

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

CROSS-MOTION RECORD OF THE DEFENDANT NAGIB TAJDIN
(returnable April 24, 2012 before Prothonotary Milczynski)

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Plaintiff

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Defendants

NOTICE OF MOTION

TAKE NOTICE THAT the defendant Nagib Tajdin (hereinafter "Tajdin") will make a cross-motion on Tuesday, April 24, 2012, at 2:00 p.m. on April 24, 2012, before Prothonotary Milczynski at the Federal Court, 180 Queen Street West, Toronto, Ontario. The estimated duration of the motion is 2 hours.

THE CROSS-MOTION IS FOR:

1. An Order for Stay of the Reference pending decision of the Appeal on Justice Russell's Order dated October 26th, 2011 and on Docket number A-421-11.
2. An Order of Confidentiality and an order that an independent agent be appointed to investigate the printing of the books and to report to the named plaintiff's counsel, the court and confirm how many books were published by this defendant and how much was the cost of the publication, and that costs such an agent be paid by Tajdin;
3. An Order to restrict the remaining reference to strictly financial analysis to the specific exclusion of the names of people who bought the books.

4. Such further and other relief as this defendant may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The plaintiff obtained a judgment declaring that the defendants infringed the copyright of the plaintiff and chose to seek profits rather than statutory damages against the defendants;
2. The plaintiff served its Statement of Issues on March 29, 2011;
3. Although this defendant was seeking to deduct expenses from revenues, he will forgo seeking deductions from revenues all deductions for shipping; free books given away (other than 193 given to ITREB); etc., and only seek to deduct the actual cost of the printing and the manufacturing of the MP3, and will pay whatever profits are found to have been notionally earned by this defendant;
4. This defendant has filed an affidavit of documents and a supplementary affidavit of documents and has been discovered by the plaintiff;
5. There are a few refusals outstanding from the discoveries, all related to the disclosure of names.
6. Justice Harrington has not ordered any books to be returned and as such names of people who have bought the books are irrelevant.
7. The plaintiff's counsel has been harassing this defendant and been engaged in a fishing expedition and continues to seek information that is not relevant. This is opposed on the

grounds that the Judgment did not order the return of the books already sold by this defendant and that the price of the sale of the books is not in issue in light of the fact that there is ample evidence that the book was sold for \$50 or even less and that the plaintiff in his Claim has admitted that the book was being sold by the defendants for \$50..


8. Counsel has refused to give assurance that he will keep confidential the information disclosed to him during Discovery and the information has been offered conditional to confidentiality.
9. Further, not only Counsel has refused to keep the information confidential but has on the contrary suggested that he will disclose it equally to people hostile to the defendants, as he has been doing so ever since the litigation commenced.
10. That Counsel disclosed to a website which has directly been used as a vehicle to condemn the defendants the contested discovery transcript and therefore can not be trusted anymore as far as confidentiality is concerned.
11. This defendant in his statement of defense and in his evidence filed in this matter to date has maintained that the whole project has been a deficit project.
12. The plaintiff's counsel has not given any evidence to contradict the "admitted" sale price of the books; And because the project was undertaken as a religious project and not a commercial project, no commercial accounting has been kept.
13. That before the lawsuit started Sachedina had vouch to destroy Tajdin and is now directing Counsel to harass the Defendant and try by a fishing expedition to get to all off his contacts, be it business, family, friends or community.

14. That Counsel and people other than H.H. the Aga Khan, who direct Counsel, have consistently been using mass emails and the press to vilify the Defendant, spread rumors, made reckless declaration leading to documented assault and hate towards the defendants and their supporters. Indeed Counsel has leaked information to the public in complete disregard for the confidentiality and the deemed undertaking.
15. That since the issue of calculating profit is a simple one: Profit equal revenue minus Expenses, a third party acceptable to the Court or to the parties could expedite the calculation and bring the Reference to completion in few weeks, rendering not all other Motions, Appeals, Discoveries and even the pending Appeal on A-411 while keeping a balance between privacy issues and public interest.
16. That this defendant will now forgo deducting all expenses in the publishing of the book except for a specified list of 3 items: direct printing costs for the book and MP3; and the delivery of 193 books to ITREB (institution of the Imam), and as such all other items of costs and expenses are no longer relevant;
17. Rules 151, 152 and 153 of the *Federal Court Rules*; and
18. Such further grounds that this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Nagib Tajdin sworn 22 April 2012;
2. Motion Records filed by the plaintiff and the co-defendant for these motions;
3. Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Toronto, in the Province of Ontario, this April 22, 2012



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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
others persons or entities unknown to the plaintiff who are reproducing,
publishing, promoting and/or authorizing the reproduction and promotion
of the Infringing Materials.**

Defendants

NOTICE OF CROSS-MOTION

**(of the defendant Nagib Tajdin
returnable April 24, 2012)**

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FEDERAL COURT

BETWEEN:

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Defendants**AFFIDAVIT OF NAGIB TAJDIN**

I, Nagib Tajdin, of the City of Nairobi, Kenya, **MAKE OATH AND SAY AS FOLLOW:**

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 both in response to the plaintiff's Motion for Refusal and 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. I have therefore requested a Stay of these proceedings.
4. However, if the Hon court decided that the matter is to proceed, I request Confidentiality in order to terminate the reference within a couple of weeks, therefore saving judicial resources, costs and this will be to the satisfaction of the named Plaintiff whose interest I always have in my heart.

RELATION BETWEEN THE NAMED PLAINTIFF AND THE DEFENDANT:

5. The concept of voluntary service is a pillar of the Ismaili faith. I have endeavored to serve the plaintiff (the "Imam") all my life. My relation with my Imam is not of money but one of spiritual salvation.

6. The litigation has left my relation with my Imam untouched and unchanged. Even after the lawsuit was launched under his name, His Highness has personally invited my wife and me in a restricted event which he attended last July in Nairobi with the Prime Minister of Kenya.
7. I have founded and maintained the oldest and largest web site (www.ismaili.net) dedicated to the Imam and the Ismaili faith. I have not charged any membership fees nor accepted any financial help nor sold advertisement on the site. I have supported the web site for 16 years personally out of my own means. It is in this spirit as well that I have published these farman books, the latest being the Golden Edition, the book for which I have been held to be infringing the copyright of the Imam.
8. All of the projects, the web site as well as the farman books, were all undertaken without any expectation of profit or of deducting losses (incurred over the years) from my income taxes as deductible expenses, and as such I never kept records of income or expenses, and most of the transactions and expenses were incurred by transactions in cash and all sales never had receipts issued or receipts kept for expenses, etc.
9. In fact, none of the projects have produced any profits for me and I have, on the contrary, lost a lot of money in these projects.
10. I have met often with Shafik Sachedina ("Sachedina") and Mohamed Manji, ("Manji") both of whom are giving instructions to Mr. Gray. Sachedina had filed an affidavit in the motions for summary judgment and is well aware of the publications.
11. Sachedina has on a number of occasions acknowledged to me that the projects of publishing these farman books have a lost of money. He knows that I cashed in my life insurance to help pay for these projects. I have met him at many exotic places, such as Syria, Ivory Coast, Pakistan, Tajikistan, in addition to main stream places such as London, etc.
12. In 1998, Sachedina when he visited our family in Montreal, told me (in Aziz Bhaloo's presence (who had also given an affidavit in the motions for summary judgment) that the

Imam had sent me and my family special blessings for my and my family's services, and at that time too, he had confirmed that he knew that I had invested a lot of money and was distributing the books at an enormous financial loss.

THE ACCOUNTING ISSUE

13. To deal with the accounting issue, the only real issue is the number of Golden Edition printed by me. Once that number is established, the sale price would need to be determined which would establish the gross revenues earned by me, and the remaining issue would be deducting expenses from the revenue to produce the value of profit or loss.
14. Many costs were incurred in the creation of the Golden Edition, such as countless meetings, typing, proofreading, hardware, software, printer cartridges, travel and accommodation, taxis, meals, numerous digital recorders, etc. But collecting 15 years' worth of receipts is a gargantuan task and many of the receipts were not even kept by me as I had no desire to deduct my losses or expenses as tax deductible expenses.
15. In reviewing the affidavit of Mr. Jiwa ("Jiwa"), I note that he is prepared to pay rather than face harassment. I have also decided to do same. I will not deduct from the gross revenues any deductions for my office supplies, travel costs, accommodation costs, shipping costs , etc., as in seeking the costs to be deducted, Mr. Gray seems bent on my having to disclose all of my and my wife's intimate financial disclosure such as bank accounts, etc., and the names and details of the persons who have bought from me.
16. Therefore, I will also not seek to deduct from the gross revenues all the books given away by me for free as Mr. Gray is insisting that he wants the names of each person and he wants to contact each one to verify the information. Not only is this not relevant, but it is highly prejudicial to the privacy of these individuals.

17. The following is my estimates for the actual accounting (with estimates of the expenses incurred) and the accounting after I forgo all of the other expenses:

	Revenue	Actual	Accounting
Number published Golden Edition Books 5,500 at \$50		275,000	275,000
Free Books - (1,441 books x \$50 = \$72,050) To be decided by Referee		-72,050	
Free to ITREB Kenya 193 books		-9,650	-9,650
Total max real sales		193,300	265,350

EXPENSES		
Paid MP3 prod.	\$18,148	\$18,148
Paid Books Basic Printing cost paid to Printer	\$181,209	\$181,209
Preparation of book hosting working session, transport, photocopying, renting meeting rooms 3 to 5 sessions per year for 15 years \$45,000 To be decided by Referee	\$45,000	
Various computer/audio-visual hardware/software. Recorder, convertes Router/cable/printer purchased for the book estimated Total \$15,000 To be decided by Referee	\$15,000	
Secondary Shipping (such as Kenya to Uganda) \$4,000 To be decided by Referee	\$4,000	
Net Paid Courier and post for Golden Edition shipping (ground and UPS courier as well as Canada Post) To be decided by Referee (have invoiced for \$14,655)	\$24,656	
Paid NRB Air Cargo (\$4,000) plus delivery in Nairobi(\$1,000) 2x500 kg = 1,000 kg.	\$5,000	
Paid NRB Custom clearance	\$950	
International phone calls and communications Total \$9,000	\$9,000	
Travel costs since 1992 around the world for Tajdin only (helpers paid about \$81,300 for their own trips.	\$50,450	
TOTAL EXPENSES	\$353,413	\$199,357
Loss	(\$160,113)	\$65,993

18. Accordingly, although I have lost about \$160,000.00, I am willing to pay about \$66,000.00 as profits deemed to be made by me as I will not seek to deduct the remaining expenses.

19. The only items I will seek to deduct from the gross revenues are the following:
 - a. 193 books given to ITREB for free;
 - b. cost of the amount paid for printing the books; and
 - c. cost of manufacturing the MP3 given with each book.

