materials have no legal relevance.

11. With respect to the first sentence of paragraph 30, paragraphs 32 and 34 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. In any event, the Plaintiff has never authorized any individual or ITREB, the designated entity, to sell his works, including the Infringing Materials, without first establishing the basic terms and conditions by which they would be distributed. The Plaintiff otherwise denies the allegations made therein.

12. With respect to paragraph 35 of the Defence, the Plaintiff denies that the Infringing Materials are not sold on a website. The Plaintiff has no other knowledge of the Defendant's methods for distributing and selling the Infringing Materials. Whether or not the Infringing Materials are only distributed to Ismailis is not relevant to the legal matters at issue in the present proceeding.

13. With respect to paragraphs 37 and 38 of the Defence, the Plaintiff admits that he received correspondence from the Defendant dated January 4, 2010, which included a copy of the Infringing Materials. The Plaintiff responded to this correspondence by letter dated January 24, 2010 whereby he advised the Defendant that the publication and distribution of the Infringing Materials was not authorized and contrary to the wishes of the Plaintiff. Further, this letter contained a request that the Defendant cease publishing and distributing the Infringing Materials immediately.

Service of the Statement of Claim on the Defendant

14. With respect to paragraph 9 of the Defence, the Plaintiff denies that the Defendant was not served with the Statement of Claim. Shortly after issuance of the Statement of Claim it was e-mailed to the Defendant, Nagib Tajdin, at both of the Defendant's e-mail addresses. Several attempts were made to serve the Defendant with the Statement of Claim in both Canada and Nairobi in accordance with the *Federal Courts Rules*, SOR/98-106 ("*Federal Courts Rules*"). Multiple copies of the Statement of Claim were sent to the address provided by the Defendant in his Statement of Defence, with requests for the Defendant to confirm service.

15. In any event, the Plaintiff accepts that by delivering a Statement of Defence, the Defendant has provided proof that he was served with the Statement of Claim dated April 6, 2010. Moreover, and for further certainty, the Defendant was personally served with a copy of the Statement of Claim on May 1, 2010 in Nairobi, Kenya through the office of the President of the Ismaili National Council for Kenya in accordance with the *Federal Courts Rules*.

No Implied or Express Consent

16. With respect to paragraphs 10, 11, the first sentence of paragraph 12, the first sentence of paragraph 13, paragraphs 14, 19, 20, 27, and the last sentence of paragraph 46 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, or any other Farman books, including on the occasion of August 15, 1992, as described by the Defendant, or at anytime thereafter. Neither ITREB nor any other person or entity, other than the Plaintiff, can give consent to the publication or distribution of the Infringing Materials, or any other Farman books.

17. On August 15, 1992, the Plaintiff had sight of the books in question, but had no knowledge of the contents or whether the books had been considered for distribution by ITREB, with the consent of the Plaintiff, and therefore could not have consented to any prior or future publication. This is because the Plaintiff did not actually retain the books, which were carried away by either the Defendants or their agents, after the meeting.

Prior Complaints

18. With respect to the second sentence of paragraph 13, the first sentence of paragraph 19, the last part of paragraph 20 and the first sentence of paragraph 29 of the Defence, the Plaintiff denies that he has not issued and/or authorized prior complaints against the Defendant's publication and distribution of the Infringing Materials and other Farman books.

19. Prior to 2009, the Plaintiff had authorized requests that the Defendant cease

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publishing and distributing other Farman books, and to the Plaintiff's knowledge, the Defendant complied with these requests.

20. With respect to the second sentence of paragraph 22, the first sentence of paragraph 27, and paragraph 28 of the Defence, the Plaintiff has no knowledge of whether or not the Farman books 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.

21. 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.

No Limitations Defence

22. With respect to paragraph 15 of the Defence, the Plaintiff denies that any limitations period in the *Copyright Act*, R.S.C. 1985, c. C-42 ("*Copyright Act*") is applicable to this proceeding. This allegation is wrong in law.