20. I reiterate that I have given away free books and incurred costs and suffered losses but to avoid the harassment and the loss of time and incredible expenses incurred in this litigation which is paid for from our community resources and to disclose names and details of individuals I will waive the expenses and simply pay as profits to bring this matter to a close.

21. I will mention below as to why I need to protect the names of individuals and the name of the printing company, but for the moment I will address the gross revenues from the sales of the Golden Edition.

SALES PRICE

22. Sachedina retained an investigator to investigate my activities well before the litigation had commenced or even threatened. His investigator discovered that I had quoted him a price of \$400 for 8 books of Golden Edition including the cost of shipping, essentially charging them \$50 per book. Attached hereto as Exhibit "A" is a copy of email from Sachedina dated January 29, 2010, well before the litigation was commenced.

23. This email was produced by Mr. Gray in Sachedina's affidavit filed by him during the motions for judgement, and that email was redacted by Mr. Gray. Yet during my examinations, Mr. Gray seemed to blame me for the redaction. (Transcript question: Q163)

24. Emails sent to ilm-net members by Jiwa (as noted on his affidavit) shows that the selling price of the books was \$50.00.

25. Jiwa also swore in his affidavit that he bought it from someone for \$50 and he sold the books

for \$50. This demonstrates further that the sale of this book was not driven or motivated by profit. not only for me but for all who were involved in the endeavor to distribute a religious book and that the books were sold for \$50.

26. Therefore, it is not surprising that Mr. Gray in the Statement of Claim at paragraph 25 has said concerning the selling of the books as follows:

"The Defendants promote the Book for sale on their respective website for \$50.00 CAD a volume, to be purchased in multiples of four volumes. The MP3 is offered as a free gift with each book "

27. Despite having said that we were selling the Golden Edition for \$50, Mr. Gray has been insisting that he wants proof from us of same, meaning he wants us to produce all emails and other documents to prove that we are selling the Golden Edition for \$50. Mr. Gray is also insisting that names of all people who has bought the books also be disclosed to him despite their privacy issues on the grounds that he wants to verify that we were selling the books for \$50.
28. Clearly after having stated in his claim and submitting an email from Sachedina confirming that I offered to sell 8 books for \$400. Yet Mr. Gray continues to harass us to determine the selling price, and any questions relating to this issue is not relevant.
29. In spite of all his worldwide connections Sachedina has not been able in 2 years since this litigation started, to find even one person that would have paid more then \$50 for the book including the electronic MP3 bookmark player, as no evidence has been given by Mr. Gray.
30. It is important to state that Mr. Gray has not even asserted in his Statement of issues that we were selling the book for more than \$50 nor has he given any evidence of same, and to continue to ask us questions to determine the selling price is sheer harassment for improper purpose of discovering the names of all persons who has bought the books as this is what is sought by Sachedina and Manji.
31. Clearly then asking us to produce names of people and copies of all emails to verify the sale price is not relevant and nonetheless he continues to seek this information, and persistently

continues asking same questions, both of me and of Jiwa. There is no need to invade privacy of the third party individuals because the Justice Harrington's Judgment did not require the purchasers or those who received free books to return the books.

32. Therefore the only *real and material issue* is how many copies I have printed. I ordered 5,000 copies from the printer, and the printer printed 5,500 copies. I explained during my discoveries that the printer explained that due the manner in which presses run, they cannot make exact copies because it depends on the overall number of pages when printing, and as such they printed 5,500 copies of the books, and they delivered the books in batches. I have paid to the printer \$181,209.00 for 5,500 books, and I paid \$18,148 for the MP3 for a total of \$199,357 for the printing costs, or \$32.25 per book is what the raw costs for production was.
33. I had in one email noted that a second edition was ordered. Mr. Gray has made a serious attempt to try to state that I am hiding the issue of how many books were printed. However, I explained in my discoveries that the printer had sent me books in separate batches and that separate printing orders were not prepared for me. Jiwa has produced an email sent well before the litigation - confirming that a second batch was coming and not a second printing was ordered.

EXPENSES

34. Printing & MP3: The statement of invoices and payment with date and amount has been submitted pending disposal of this cross-motion for confidentiality and the Appeal on the Docket. A letter from the printing press confirming that there were only 5,500 copies printed along with the cost of printing has been provided to Mr. Gray except that the name of the printer has been redacted. Attached hereto as Exhibit "B" is a copy of the letter from the printer dated July 26, 2011, and the details of the payments and the invoice for the MP3.
35. I am prepared to give the original documents of the printer (and of the MP3) to an independent person to investigate the number of total copies printed and the cost paid to them as this is the only information that needs to be verified.

36. I will explain later why it is important not to release the name of the printer to Mr. Gray.
37. 193 Books to ITREB: Attached hereto is a letter confirming that I have delivered to ITREB Kentya 193 books. Attached hereto as Exhibit "C" is a copy of the acknowledgment by ITREB in receiving these books.
38. Accordingly, the only issue remaining to verify is the number of books (and MP3) printed and the cost for same to determine the issues.

COUNSEL REFUSES TO KEEP CONFIDENTIAL

39. I have proposed several times to Mr. Gray to give him the information relating to the printing if he agreed to keep it confidential. Each time he has refused.
40. During 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 name.

a. Question 150 to 155:

"You can have someone that you trust going to the printing press. And I will give you a letter allowing the printing press to give you those information, which are accounting and finance information, how much money they received; how many books they have printed; what are the dates they printed; when they printed, how many did they bind the first time and release the first time; how many did they bind the second time, release the second time, because you know the way it's done. It's all printed in one go. But then you know this binding books, packing, all these things are done by batches. So first batch, second batch. They will tell you all of those things. I will write to them that they can disclose the information on how many; when it was printed; when it was sent; how much money they have received for issuance of the shipment; which are the dates. So that takes care of all the expenses that I have incurred for the printing. There is no better way of doing that."

41. Again in Q172 I reiterated that:

"We'll find a way to verify for you from a person which you trust to go there, an accountant or a lawyer, to the printing press, verify in their books, I will give you the authorization, how many books were printed."

42. Again and again I reiterated that I am prepared to give the information to an independent person to verify the number of books printed in total and the total charged and paid by me to the printer.

Q My answer to Question 301:

A. Once we agree on this confidentiality issue we can give you that. We don't want this name to go to Mr. Sachedina, to Mr. Mohammed Manji. I'm not going to agree to it. I already have an appeal and a stay, which I have asked."

43. I continued to maintain my position (Qs: 243, 244, 289, 290, 367, etc.), but Mr. Gray said as follows:

Q: 367: I'm just going to keep asking the question until you answer it.

44. Mr Gray constantly asked the same questions on the same documents trying to show there were ten times more redacted documents than the document redacted of names or address. However, I have not refused to give all information, I have simply refused to give Mr. Gray the names of persons who bought the books, the name of the printer and the name of the MP3 manufacturer and shipping company.

ABUSE OF PROCESS

45. Mr. Gray continued asking me where my money came from to pay the printing press, how much loan I took, or what I did with the money I received.
46. Mr. Gray also asked me which companies I have dealt with, about my client that I dealt with **in my previous Internet Business of 7 years ago**, what is my relation to Sterling Properties (I have no relation with them except that Internet Global which was the company I was working as manager before moving to Kenya 6 years ago. I had been asked to register a

domain name for Sterling Properties and one of the employees did that name registration as he did for so many other clients at that time in the scope of our work as an Internet provider. My name is on the registration of their domain on behalf of Internet Global Inc which is the company name shown on their record.)

47. In any event, such questioning is completely improper and uncalled for.
48. In para 54 of his Written Submission, Mr Gray proposes that we may have the potential to fabricate information and he need to cross reference third parties to prevent fabrication.
49. The lines of questioning by Mr. Gray obviously informed me that he is interested in a lot more than accounting for profits.

CONFIDENTIALITY NEEDED:

50. On the issue of confidentiality, Mr Gray has previously represented that he would not share the information he receives with anyone except with the Imam. However later, in writing to the Referee, Mr Gray confirmed that he would share information with many others.
51. During our cross-examinations, Mr. Gray told us that he takes instructions from Sachedina and Manji, and recently on 31st August 2011, Mr Gray sent an email about this lawsuit to Mr Abdulla Dharamsey, who is a "Founder and Honorary Chair of the Global Ismaili Muslim eForum, claiming over 32,500 worldwide email recipients" (who also widely circulates to his recipients emails inciting hatred against us) and in the said 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...").
52. This does clearly shows that Mr Gray can seek and is seeking instructions from Sachedina in regards to this lawsuit. He has said this to me and Jiwa just after he finished Jiwa's cross-examinations for the summary motion judgment.
53. For instance, the Statement of Claim was circulated by mass email and to the news outlets within a few days of issuing and well before it was even served on us as per the Rules.

54. Mr. Gray regularly gives information to websites such as Vancouverite.com and lawsuit2010.com which are committed to condemn us and to incite hatred against us in the community. Mr. Gray has also given the transcripts of the discovery to these websites which were used by the websites to create troubles for us in the community, despite Prothonotary Tabib saying "The parties do not agree the transcript should be filed.". The Transcripts of the discovery has not been subject of any motion nor filed on the record. Attached hereto as Exhibit "D" is a copy of one the transcript posted by vancouverite.com.
55. In May 2010, Mr Gray sent us an "Affirmation" purportedly signed by is His Highness The Aga Khan against us with an email threatening that he has been told by the Aga Khan to circulate it widely if we do not settle the action, and in fact within a few days circulated it to Vancouverite.com for posting on its website.
56. However, Mr. Gray himself later told me and Jiwa in August of 2010 that circulating of the Affirmation was his own idea, and that he was not told so by the Aga Khan to do so despite his earlier written comments to us in his email.
57. Mr. Grays comments to the websites and the manner in which the information is used create a lot of hatred towards us in the community.
58. These mass emailing of the Claim, and releasing the discovery transcript, giving the affirmation, etc., are all made with intent to create problems for us, to defame us and to incite our community against us. Mr. Gray had asked Prothonotary Tabib, after he had released the transcripts to vancouverite a week or so earlier, that he wanted to file the transcripts on the record for the motions for summary judgment, but was not permitted to do. Attached hereto as Exhibit "E" is a copy of the CMC Minutes dated November 18, 2010.
59. These activities encourage hate propaganda against us, calls for excommunication against us and physical threats which were also posted on web sites. Attached hereto as Exhibit "F" are a few copies of such hate postings against us.
60. On 12th of October 2010, at the hearing in Ottawa in front of Justice Boivin, one Mehboob

Kamadia who regularly posts derogatory material against the defendant on lawsuit2010.com, came all the way from Toronto and attended the hearing with his 3 friends and accomplices. After the hearing, I saw him having a conversation with Mr. Gray as I left the courtroom, and a short time later he and his accomplices surrounded me outside the courtroom and Mr Kamadia started insulting to me, and assaulted me in public.

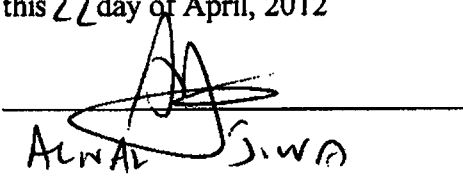
61. Mr Jiwa, my co-defendant, has also given evidence that he too was assaulted in a prayer hall.
62. It is not surprising to me that before the litigation commenced, Sachedina had threatened me that he would destroy and ruin me. His threats have become reality. Attached hereto as Exhibit "G" is a copy of my letter sent to Sachedina after the said telephone conversation with him.
63. There are a few names that were identified during the litigation, such as of Karim Alibhai, and Meheub Chatur. Mr Alibhai received many threatening calls after he submitted his Affidavit in support of the Defendants, and Mr Chatur whose name came into the limelight for paying the Costs ordered by the Court, without even knowing the Defendants, has also been threatened. Furthermore, defamatory and highly inflammatory writings and threats against Mr. Chatur have appeared on websites such as lawsuit2010.com and circulated by emails.
64. The lawsuit2010.com, which I believe is established by or on behalf of Kamadia, lists names of all those of my friends and family members who support me, and the comments are highly inflammatory and aimed at provoking hate towards my family and friends, thereby triggering threats of harm, petitions for our excommunication from the community and death threats. Attached hereto as Exhibit "H" is a copy of two such postings.
65. The printer could be also subject to threats and even reprisals by Kamadia whom I have known since we were children and is a very vindictive person. For instance, after the litigation commenced, Kamadia has written many emails condemning Jiwa and me and has been inciting people against us. He sent mass emails to other Muslim community with intent that the larger community also go after me, and a person traveled from Congo to Kenya to meet me and to give me threats in person.

66. There is no other ulterior motive by me not to disclose the documents other than that once the names of individuals who bought the books, or those who helped me in this projects becomes public, they will also be subject of ridicule by these websites, will be subject to threats, and perhaps even assaults.
67. Justice Harrington had ordered costs of \$30,000 (on consent), and was paid (before the appeal was even finalized or heard) with a stipulation that if we won the appeal this amount not to be returned to us but be used for any purpose the Imam determines (such as paying to the Aga Khan Foundation). A cheque payable to the Aga Khan was forwarded to him and to date it has not been cashed. The Federal Court of Appeal dismissed our appeal on January 16, 2012, with costs, and to date Mr. Gray has not even submitted his Bill of Costs.
68. Knowing our Imam, knowing that this project was not for profit, knowing we did not make a profit, knowing that the cheque of \$30,000 is not cashed, and knowing that we published this book only to help the congregation become better acquainted with their faith, I believe that the Imam does not want any costs, or profit or damages from us.
69. It is only Manji and/or Sachedina who wants to identify who are the people who are our supporters so that can be marginalized by them in our community, as both of them, and in particular Sachedina is in charge of the institutions of the community with wide reaching powers.
70. Mr. Gray indicates that I post articles to my web sites. I would have preferred no to, but however all the mass emails and web sites dedicated against us necessitates me to place the record straight on the web sites and to neutralize the negative and misleading comments posted against us. My posting is done without identifying any individuals and has stemmed the tide against us and has given a balanced and accurate reporting of what is happening.
71. 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 unless they are consulted by a neutral third party.

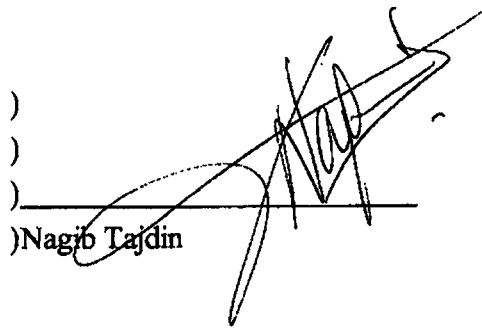
- 72. The reference is strictly to resolve the issues of monetary nature (profits, revenue, and expense) not to extract information about defendant's clients or suppliers or business partner or social friends or others who they have come in contact with. No breach of privacy should be allowed. No additional documents containing any names should be divulged nor any information which can be verified through neutral qualified or independent person.

SWORN at the City of Toronto
in the Province of Ontario
this 22 day of April, 2012



ALWAN SWA

)
)
)
) Nagib Tajdin



This is exhibit "A" attached to the

Affidavit of Nagib Tajdin

Sworn on April 22nd, 2012

A handwritten signature in black ink, appearing to be 'Nagib Tajdin', written in a cursive style.

From: "MONGIN, Sandrine" <sandrine.mongin@aiglemont.org>
Date: Fri, 29 Jan 2010 13:51:26 +0100
To: <shafik.sachedina@sussexhealthcare.co.uk>
Subject: Golden Edition - 8 copies

----- Forwarded message -----

From: Kalam-e Imam-e Zaman Golden Edition <goldenkiz@live.com>
Date: Thu, Jan 28, 2010 at 4:13 PM
Subject: RE: Golden Edition - 8 copies
Very few left, please contact Amin Tajdin in Montreal for pickup of your books. 514-583-5029.
Cost will be \$400.
<http://www.ismaili.net/heritage/node/25335>

_____ NOD32 4978 (20100326) Information _____

This message was checked by NOD32 antivirus system.
<http://www.eset.com>

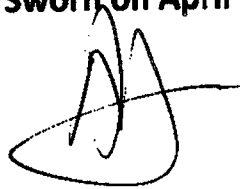
_____ NOD32 4978 (20100326) Information _____

This message was checked by NOD32 antivirus system.
<http://www.eset.com>

This is exhibit "B" attached to the

Affidavit of Nagib Tajdin

Sworn on April 22nd, 2012

A handwritten signature in black ink, consisting of a large, stylized letter 'N' with a horizontal line extending to the right, and a circular flourish at the bottom.

July 26th, 2011.

To Nagib Tajdin.
P.O. Box 38236-00623 Parklands
Nairobi, Kenya.

Ref : Your Publication of the Golden Edition.

Dear Nagib,

This is to confirm that to date we have printed a total of 5,500 copies of the Golden Edition, a book of about 1,500 pages. All of the copies have been delivered to you and we confirm that you have paid in full to the amount of \$181,209.58 as mentioned in our statement number 03417 dated September 30th and here-attached.

All the amounts due have now been paid by you and there is no other printing order pending after these initial 5,500 copies.

The amount mentioned above covers the cost of the books and does not include the Electric Bookmark which you have provided to us to be inserted with each box.

With best regards,

00024

Commodity & Description of Name	QTY(set)	Price including shipping charges(USD)	Total Amount(USD)
Sound bookmark Size: Around 5.6*15cm with logo printing as your artwork Duration time: 14 audio ,total 395 seconds with speaker & battery Can the bookmark's module be around 0.9 cm - The text on the Bookmark's stick should be the following in large Reddish-Brown letters: "GOLDEN EDITION" - Bookmark total length: 8 inches Color: golden. Print: Reddish- brown. - Make sure the material is durable and audio quality sounds good The mechanism should be: Press button: hear one audio clip of 30 seconds. Press button again: stop the audio clip Press the button again: hear another audio clip of 20-30 seconds Press button again: stop the audio clip etc.. - Full order must be delivered on November 10 Packing: 1pc/opp, 20pcs/inner box, 400pcs/CTN, CTN size: 34*26*38.5cm, G. W. 12.5KG/CTN	1000	2.98	2,980.00
Extra spares	60	Free	0.00
Extra cost for setting up charges(USD)=			268.00
Total Amount(USD)=			3,248.00

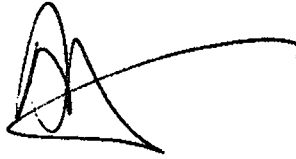
Commodity & Description of Name	QTY(see)	Price including shipping charges(USD)	Total Amount(USD)
<p>Sound bookmark Size: Around 5.5*15cm with logo printing as your artwork. Duration time: 14 audio, total 395 seconds with speaker & battery Can the bookmark's module be around 0.9 cm - The text on the Bookmark's stick should be the following in large Reddish-Brown letters: "GOLDEN EDITION" - Bookmark total length: 6 inches Color: golden. Print: Reddish-brown. - Make sure the material is durable and audio quality sounds good The mechanism should be: Press button: hear one audio clip of 30 seconds. Press button again: stop the audio clip Press the button again: hear another audio clip of 20-30 seconds Press button again: stop the audio clip etc.. - Full order must be delivered on November 10</p>	5000	2.98	14,900.00
Total Amount(USD)=			14,900.00

Remark:

This is exhibit "C" attached to the

Affidavit of Nagib Tajdin

Sworn on April 22nd, 2012

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

The Shia Imami Ismaili
Tariqah and Religious Education Board for Kenya

0002E

November 17, 2010

Mr. Nagib Tajdin
P.O. Box 38236-00623
Nairobi

Dear Mr. Tajdin,

We confirm receipt of 193 books sent to ITREB Kenya for onward submission to IIS, UK.

With kind regards and Ya Ali Madad.



Shemina Adatia
Chairman- ITREB Kenya

00027



Nagib Tajdin
P.O. Box 38236-00623
Parklands
Nairobi, Kenya
Tel: 254-723-693-844

Delivery Note

20101120

1. The Aga Khan
Islamic Small Tariqah and Religious Education Board (ITREB)
Parklands
PARKLANDS, NAIROBI KENYA

DESCRIPTION	Total Box	Total Quantity	Unit Price	Amount
lo-wrapped sealed new Golden Edition Islam-e Imam-e-Zaman in box including MP3 bookmark	48 boxes+1 loose sealed unit	193	No Charge	No Charge
			Sous Total/Sub-Total	\$0.00
base note: Delivery date: 20 November 2010				
			Total	\$0.00

Gift - No Payment required

Received in good order by:

Name:

Signature:

<p><i>Betty</i></p> <p>The Aga Khan Islamic Small Tariqah and Religious Education Board For Kenya</p> <p>P.O. BOX 40091-00100 Nairobi, Kenya Tel: 254-723-693-844 Fax: 2027203</p> <p>Mobile: 0729 786006 / 0733 786006</p>

Nagib Tajdin
P.O. Box 38236 – 00623
Nairobi, Kenya

Nairobi, November 20, 2010

Mrs Shemina Adatia,
Chairman – ITREB Kenya
Nairobi, Kenya

REF: REGARDING MY DELIVERY NOTE # 20101020

Dear Mrs Adatia,

As acknowledged by your office, I have given today 193 of the Golden Edition of Kalam-e Imam-e-Zaman to ITREB with the above delivery note.

I refer to your letter signed and dated 17 November 2010 which has been handed to me today at your offices.

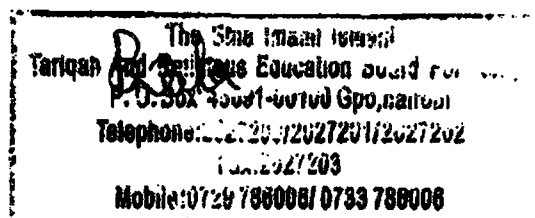
Please note that contrary to your letter, these books have not been given to ITREB for onward submission to IIS or any other institutions.