23. The Plaintiff has no knowledge concerning the Defendant's admission that "he has actively distributed Farman books since 1992 (to date)". The Plaintiff had authorized previous requests that the Defendant cease publishing and distributing other Farman books in the past, and to the Plaintiff's knowledge, the Defendant complied with these requests. In any event, the continued wrongful distribution of

copies, whenever such distribution began, is a continuing actionable breach of the *Copyright Act*.

Access to Farmans

24. With respect to paragraphs 17 and 19 of the Defence, the Plaintiff denies that the distribution, reproduction or publication of Farmans in a manner that infringes the author's copyright has ever been authorized by the Plaintiff.
25. With respect to paragraph 18 of the Defence, the Plaintiff denies that Farmans are routinely copied in a manner that infringes the author's copyright. The Plaintiff has no knowledge of the specific "other materials of religious nature" to which the Defendant refers. In any event, only the Infringing Materials, as defined in the Statement of Claim are relevant to the issues in the present proceeding.
26. With respect to the second sentence of paragraph 21 of the Defence, the Plaintiff denies that no access to Farmans is provided at the Jamatkhana. Arrangements are also made to provide isolated Jamats, who experience difficulties attending Jamatkhana, with access to religious education, including Farmans.
27. With respect to paragraph 24 and 25 of the Defence, the Plaintiff admits that he expects that all Ismailis have access to Farmans. All Ismailis have access to Farmans at the Jamatkhana. The 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. The unauthorized publication or distribution of the Plaintiff's Farmans is a breach of the Plaintiff's copyright. Farmans are definitive only when authored, published and distributed by

the Plaintiff

Admission of Infringing Activities

28. With respect to paragraph 12, the first sentence of paragraph 22 and paragraph 44 of the Defence, the Plaintiff has no knowledge concerning when or how the Defendant "commenced gathering Farmans", but accepts the Defendant's admission that he publishes and distributes the Infringing Materials.

29. The Defendant states on numerous occasions throughout his Statement of Defence that he copies, publishes and/or distributes the Infringing Materials. The Plaintiff accepts each of these statements as an admission of infringement by the Defendant.

Editing is Permissible

30. With respect to the second sentence of paragraph 25 and the last sentence of paragraph 27 of the Defence, the Plaintiff reviews and, if necessary, edits his literary works as he sees fit and denies that he is not permitted to do so.

Defendant's Undertaking to Cease Infringing Activities

31. With respect to paragraph 26, the last sentence of paragraph 54 and paragraphs 55, 59 and 66 of the Defence, the Plaintiff accepts the Defendant's undertaking, 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.

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

33. In addition, as described above, by letters dated January 24, 2010 and February 18, 2010, the Plaintiff has personally written to the Defendant requesting that he cease publication and distribution of the Infringing Materials. The Defendant has been advised of this information by the Plaintiff's brother and aides, all with the authority of the Plaintiff.

Moral Rights Infringed

34. With respect to paragraphs 28 and 29 of the Defence, the Plaintiff denies that the Defendant has not breached the Plaintiff's moral rights in his literary works. By publishing and distributing the Infringing Materials, the Defendant has deprived the Plaintiff of the opportunity to review and/or edit his works.

Letters from the Plaintiff to the Defendant

35. With respect to paragraphs 39 of the Defence, the Plaintiff admits that he sent a letter to the Defendant dated January 24, 2010. The Plaintiff admits that he authorized this letter to be forwarded to the Defendant's attention via Ms. Michelle

Parkes, personal secretary for the Plaintiff.

36. With respect to paragraph 40 of the Defence, the Plaintiff has no knowledge of whether or not the Defendant immediately ceased distribution of the Infringing Materials. In any event, the Defendant was, and is presently, publishing and distributing the Infringing Materials.
37. With respect to the last sentence of paragraph 40, the first sentence of paragraph 54 and paragraph 64 of the Defence, the Plaintiff denies that any of the Defendant's attempts to communicate with him directly have been "thwarted". The Plaintiff is, and has been, willing to communicate directly with the Defendant by letter, but did not believe that it would be appropriate to meet with the Defendants in person. The Plaintiff has had two letters rejected which could have settled the matter between himself and the Defendants and therefore the Plaintiff does not believe that there is any reason to meet. The Plaintiff further denies that the Defendant has any basis in law, or otherwise, to require a personal meeting with the Plaintiff as a pre-condition to ceasing his infringing activities.
38. With respect to paragraphs 41, 42 and the last sentence of paragraph 58 of the Defence, the Plaintiff denies the Defendant's characterization of his letter dated January 24, 2010. The Plaintiff's letter addressed all relevant issues raised by the Defendant by requesting that the Defendant cease publishing and distributing the Infringing Materials. This letter does not contain inaccurate information.
39. With respect to paragraphs 43, 44, 45, 57 and 63 of the Defence, the Plaintiff denies that the signature on the letter dated January 24, 2010 belongs to anyone