Mowlana Hazar Imam has accepted these books in our meeting on 15th of October 2010 specifically for ITREB and not for IIS.

Please do not send the books to any other institution. I trust you will follow the guidance of the Imam and keep these books for ITREB.

With kind regards and Ya Ali Madad,


Nagib Tajdin



This is exhibit "D" attached to the

Affidavit of Nagib Tajdin

Sworn on April 22nd, 2012

A handwritten signature in black ink, consisting of a large, stylized initial 'N' followed by a horizontal line extending to the right.

27/10 16:18 FAX 416 216 3830 UGILLY KENAUJI LUK

150%

SNAGIT

Basic capture profiles (5)

- Window
- Full screen
- Scrolling window (Web ...)
- Web page (keep links)

I want to...

- Open Snagit
- Open Snagit Editor
- Open Catalog Browser
- Configure Snagit OneClick

0004/001

Court File No. T-514-10

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

NAGIB TAJDIN, ALNAZJIWA, JOHN DOE and DOE CO.
 Plaintiff vs. the Defendant who are reproducing.

32000



General



Permissions



Security

Discovery of His Highness Prince Karim Aga Khan

Location: C:\Program Files\Microsoft Office\Office12\Word\...

Name: Prince Karim Aga Khan

Permissions:

Metadata:

4/1/10 10:10 PAA 410 410 3330

UNILYI REVOLUT 100

DISCOVERY OF HIS HIGHNESS PRINCE KARIM AGA KHAN Court File No. T-514-10

00030

Page 1

Toronto, Ontario

— Upon commencing on Friday, October 15, 2010
at 10:35 a.m.

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(3)

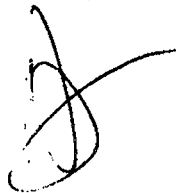
(1)
(2)
(3)
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This is exhibit "E" attached to the

Affidavit of Nagib Tajdin

Sworn on April 22nd, 2012

A handwritten signature in black ink, appearing to be 'Nagib Tajdin', written in a cursive style.

FEDERAL COURT

MINUTES OF HEARING

Page: 1 of 4

Ottawa, Ontario this 18th day of November 2010

Present Mireille Tabib, Prothonotary

File Number: T-514-10

Between: HIS HIGHNESS PRINCE KARIM AGA KHAN v. NAGIB TAJDIN ET AL

Counsel: Brian Gray and Allyson Whyte Nowak
(416) 216-1905 for the Plaintiff

Nagib Tajdin
011 254 723 693 844 for the Defendant on his own behalf

Alnaz Jiwa
(905) 640-3831 for the Defendant on his own behalf
ext. 204

Court Registrar Dickenson, A.

Reporter N/A

Senior Usher N/A

Courtroom in Chambers

MINUTES OF HEARING

T-514-10

Page 2 of 4

TIME Before the Court, Case Management Case Conference

9:05 The CMC begins

The Court indicates the purpose of the CMC is to determine whether issues on the Motions for Summary Judgment may be narrowed, as a result of the examination for discovery of the Plaintiff.

The Court addresses the aspect of the Defendants' Motions relating to the identity of the Plaintiff.

Mr. Jiwa responds, followed by Mr. Tajdin.

Mr. Gray comments at the Court's request.

The Court and the parties exchange on the letters the Defendants allege are forgeries, and the Affirmation on behalf of the Plaintiff.

The court reviews the relief sought in the Statement of Claim.

Mr. Gray suggests submitting the transcript of the examination of the Plaintiff, to be put before the

MINUTES OF HEARING

T-514-10

Page 3 of 4

Judge presiding over the Motions for Summary Judgment.

The Court clarifies concessions by both Defendants with respect to authorization of the Plaintiff.

Mr. Gray reiterates his request to submit the transcript.

The Court and the parties exchange on possible options.

The parties do not agree the transcript should be filed.

The parties are urged to communicate in writing to attempt to narrow issues.

Mr. Gray requests leave to file a revised Motion Record containing material relevant to all Summary Judgment Motions, and referencing cross-examinations.

The Court and the parties discuss the record as it presently stands.

Upon discussions, it is agreed that the Plaintiff may serve and file Amended Written Representations on all Motions by November 22, 2010, and the Defendants may serve

MINUTES OF HEARING

T-514-10

Page 4 of 4

and file Amended Written Representations
on all Motions by November 26, 2010.

The parties are to serve on each other
copies highlighting the amendments.

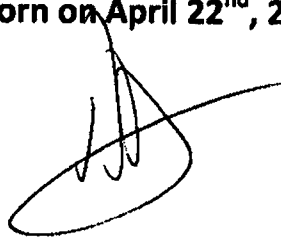
10:05 The CMC is concluded.

A. Dickenson
November 18, 2010

This is exhibit "F" attached to the

Affidavit of Nagib Tajdin


Sworn on April 22nd, 2012

A handwritten signature in black ink, consisting of several vertical strokes and a large loop at the bottom, enclosed within a horizontal oval shape.

 **Soulmate**

April 18th, 2010 at 6:01 pm

Hey Patricia... You babble a lot and your postings are full of hot air. It seems that you have lost your mind. Did you buy your brains at your neighborhood dollar store at the price of 2 for 99c? Your postings are totally void of rationality and are filled with personal attacks against Mr. Salim Jiwa. I think you need psychological evaluation as I sense paranoia in your postings. My advice to you is that you should mind your own business and stop defending that which is not defensible. Stop being a mouthpiece and/or alias for Mr. Nagib Tajdin and Alnaz Jiwa. Will you follow my advice? I doubt it!

 **Mohammad Amin Karimi**

April 19th, 2010 at 8:43 am

Hello everyone....

I am so very shocked of hearing such a news from my cousin that people can do such an action which is beyond our thoughts... We even can't imagine about it, but people like NT & AJ and I personally don't care about others..... I am sorry for both of you (NT&AJ)....

 **Meraj**

April 20th, 2010 at 5:38 am

It is really shame if Nagib Tajdin and Alnaz Jiwa calling them Ismailis, if they would know what does being an Ismaili means they wouldn't run behind money to sell Hazir Imam's most rare and important workout, finally I am saying that what will court do? they should be judged by Ismailis! If I ever meet them will shoot them out with bullet!

 **Meraj**

April 20th, 2010 at 5:42 am

Nagib Tajdin and Alnaz Jiwa if you are reading my statement go to hell and burn in the fire of Imam's anger! feel shame on you both if you are calling your selves Ismailis! do you know what is the meaning of being a real ismaili?

[General Feedback] Maheub Chatur/ Payment

Date: Fri, 12 Aug 2011 05:54:23 -0400
From: shafiqvisram@yahoo.com[+]
To: heritage@ismaili.net[+]
Reply-To: shafiqvisram@yahoo.com[+]
Size: 1 KB

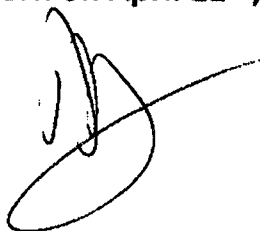
Source | Show Headers

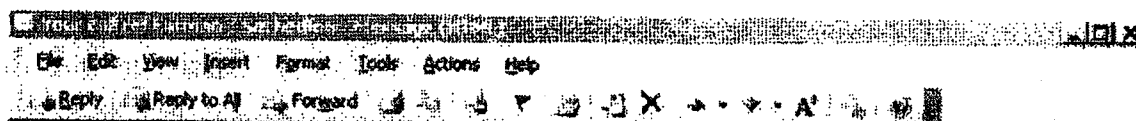
Shafiq Visram sent a message using the contact form at <http://ismaili.net/heritage/contact>.

Can someone from jamet please infrom Mr maheub Chatur to go and jump into the Big Horse shaped falls in Canada I would go and throw him in but it's Ramadan and I'm Fasting.

Report as inappropriate: <http://ismaili.net/heritage/mollom/contact/110812ea0311e8b6ab>

**This is exhibit "G" attached to the
Affidavit of Nagib Tajdin
Sworn on April 22nd, 2012**

A handwritten signature in black ink, consisting of a large, stylized initial 'N' followed by a horizontal line extending to the right and a large, sweeping loop underneath.



You forwarded this message on 2010-02-17 5:34 PM.

From: Nagib Tajdin (nagib@pobale.net)

Sent: Wed 2010-02-17 4:06 PM

To: 'SACHEDINA, Shafiq'; 'shafiq.sachedina@sussexhealthcare.co.uk'

Cc:

Bcc:

Subject: Your call ref Farmaci / Sachedina

Dear Shafiq,

I want to acknowledge your phone call this morning of 17th February 2010 at 12:02 Nairobi time.

You called me about the letter that you have sent me through Michelle Parkes, purporting to be from Mowlana Hazar Imam in regards to the Farman book and for which we know now, beyond reasonable doubt, that the signature on that letter is forged, and is not the signature of our beloved Mowlana Hazar Imam.

Why you have colluded with Michelle Parkes to send me a letter with a forged signature still need clarification.

As an Ismaili who has done Bayah to the Imam-of-the Time, it is irrelevant to me that you have threatened me today for 16 minutes and 43 seconds to spoil my name in the Jamat and other unspecific threats which I have listened very patiently.

My unconditional allegiance is to Mowlana Hazar Imam and my only concern is the happiness of the Imam and His Jamat. And The Imam knows that for many decades, I have tried my utmost, despite of all the hurdles, to make Him happy.

What you have done is not acceptable to any Ismaili. You should not send to the Mund of the Imam a letter with a forged signature. You should understand that if and when it will be discovered, there will be consequences. I consider this forgery to be a very serious matter (as I am sure that our Imam will also consider it a very serious matter).

As you know there are three steps in the Forensic process.

- 1) A series of known authentic signatures should be compared to the signature in question. We have several world renowned experts willing to testify that they have analyzed the signature you have sent me and they have found that it is indeed from a different person, not from Mowlana Hazar Imam.
- 2) A profile of the person who has done the forgery is then drawn from the shape, speed, slant and other elements present in the forged signature. There are accepted principles which are applied. We already have the profile of that person.
- 3) The handwritings of few people who meet that profile is then sent for forensic and the experts have to find if any and which one is that of the forger. Remember that the experts can confirm who signed the forgery as soon as they have handwritten materials to compare the forged signature. In this case you know it will be very easy task

The laws of France with respect to such forgeries are very serious. Please do not embarrass yourself by pushing me to report the matter. You are an intelligent person. I am suggesting that instead you immediately tell Mowlana Hazar Imam that you have made this mistake, show Him the sealed letter I wrote to him and which you have hijacked. Show Him the answer you have sent me with the forged signature, seek His forgiveness and I will close the matter.

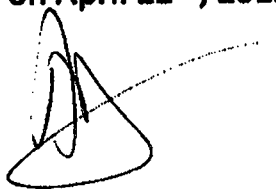
There is nothing wrong in recognizing one's mistake but there is everything wrong in trying to hide it. The Imam is merciful, you have served Him many years, He will forgive you, trust me.

Trying to spoil my name as you have threatened will not help you cover this shameless forgery of Hazar Imam's signature. You should know that I have more proofs on hand than what I need.

This is exhibit "H" attached to the

Affidavit of Nagib Tajdin

Sworn on April 22nd, 2012

A handwritten signature in black ink, appearing to be 'Nagib Tajdin', written over a faint dotted line. The signature is stylized with a large initial 'N' and a long horizontal stroke extending to the right.

Your Email **00038**

Keep me logged in

Excommunicate

Excommunicate Nagib Tajdin & Alnaz Jiwa is on Facebook.

To connect with Excommunicate Nagib Tajdin & Alnaz Jiwa, sign up for Facebook.

[Sign Up](#) [Log In](#)



Excommunicate Nagib Tajdin & Alnaz Jiwa

1 like

Cause

These are the 2 men who published Farman books against the Imams will and made our Imam come to court!

[About](#)

[Photos](#)

Your Email 00040

Keep me logged in



Excommunicate Nagib Taj... About

About

These are the 2 men who published Farman books against the Imams will and made our Imam come to court!

Mission

We will not rest until justice has been served and these two demons are permanently excommunicated from the holy Ismaili tariqah.

Description

Excommunicate Nagib Tajdin & Alnaz Jiwa

This page was created to get 'likes' to get these two morons expelled out of the Ismaili Muslim Faith.

For over 20 years these 2 villains have been publishing books and running websites against Mawlana Hazar Imam's will, they have smuggled recording devices in their underwear when they go to deedar, they have ignored all guidance given by Mawla to stop these activities and they have dragged our Mawla to court and ridiculed him.

It's about time that the jamat steps in and defends our Imams rights; he has dedicated his life to our spiritual and worldly upliftment and has done nothing but help us and guide us.

According to article 14 of our Ismaili constitution, disciplinary actions for such profoundly horrible acts include expulsion from our faith. The more people join, the greater the impact will be to the conciliation and arbitration board will be. We don't want to ever see such scummy and toxic people in our jamatkhanas. They smell worse than a gutter on a hot day.

We will not rest until justice has been served and these two 'murids' are permanently excommunicated from the holy Ismaili tariqah.

Basic Info

Joined 11/14/2011
Facebook

Contact Info

Website <http://www.lawsuit2010.c>

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

REPLY TO PLAINTIFF'S STATEMENT OF ISSUES

(of the defendant Nagib Tajdin)

In response to the Plaintiff's Statement of Issues dated March 29, 2011, the Defendant, Nagib Tajdin ("Tajdin") states as follows:

1. This copyright lawsuit is about a book entitled "Farmans 1957-2009 - Golden Edition Kalam-E Imam-E-Zaman" (the "Golden Edition") and an mp3 audio bookmark (the "MP3"), collectively (the "Infringing Materials").
2. The Golden Edition is a book of Biblical proportions containing most of the general pronouncements made by the Aga Khan as Imam of the Ismailis from 1957 to 2009. These pronouncements of divine nature called "Farmans" are made in various countries across the world and are binding to all Ismailis unless stated otherwise within the Farman.
3. The MP3 is an audio bookmark preloaded with 14 short audio extracts of recording of Farmans read in the Aga Khan's own voice. Each extract is about 30 seconds in length.
4. In his Reasons for Judgment dated January 7, 2011, and amended 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 held that the Defendants had infringed the

Plaintiff's copyright.

5. By Notices of Appeal dated February 7, 2011, the Defendants appealed to the Federal Court of Appeal the Judgment, and on June 16, 2011, the Defendants perfected their appeal. The Plaintiff's counsel served and filed their responding Memorandum of Fact and Law on the Defendants on July 14, 2011.
6. The named Plaintiff, His Highness Prince Karim Aga Khan ("Imam"), is the spiritual leader of the Shia Imami Ismaili Muslims. There are approximately 15 million Ismailis worldwide, located in over 25 countries across the world. The Imam succeeded his grandfather, Sir Sultan Mahomed Shah Aga Khan, to become the 49th hereditary Imam on July 11, 1957.
7. The Aga Khan is not just a religious leader in the ordinary sense, but is the bearer of the "Noor", a word which means "The Light", and the Noor has been handed down in direct descent from the Prophet. As Imam of the Ismailis, the Aga Khan has an absolute authority in interpreting the faith of the Ismailis to practice according to the Time and Age, and such guidance is given by the Imam through His Farmans.
8. 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. The Aga Khan, when responding to questions posed by the *Sunday Times* reporter on December 12, 1965, stated:

Q: Are you, for all believing Ismailis, a symbol of their Faith?

A: "Yes. Since My grand-father, the last Aga Khan, died, I have been the bearer of the "NOOR" a word which means "The Light". The NOOR has been handed down in direct descent from the Prophet. But My work and responsibilities overflow into the practical side of life."

Q: You have been compared to the Pope. Is your word, like his infallible?

A: "The Imam's word on the Faith is taken as an absolute rule. Every Ismaili is expected to accept it. The Community always follows very closely the personal way of thinking of the Imam. It's one of the particularities of Ismailis. 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 – The Community of Ismaili Muslims. "One has to make a very careful distinction here between worldly and religious matters. An Ismaili may ask My advice on a worldly problem, then not accept it. But if he were to ignore the Imam's decision on matters of Faith, the Community pressures on him would be very strong."

9. All Ismailis give their oath of allegiance to the Aga Khan, and the Aga Khan in return promises to guide and protect His followers, and therefore, all Ismailis have an inherent right to the Farmans of the Aga Khan.
10. Tajdin is a loyal follower of the Imam and has sworn allegiance and obedience to Him. All of Tajdin's Farman book publication projects were done out of his love and affection for the Imam and His followers. The Imam encourages all within his community to give generous voluntary services in various capacities to the Ismailis and to the local communities. Accordingly, the publication of the Farman books were undertaken by Tajdin in the spirit of service in the same manner as Christians would spread the Good Word without any ulterior motive of making profit. Publishing these books has been a labour of love for Tajdin.
11. The Golden Edition is the last of a series of 10 books of Farmans of the Aga Khan published by Tajdin. The Golden Edition (published in late December 2009) is a consolidation of the previous Farman books published by Tajdin since 1992, along with new Farmans made by the Imam. These publications were undertaken after the Imam expressly gave His consent and authorization in Montreal, on August 15, 1992.
12. The Golden Edition contains 1,513 pages and weight about 2.5 kg. It has a comprehensive index of more than 200 pages. It is a hard binding with separations within and comes in a decorative box with the MP3. It is presented respectably as a

precious book of divine nature made as a service to the community without regards to costs, expenses, work, difficulty or time investment. The module in the shape of a bookmark is an invention of the publisher and contains 3 batteries instead of one for long life duration. Tajdin has never tried to cut the cost and make profit. On the contrary all effort have been made to present the highest quality of book sold at the lowest possible subsidised price. A similar book on the market, *without* the MP3 and the decorative box, is being sold for about \$120.00 to \$200.00 per book, in a for-profit market.

13. Tajdin ordered 5,000 books, but the printer published 5,500 copies of the Golden Edition on December 13, 2009 (the birthday of the Imam), and copies were either sold or distributed free to Ismailis and delivered to various countries to Ismailis (followers of the Imam) only. By November 2010, Tajdin was left with 193 copies, which were delivered as a gift to ITREB of Kenya (religious organization of the Ismailis) for their use. This is the same organization to which Justice Harrington later ordered all remaining Golden Edition books to be delivered.
14. There is no profit made by Tajdin in this matter. The evidence shows that for each of the publications, about 33% of the Farman books were given away free. Tajdin is a loyal follower of the Aga Khan, and he and his family are "Major Donors" to all the Aga Khan's Institutions. In fact, in January of 2010, before this lawsuit started, Tajdin offered to donate one book free for each of the 5,000 to 7,000 existing Jamatkhana in the world, a gift based on a number given by Shafik Sachedina and estimated to be of \$300,000 in value.
15. Tajdin is in the process of seeking witnesses from across the world from who are willing to sign affidavits to confirm that they received Golden Edition free of all charges, including shipping costs.
16. On March 29, 2011, plaintiff's counsel submitted a Requisition to the Court reference

to conduct "discovery" for accounting for damages as ordered by Justice Harrington, including discovering the identities of the persons to whom the books were sold, and for all of the Farman books sold or distributed as from 1992 (see paragraph 24(a)), when Justice Harrington's order extends to damages or profit for the publication of the Golden Edition only (published in December 2009).

17. The previous publications are not subject of the lawsuit, and yet the plaintiff's counsel seems to be seeking damages for all Farman books published by Tajdin between 1992 and December 2009, even though the pleadings specifically identified only the Golden Edition (published in December 2009) as the infringing material
18. No harm has been done to the Aga Khan by this publication. On the contrary, Tajdin has obeyed Him. In His Farmans, the Aga Khan encourages His followers to share and disseminate His Word within the community as has traditionally been done for centuries. The previous Imam has even said that by distributing His Farman, Ismailis are helping in keeping them alive. According to Ismaili Constitution and belief, Farmans of previous Imams are valid up to the time the Farman has been specifically revoked by a subsequent Imam, not by any other person. This Farman is still valid for the community.
19. Tajdin's work in collecting, transcribing, publishing, and even distributing the various Farman books published over the past two decades, has been undertaken in the nature of service and donation to his community not only without expectation of profits, but at enormous personal costs, both time and monetary, incurred by Tajdin. Since this undertaking is a voluntary religious undertaking to the community without any expectation of profits and not undertaken as a profit making project nor as a business, Tajdin did not keep records of same.
20. The Golden Edition, which is a labour of love, is a compilation of most of the Farmans collected during Nagib's trips to over 52 destinations. [See Schedule A]

21. All of the Farmans, which have been attended in person during these trips have descriptions either at the top of the page or within the text testifying information such as the mood of the community, the number of people who attended; etc For example, on page 914 of the Golden Edition, we read as heading to a Farman made in Dushanbe in 1995:

"The morning was cloudy with mild temperature. The Jamat started arriving just after 6:00 A.M. The gathering of around 8,000 Ismailis was expected. The soccer field itself was wet with morning dew and the people kept standing. Plastic bags were provided and the Jamat was encouraged to sit down. *Madhos* (religious poems) with musical instruments were sung, some mentioned "Sultan Mohamed Shah." Sermons were made with mentions of Aby Ali Ibn Sina, Nasir-Khusraw, al-Kirmani etc. Explanation of Salwat and how to recite Salwat should be recited with loud voice

Mowlana Hazar Imam entered the Stadium at exactly 9:00 A.M. in full regalia: white *Sherwani*, ceremonial *Khitat* and *astrakhan* cap. He walked slowly, on the carpet for about 5 minutes, turned right before climbing the stage to sit on the chair. Behind the chair was the Imam Crest. Seated behind and to the left of Hazar Imam were six *Khalifahs* of Tajikistan Jamats. *Sura Noor* was first recited in Arabic then the translation was recited by a girl in Farsi. She bowed from afar. Then two men recited a *Madho*."