other than the Plaintiff. The Plaintiff has no knowledge of the Defendant's motivations or attempts to have the authenticity of his signature reviewed by forensic experts. The Plaintiff denies the conclusions of any expert findings that the signatures in his correspondence to the Defendant are not his own.

40. With respect to paragraphs 48 and 49 of the Defence, the Plaintiff admits that he sent a second letter to the Defendant dated February 18, 2010. The Plaintiff admits that he authorized this letter to be forwarded to the Defendant's attention by e-mail from Ms. Anne-Valerie Moreaux, personal secretary for the Plaintiff. The Plaintiff denies the Defendant's characterization of the letter dated February 18, 2010 and confirms that the signature on this letter is his own.

41. The Plaintiff denies any and all allegations concerning the validity of the Plaintiff's signature and further asserts that such allegations are entirely irrelevant to the legal matters at issue in this proceeding.

No Campaign Against the Defendant

42. With respect to paragraphs 46, 60 and 61 of the Defence, the Plaintiff denies that any kind of "slander campaign" has been launched against the Defendant by the Plaintiff and/or his aides. The Plaintiff authorized the announcement made by the Ismaili Leaders' International Forum on April 15, 2010 and admits that this announcement references the Defendant's allegations of forgery. This announcement was read out only in those Jamatkhans which the Plaintiff considered were directly interested in this matter.

43. The Plaintiff denies that this announcement in any way slanders the

Defendant. If anything, the Defendant's allegations of forgery may be considered slander and defamation against the Plaintiff and his aides. The Plaintiff reserves the right to pursue any and all legal remedies concerning these allegations made by the Defendant. In any event, as presently pled, the Defendant's allegations of slander are irrelevant to the legal matters at issue in this proceeding.

44. With respect to paragraph 47 of the Defence, the Plaintiff admits that, in an attempt to avoid initiating legal proceedings, he authorized his senior aide, Shafik Sachedina to speak to the Defendant on his behalf on February 17, 2010. The Plaintiff, however, denies the Defendant's characterization of this conversation, including by any subsequent e-mail, and asserts that such unfounded allegations are entirely irrelevant to the legal matters at issue in the present case.

45. With respect to paragraphs 50, 51 and 52 of the Defense, and contrary to the statement in Paragraph 51 of the Defense, the Plaintiff denies that the Defendant was not contacted by the Plaintiff and his brother. In an attempt to avoid taking legal action, the Plaintiff contacted the Defendant to request that he cease publishing and distributing the infringing Materials. The Plaintiff's brother, Prince Amyn, confirmed that this was the Plaintiff's wish. As discussed above, the Plaintiff contacted the Defendant directly by letters dated January 24 and February 18, 2010 respectively. The Plaintiff's brother also responded to a letter from the Defendant by e-mail dated April 2, 2010. The Plaintiff denies the remainder of the allegations made by the Defendant in these paragraphs and further states that they are irrelevant to the legal matters at issue in the present proceeding.

46. With respect to paragraph 68 of the Defence, the Defendant's request for a

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"full inquiry" on the alleged forgery of the Plaintiff's signature has no basis in law and is of no relevance to the legal matters at issue in the present proceeding.

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

Amended on June 17th, 2010.


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Court No. T-514-10

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

**DUPLICATE
DUPLICATA

JUN 17 2010

TORONTO**

**AMENDED REPLY TO STATEMENT OF
DEFENCE OF NAGIB TAJDIN**

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