22. As a devoted Ismaili, Tajdin has never had any reservation whatsoever in practicing the long standing tradition of voluntary service in time or resources to help the community and please the Imam. Beside giving free copies to fellow believers, Tajdin absorbed most of the shipping expenses, which were substantial in view of the weight of the book and the remoteness of the many countries, where the Ismailis were sent the Farmans books. Rarely a token shipping charge was asked. Only about 300 books had been paid though Paypal had shipping charges to them as mostly they were from Ismailis in affluent countries that could afford to pay the cost.
23. Five thousand (5,000) copies of the Golden Edition were ordered by Tajdin in

December of 2009, but 5,500 were delivered and paid by him. In relation to the 15 million Ismailis worldwide, this was a very small publication, and most of the books were either distributed free or sold at \$50, and within six months only 193 copies were remaining with Tajdin in Nairobi which were delivered and given free to the ITREB Nairobi, (an organizations belonging to the Ismaili Community), before the hearing of the motions for summary judgment in December 2010.

24. All documents have been given to Plaintiff's counsel with Tajdin's Affidavit of Documents, sworn October 2, 2010, and served on Plaintiff's counsel, Mr. Gray, on October 4, 2010. In fact, the only documents that were not produced are the expenses incurred during the past 15 years because those were not kept, as this was a deficit project of religious nature.
25. In the case at bar, Justice Harrington refused to order the return of the Golden Edition from all individuals who bought these from the Appellants despite being sought by the Plaintiff. Divulging any names or contact information of the people who now have the books would be detrimental to them, as they would also be targeted and harassed and would breach their privacy and cause irreparable harm.
26. Harassment, ostracism in the community, threats of harm, and even death threats and physical attacks against Tajdin and Jiwa are on record. Evidence was also provided that people whose name we have given up to now have been subjected to harassment and ostracized in the community, therefore, the purchasers' privacy rights must be protected.
27. The reference is strictly to resolve the issues of monetary nature (profits, interest, etc..) not to extract information about defendants or others who they have come in contact with. No breach of privacy should be allowed. And no additional documents containing any names should be divulged.
28. The Plaintiff party should not be permitted to pursue further open-ended discovery,

such as discovering the names and addresses of the purchasers. On February 8, 2011, in its motion for judgment, the Plaintiff party asked for:

"...and the Defendants are ordered to attend for discovery to answer all relevant questions relating thereto. The Plaintiff may in his sole discretion choose not to proceed with the reference for damages or profits at any time, in which case all further steps in the reference shall cease and the reference shall be discontinued with no costs of the reference to either party."

29. On March 4, 2011, Justice Harrington did not award such a discovery, and wrote that "The declaration sought is broader in scope than the injunctive relief sought".

30. With respect to paragraph 25 of the Plaintiff's Statement of Issues, attached is a copy of the cheque showing that the Defendants had complied with the costs order. [See Schedule C]. The Defendants complied with the costs order as well and on May 27, 2011, sent a cheque for 19,000, British Pounds, equalling C\$30,300, payable to the Aga Khan, but seven weeks later (to date), although a stay pending appeal was refused by the Plaintiff and a requisition is being actively pursued, the cheque still has not been cashed. The reference and discovery should not be pursued in order to get information rather than money.

31. With respect to paragraph 24 of the Plaintiff's Statement of Issues, Tajdin states as follows:

a. What is the total number of books and mp3 audios that were printed and produced?

- the total number of books ordered is 5,000; the total number of books printed and charged by the printer is 5,500.

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")?

- A spreadsheet is attached with the sales numbers and the expenses associated. The book was either sold for \$50CDN in Canada, \$50USD in the US or given away for free. There was no other price. [See Schedule B]

c. What revenues were made by the Defendants from the Impugned Sales?

- A spreadsheet is attached with the sales numbers and the expenses associated.

- Shipping Costs: Only the Paypal orders paid a subsidised rate for part of the shipping cost (average \$9/book which weighs 2.5kg and which was sometimes sent overseas where shipping can cost close to \$50 per book) None of the books ordered in person or distributed in person was charged for shipping. All other books were shipped at no cost to the purchaser according to the Fedex published rates. Receipts were not kept.

d. What costs are properly deductible by the Defendants from the revenues made in respect of the Infringed Sales?

- Total cost = Shipping costs + Printing Cost + Cost of designing and formatting + Cost of data processing and automation + Cost of transcribing, proofreading, travel for meeting, meeting arrangements over 15 years + Cost of hardware over 15 years dedicated to this project + Cost of Travels (52 trips around the world) to collect material over many years, these trips only covers material not in the other books published by Tajdin.

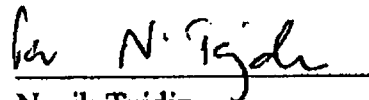
- Looking at the calibre and quantity of work done over 15 years to bring this book to light, even without any documents, a realistic estimate would puts the costs at \$500,000.

e. What award of pre-judgment and judgment interest under section 36 and 37 of the Federal Courts Act are applicable?

- This does not apply because there is no profit

32. In Reply to Paragraph 26 of the Plaintiff's Statement of Issues, Tajdin states that the documents produced show enormous costs and deficit of this project; therefore, oral discovery of the Defendants is not necessary, and the matter proceed to a hearing, if the named Plaintiff's still desires to pursue to recover non-existing profits.

July 18, 2011



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Defendant

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

WRITTEN REPRESENTATIONS

(of the defendant Nagib Tajdin)

I - NATURE OF THE MOTION

1. This is a motion for an Order (i) for Staying the Reference pending decision of the Appeal on Justice Russel's Order dated October 26th, 2011 and on Docket number A-421-11; (ii) an Order of Confidentiality and an Order that an independent agent be appointed to investigate the printing of the books and to report to the named plaintiff's counsel, the court and confirm how many books were published by this defendant and how much was the cost of the publication, costs of which to be paid by Tajdin; and (iii) an Order to restrict the remaining reference to strictly financial analysis to the specific exclusion of the names of people who bought the books.

II - FACTS

2. This court has been assigned to determine profits made by this defendant from the sale of the Golden Edition pursuant to the Order of Justice Harrington dated March 4, 2011.
3. There is an on-going Appeal on matters which are at the heart of Mr Gray's Motion. I have therefore requested a Stay of these proceedings.

Tajdin's Record, Tab 2, para. 3

4. However, if this court decides to proceed, this defendant states that to avoid delays and harassing questioning, he will now not seek to deduct costs and expenses as originally claimed but will seek to deduct only three limited items from the gross revenues as follows:

- a. 193 books given to ITREB for free;
- b. cost of the amount paid for printing the books; and
- c. cost of manufacturing the MP3 given with each book.

Tajdin's Record, Tab 2, para. 19

5. Therefore, the only real issues then outstanding will be as follows:

- a. determining the number of copies of the Golden Edition was printed;
- b. the selling price for the books;
- c. the costs of the MP3;
- d. the costs of the printing; and
- e. the cost of the 193 books given to ITREB.

6. This defendant has given a letter from the printer to Mr. Gray which indicates that the number of books printed are 5,500; that the cost of the printing paid in full for these book are \$181,209.00 for all of the 5,500 books; that the cost of manufacturing MP3 is \$18,148.

Tajdin's Record, Tab 2, Exh. 2

7. This defendant has redacted only the name and address of the printer and the manufacturer for MP3.

Tajdin's Record, Tab 2, para. 44

8. Therefore, the total direct costs that Tajdin will be deducting is \$181,209, \$18,148, and \$9,650 for 193 books given to ITREB, a total of \$209,007. The sales revenue for each book is \$50, or a total of \$275,000, for a net profit of \$65,993.

Tajdin's Record, Tab 2, para. 32

9. Although this defendant lost about \$160,000 in this project he will agree to pay as notional profits to the Aga Khan.

Tajdin's Record, Tab 2, para. 17

10. The following is the estimates for the actual accounting (with estimates of the expenses incurred) and the accounting after I forgo all of the other expenses:

Tajdin's Record, Tab 2, para. 17

	Revenue	Actual	Accounting
Number published Golden Edition Books 5,500 at \$50		275,000	275,000
Free Books - (1,441 books x \$50 = \$72,050) To be decided by Referee		-72,050	
Free to ITREB Kenya 193 books		-9,650	-9,650
Total max real sales		193300	265350

EXPENSES		
Paid MP3 prod.	\$18,148	\$18,148
Paid Books Basic Printing cost paid to Printer	\$181,209	\$181,209
Preparation of book hosting working session, transport, photocopying, renting meeting rooms 3 to 5 sessions per year for 15 years \$45,000 To be decided by Referee	\$45,000	
Various computer/audio-visual hardware/software. Recorder, convertes Router/cable/printer purchased for the book estimated Total \$15,000 To be decided by Referee	\$15,000	
Secondary Shipping (such as Kenya to Uganda) \$4,000 To be decided by Referee	\$4,000	
Net Paid Courier and post for Golden Edition shipping (ground and UPS courier as well as Canada Post) To be decided by Referee (have invoiced for \$14,655)	\$24,656	
Paid NRB Air Cargo (\$4,000) plus delivery in Nairobi(\$1,000) 2x500 kg = 1,000 kg.	\$5,000	
Paid NRB Custom clearance	\$950	
International phone calls and communications Total \$9,000	\$9,000	
Travel costs since 1992 around the world for Tajdin only (helpers paid about \$81,300 for their own trips.	\$50450	
TOTAL EXPENSES	\$353,413	\$199,357
Loss	(\$160,113)	\$65,983

SALES REVENUES

11. Sachedina retained an investigator to investigate Tajdin's activities well before the litigation had commenced or even threatened. His investigator discovered that he was quoted him a price of \$400 to purchase 8 books.

Tajdin's Record, Tab 2, para. 22, Exh. "A"

12. This email was produced by Mr. Gray in Sachedina's affidavit filed by him during the motions for judgement, and that email was redacted when served upon us, and filed in the court. Yet during Tajdin's examinations, Mr. Gray seemed to blame Tajdin for the redaction. (Transcript question: Q163)

Tajdin's Record, Tab 2, para. 23

13. Emails sent to ilm-net members by Jiwa (as noted in his affidavit) shows that the selling price of the books was \$50.00.

Tajdin's Record, Tab 2, para. 24

14. Jiwa also swore in his affidavit that he bought it from someone for \$50 and he sold the books for \$50. This demonstrates further that the sale of this book was not driven or motivated by profit. not only for Tajdin, but for all who were involved in the endeavor to distribute a religious book and that the books were sold for \$50.

Tajdin's Record, Tab 2, para. 25

15. Therefore, it is not surprising that Mr. Gray in the Statement of Claim at paragraph 25 has said concerning the selling of the books as follows:

"The Defendants promote the Book for sale on their respective website for \$50.00 CAD a volume, to be purchased in multiples of four volumes. The MP3 is offered as a free gift with each book "

Tajdin's Record, Tab 2, para. 26

16. Despite having admitted that the books were selling for \$50, Mr. Gray has been insisting that he wants proof of same, meaning he wants production of all emails and other documents to prove that the books were sold for \$50. Mr. Gray is also insisting that names of all people who has bought the books also be disclosed to him despite their privacy issues on the grounds that he wants to verify that we were selling the books for \$50, even though the Judgment does not require the return of the books sold.

Tajdin's Record, Tab 2, para. 27

17. Clearly after having stated in his claim and submitting an email from Sachedina confirming that I offered to sell 8 books for \$400, yet Mr. Gray continues to harass Tajdin to determine the selling price, and any questions relating to this issue is not relevant.

Tajdin's Record, Tab 2, para. 3

18. In spite of all his worldwide connections Sachedina has not been able in 2 years since this litigation started, to find even one person that has paid more then \$50 for the book including the electronic MP3 bookmark player, and no evidence has been given by Mr. Gray on this issue to date.

Tajdin's Record, Tab 2, para. 29

19. It is important to state that Mr. Gray has not even asserted in his Statement of issues that we were selling the book for more than \$50 nor has he given any evidence of same, and to continue to ask questions to determine the selling price is sheer harassment for improper purpose of discovering the names of all persons who has bought the books as this is what is sought by Sachedina and Manji.

Tajdin's Record, Tab 2, para. 30

20. The asking of names of people and copies of all emails to verify the sale price is not relevant and nonetheless he continues to seek this information, and persistently continues asking same questions, of the defendants. There is no need to invade privacy of the third party individuals

because the Justice Harrington's Judgment did not require the purchasers or those who received free books or who bought the books to return the books.

Tajdin's Record, Tab 2, para. 31

21. Tajdin has met often with Shafik Sachedina ("Sachedina") and Mohamed Manji, ("Manji") both of whom are giving instructions to Mr. Gray. Sachedina had filed an affidavit in the motions for summary judgment and is well aware of the publications.

Tajdin's Record, Tab 2, para. 10

22. Sachedina has on a number of occasions acknowledged to that the projects of publishing these farman books have a lost of money. He knows that Tajdin cashed in his life insurance to help pay for these projects, and Tajdin has met him at many exotic places, such as Syria, Ivory Coast, Pakistan, Tajikistan, in addition to main stream places such as London, etc. when traveling to collect the Farmans.

Tajdin's Record, Tab 2, para. 11

23. In 1998, Sachedina when he visited Tajdin's family in Montreal, he told Tajdin (in Aziz Bhaloo's presence, who had also given an affidavit in the motions for summary judgment) that the Imam had sent Tajdin and his family special blessings for their services, and at that time, too, he had confirmed that he knew that Tajdin had invested a lot of money and was distributing the books at an enormous financial loss.

Tajdin's Record, Tab 2, para. 12

24. Tajdin reiterates that he has given away free books and incurred costs and suffered losses but to avoid the harassment and the loss of time and incredible expenses incurred in this litigation which is paid for from community resources and to avoid to disclose names and details of third party individuals (to avoid them being harassed), Tajdin will waive the expenses as noted above and simply pay as profits to bring this matter to a close.

Tajdin's Record, Tab 2, paras. 14-16

25. The sales price of the Golden Edition as admitted by the Claim is \$50, making the revenues to be \$275,000 as set out in paragraph 8 above.
26. Tajdin had in one email noted that a second edition was ordered. Mr. Gray has made a serious attempt to try to state that he is hiding the issue of how many books were printed. However, Tajdin explained in his discoveries that the printer had sent books in separate batches and that separate printing, or a second printing was not ordered.
- Tajdin's Record, Tab 2, para. 33**
27. Jiwa in his materials has produced an email sent by me well before the litigation - confirming that a second batch was coming and not that a second printing was ordered.

Tajdin's Record, Tab 2, para. 33

CONFIDENTIALITY ORDER

28. Tajdin is prepared to give the original documents of the printer (and of the MP3) to an independent person to investigate the number of total copies printed and the cost paid to them as this is the only information that needs to be verified.

Tajdin's Record, Tab 2, para. 35

COUNSEL'S ACTIONS

29. Tajdin has proposed several times to Mr. Gray to give the information relating to the printing if it stays confidential. Each time he has refused. During Tajdin's Discovery dated 8 November, he proposed to give all the information if such could remain confidential. Mr Gray unequivocally refused to keep it confidential.

a. Question 150 to 155:

"You can have someone that you trust going to the printing press. And I will give you a letter allowing the printing press to give you those information, which are accounting and finance information, how much money they received; how many books they have printed; what are the dates they printed; when they printed, how many did they bind the first time and release

the first time; how many did they bind the second time, release the second time, because you know the way it's done. It's all printed in one go. But then you know this binding books, packing, all these things are done by batches. So first batch, second batch. They will tell you all of those things. I will write to them that they can disclose the information on how many, when it was printed; when it was sent; how much money they have received for issuance of the shipment; which are the dates. So that takes care of all the expenses that I have incurred for the printing. There is no better way of doing that.”

Tajdin's Record, Tab 2, paras. 39-40

30. Again in Q172:

“We'll find a way to verify for you from a person which you trust to go there, an accountant or a lawyer, to the printing press, verify in their books, I will give you the authorization, how many books were printed.”

Tajdin's Record, Tab 2, para. 41

31. Again and again he reiterated that he was prepared to give the information to an independent person to verify the number of books printed in total and the total charged and paid to the printer.

Tajdin's Record, Tab 2, para. 42

32. Tajdin's answer to Question 301:

A. Once we agree on this confidentiality issue we can give you that. We don't want this name to go to Mr. Sachedina, to Mr. Mohammed Manji. I'm not going to agree to it. I already have an appeal and a stay, which I have asked.”

Tajdin's Record, Tab 2, para. 42

33. He continued to maintain his position (Qs: 243, 244, 289, 290, 367, etc.), but Mr. Gray said as follows:

Q: 367: I'm just going to keep asking the question until you answer it.

Tajdin's Record, Tab 2, para. 43

34. Mr Gray constantly asked the same questions on the same documents trying to show there were ten times more redacted documents than the document redacted of names or address. However, Tajdin has not refused to give all information, he has simply refused to give Mr. Gray the names of persons who bought the books, the name of the printer and the name of the MP3 manufacturer and name of the shipping company, and names of people who received the books.

Tajdin's Record, Tab 2, para. 44

35. However, as Tajdin now will not seek to deduct the expenses of free books given away to individuals, or the shipping costs, or the travel costs, or any such deductions, these questions are not relevant, and in any event, names of individuals were not relevant to begin with.

ABUSE OF PROCESS

36. Mr. Gray on discoveries continued asking Tajdin where his money came from, how much loan he took, or what he did with the money he received.

Tajdin's Record, Tab 2, para. 45

37. Mr. Gray also asked him companies he has dealt with, who was his client in his previous Internet Business of 7 years ago, what his relation was to Sterling Properties without any evidence given to Tajdin as what is the relevance of asking such questions and in any event is not relevant to the issues at hand as none of the transactions with that company had to do anything with the accounting at hand.

Tajdin's Record, Tab 2, para. 46

38. In any event, such questioning is completely improper and uncalled for.

Tajdin's Record, Tab 2, para. 47

39. In para 54 of his Written Submission, Mr Gray proposes that the defendants may have the potential to fabricate information and he needed to cross reference third parties to prevent fabrication. This is sheer a fishing expedition as he has not given any evidence of fabrication.

Tajdin's Record, Tab 2, para. 48

40. The lines of questioning by Mr. Gray obviously shows that he is interested in a lot more than accounting for profits.

Tajdin's Record, Tab 2, para. 49

CONFIDENTIALITY NEEDED

41. On the issue of confidentiality, Mr Gray had previously said to Tajdin that he would not share the information he receives with anyone except with the Aga Khan, but then in writing to the Referee, Mr. Gray confirmed that he would share with many others.

Tajdin's Record, Tab 2, para. 50

42. During our cross-examinations for the motion for summary judgment, Mr. Gray told Jiwa and Tajdin that he takes instructions from Sachedina and Manji, and recently on 31st August 2011, Mr Gray sent an email about this lawsuit to Mr Abdulla Dharamsey, who is a "Founder and Honorary Chair of the Global Ismaili Muslim eForum, claiming over 32,500 worldwide email recipients" (who also widely circulates to his recipients emails inciting hatred against us) and in the said 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...".

Tajdin's Record, Tab 2, para. 51

43. This clearly shows that Mr Gray can seek and is seeking instructions from Sachedina in regards to this lawsuit. For instance, the Statement of Claim was circulated by mass email and to the news outlets within a few days of issuing and well before it was even served on us as per the Rules.

Tajdin's Record, Tab 2, para. 52

44. Mr. Gray regularly gives information to websites such as Vancouverite.com and lawsuit2010.com which are committed to condemn us and to incite hatred against us in the community.

Tajdin's Record, Tab 2, para. 54, Exh. 2(d)

45. Mr. Gray has also given the transcripts of the discovery to Vancouverite.com which were used by it and lawsuit2010.com to create hatred for the defendants in the community, despite Prothonotary Tabib saying "The parties do not agree the transcript should be filed.". The Transcripts of the discovery has not been subject of any motion nor filed on the record.

Tajdin's Record, Tab 2, para. 54 & 58, Exhs. 2(d) & 2(e)

46. In May 2010, Mr Gray sent the defendants an "Affirmation" purportedly signed by His Highness The Aga Khan with an email threatening that he has been told by the Aga Khan to circulate it widely if we do not settle the action, and in fact within a few days circulated it to Vancouverite.com for posting on its website.

Tajdin's Record, Tab 2, para. 55

47. Mr. Gray himself later told this defendant and Jiwa in August of 2010 that circulating of the Affirmation was his own idea, and that he was not told so by the Aga Khan to do so despite his earlier written comments to us in his email.

Tajdin's Record, Tab 2, para. 56

48. Mr. Grays comments to the websites and the manner in which the information is used create a lot of hatred towards us in the community. These mass emailing of the Claim, and releasing the discovery transcript, giving the affirmation, etc., are all made with intent to create problems for us, to defame us and to incite our community against us.

Tajdin's Record, Tab 2, para. 57, 58

49. These activities encourage hate propaganda against the defendants, calls for excommunication against them and physical threats which were also posted on web sites.

Tajdin's Record, Tab 2, para. 59

50. On 12th of October 2010, at the hearing in Ottawa in front of Justice Boivin, one Mehboob Kamadia who regularly posts derogatory material against the defendants on lawsuit2010.com, attended the hearing with his 3 accomplices. After the hearing, Tajdin saw him having a conversation with Mr. Gray as he left the courtroom, and a short time later he and his accomplices surrounded Tajdin outside the courtroom and Mr Kamadia started insulting to him, and then assaulted him in public.

Tajdin's Record, Tab 2, para. 60

51. Mr Jiwa, Tajdin's co-defendant, has also given evidence that he too was assaulted in a prayer hall.

Tajdin's Record, Tab 2, para. 61

52. These events are not surprising to Tajdin as before the litigation commenced, Sachedina had threatened him that he would destroy and ruin him. His threats have become reality.

Tajdin's Record, Tab 2, para. 62, Exh. 2(g)

53. There are a few names that were identified during the litigation, such as of Karim Alibhai, and Meheub Chatur. Mr Alibhai received many threatening calls after he submitted his Affidavit in support of the Defendants, and Mr Chatur whose name came into the limelight for paying the Costs ordered by the Court, has also been threatened. Furthermore, defamatory and highly inflammatory writings and threats against Mr. Chatur have appeared on websites such as lawsuit2010.com and circulated by emails.

Tajdin's Record, Tab 2, Exhs. 2(h)&(f)

54. The lawsuit2010.com, which Tajdin believes is established by or on behalf of Kamadia, lists names of all those of my friends and family members who support me, and the comments are highly inflammatory and aimed at provoking hate towards my family and friends, thereby triggering threats of harm, petitions for our excommunication from the community and death threats.

Tajdin's Record, Tab 2, para. 64, Exh. 2(h)

55. The printer could be also subject to threats and even reprisals by Kamadia whom Tajdin has known since they were children and is a very vindictive person. For instance, after the litigation commenced, Kamadia has written many emails condemning Jiwa and Tajdin and has been inciting people against them. He sent mass emails to other Muslim community with intent that the larger community also go after Tajdin and a person traveled from Congo to Kenya to meet Tajdin and to threaten him in person.

Tajdin's Record, Tab 2, para. 65

56. There is no other ulterior motive by Tajdin not to disclose the documents other than that once the names of individuals who bought the books, or those who helped in this projects becomes public, they will also be subject of ridicule by these websites, will be subject to threats, and perhaps even assaults.

Tajdin's Record, Tab 2, para. 66

SOLUTION AND BALANCE BETWEEN PUBLIC INTEREST AND PRIVACY ISSUES.

57. Justice Harrington had ordered costs of \$30,000 (on consent). The costs were paid even before the appeal was finalized, and was made payable to the Aga Khan with stipulation that if the appeal was won, the costs paid was not to be returned but could be used for any purpose the Imam determined. To date, the cheque has not been cashed. The Federal Court of Appeal dismissed our appeal on January 16, 2012, with costs, and to date Mr. Gray has not even submitted his Bill of Costs for payment.

Tajdin's Record, Tab 2, para. 67

58. Knowing the Imam, knowing that this project was not for profit, knowing the defendants did not make any profit, knowing that the cheque of \$30,000 is not cashed, and knowing that the book was published only to help the congregation become better acquainted with their faith, Tajdin believes that the Imam does not want any costs, or profit or damages from him.

Tajdin's Record, Tab 2, para. 68

59. It is Manji and/or Sachedina who wants to identify who are the people who are supporting the defendants so they can marginalize them in our community, as both of them, and in particular Sachedina is in charge of the institutions of the community with wide reaching powers.

Tajdin's Record, Tab 2, para. 69

60. Tajdin seeks an order appointing a neutral party to verify the accounting information related to printing of the books - the number of books, and the cost of printing and the cost of MP3 to determine the gross revenues, and 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 unless they are consulted by a neutral third party.

Tajdin's Record, Tab 2, para. 71

61. 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.

Tajdin's Record, Tab 2, para. 72

III- SUBMISSIONS

62. The only issues outstanding are:
- a. the number of books printed;

- b. the price the books sold for;
 - c. the cost of the printing of the books;
 - d. the cost of the MP3s given with the books; and
 - e. the value of the 193 books free given to ITREB.
63. Any other expenses incurred by Tajdin are not being sought to be deducted and as such all questions relating to other matters are not relevant.
64. The plaintiff has admitted in his Claim that the book are being sold for \$50. His own evidence confirms the selling price. and as such the notional sales revenues are \$275,000 for 5,500 books. In confirming this sales revenue, the only item to verify is the number of books printed by the printer.
65. In order to expedite the proceedings and to avoid the unnecessary waste of time, the only deductions will be claimed by Tajdin are three, namely:
- a. \$9,650.00 for 193 books given to ITREB (and proof of this has been given to Mr. Gray without any redaction;
 - b. costs for printing of \$181,209; and
 - c. costs of MP3 of \$18,148.
66. To confirm these three items, Tajdin is proposing to appoint an independent agent, perhaps an accountant, or another lawyer who would be given the printers and the MP3's manufacturing name and contact information to verify the number of books printed, the cost of the books printed and the cost of the MP3.
67. Once these three items are verified, the accounting for the profits becomes a lot easier as no deductions, although incurred, is being claimed.

68. Disclosure is based on relevance, and if relevance is challenged, the Court must determine the issue of relevance.

69. The Supreme Court of Canada in the case of *Glegg* at para 22. held that,
"if the relevance of the evidence is contested, the judge must settle the issue"

***Glegg v. Smith & Nephew.*, 2005 CarswellQue 2642, 2005 SCC 31
Tajdin's Record, Tab 5, at para. 22**

70. The Court also said as follows:

"The judge hearing the case must take care to ensure that documents disclosed and questions asked during examinations on discovery are within the limits of what is relevant, that is, of what is useful for the case. **This supervisory function is especially important and must be discharged very carefully when there are objections relating to the right to privacy.**" [Emphasis added]

"If need be, the judge sets the conditions for access to and dissemination of the information when ruling on the confidentiality of the information and the disclosure thereof Québec Procureur general c. Dorion 1992, [1993] R.D.J. 88 Que. C.A.; Champagne c. Scotia McLeod Inc. 1991, [1992] R.D.J. 247 Que. C.A.; D. Ferland and B. Emery, Précis de procédure civile du Québec 4th ed. 2003, t. 1, at pp. 570-72

***Glegg v. Smith & Nephew.*, Supra
Tajdin's Record, Tab 5, para. 26**

71. In respect to fishing expedition, although litigants make reference to the general tendency of the courts to grant broad discovery, this broad based discovery "must be balanced against the tendency, particularly in industrial property cases, **of parties to attempt to engage in fishing expeditions which should not be encouraged.**" [Emphasis added]

***Intel Corp. v. 3395383 Canada Inc.*, 2004 CF 218, 30 C.P.R. (4th) 469
Tajdin's Record, Tab 5, para. 23**

72. Fishing expedition is explained as follows:

I accept the definition of a "fishing expedition", in the context of discovery, as given by Lord Esher M.R. in *Hennessy v. Wright* (No. 2) (1980), 24 Q.B.D. 445 at p. 448, a libel action:

Page 6 "... the plaintiff wishes to maintain his questions, and to insist upon answers to them, in order that he may find out something of which he knows nothing now, which might enable him to make a case of which he has no knowledge at present".

Intel Corp. v. 3395383 Canada Inc., Supra
Tajdin's Record, Tab 5, para. 23

73. The Court goes on to hold that if questions are in the nature of a fishing expedition, "They need not be answered."

Intel Corp. v. 3395383 Canada Inc., Supra
Tajdin's Record, Tab 5, para. 23

74. Although the general principles applicable to the discovery examination process is the primacy of relevancy, Courts have held that "**relevancy is a matter of law, not discretion**", and has recognized that **there are limits to the discovery process** [Emphasis added]:

The following apply to the present situation and were set out in *Reading & Bates*, supra, by Justice McNair at pages 71-72:

4. The court should not compel answers to questions which, although they might be considered relevant, are not at all likely to advance in any way the questioning party's legal position: *Canex Placer Ltd. v. A.-G. B.C.*, supra; and *Smith, Kline & French Laboratories Ltd. v. A.- G. Can.* (1982), 67 C.P.R. (2d) 103 at p. 108, 29 C.P.C. 117 (F.C.T.D.).

5. Before compelling an answer to any question on an examination for discovery, the court must weigh the probability of the usefulness of the answer to the party seeking the information, with the time, trouble, expense and difficulty involved in obtaining it. Where on the one hand both the probative value and the usefulness of the answer to the examining party would appear to be, at the most, minimal and where, on the other hand, obtaining the answer would involve great difficulty and a considerable expenditure of time and effort to the party being examined, the court should not compel an answer. One must look at what is reasonable and fair under the circumstances:

Smith, Kline & French Ltd. v. A.-G. Can., per Addy J. at p. 109.

Intel Corp. v. 3395383 Canada Inc., Supra
Tajdin's Record, Tab 5, para. 26

75. The court also stated that questioning on discovery must be restricted to those allegations that are not admitted.

6. The ambit of questions on discovery must be restricted to unadmitted allegations of fact in the pleadings, and fishing expeditions by way of a vague, far-reaching or an irrelevant line of questioning are to be discouraged: *Carnation Foods Co. Ltd. v. Amfac Foods Inc.* (1982), 63 C.P.R. (2d) 203 (F.C.A.); and *Beloit Canada Ltée/Ltd. v. Valmet Oy* (1981), 60 C.P.R. (2d) 145 (F.C.T.D.).

Intel Corp. v. 3395383 Canada Inc., Supra
Tajdin's Record, Tab 5, para. 26

76. With respect to the privacy issues, the courts have issued a serious caution as follows: Master Lou Ann M. Pope of the Ontario Superior Court in the case of *Frangione* held as follows:

"I refer to Murphy, supra, wherein Rady J. referenced a British Columbia authority for the proposition that a **court retains jurisdiction to refuse disclosure where the information is of minimal importance to the litigation but may constitute a serious invasion of privacy**: *United Seivices Funds v. Carter* 1986, 5 B.C.L.R. 2d 222 B.C. S.C.; leave to appeal dismissed 1996, 5 B.C.L.R. 2d 379 B.C.C.A. and *M. A. v. Ryan* 1994, 98 B.C.L.R. 2d 1 B.C. C.A.; affd [1997] 1 S.C.R. 157 S.C.C.." [Emphasis added]

***Frangione v. Vandongen*, 2010 CarswellOnt 5639, 2010 ONSC 2823, 76 COLT. 3d 295**
Tajdin's Record, Tab 7, at para. 72

77. The Master, also referred to comments made by the Associate Justice Southin of the B.C. Court of Appeal made in the *M. A.* case:

"In considering whether to make an order compelling disclosure of private documents, whether in possession of a party or a non-party, the court ought

to ask itself whether the particular invasion of privacy is necessary to the proper administration of justice and, if so, whether some terms are appropriate to limit that invasion.” [Emphasis added]

**Frangione, Supra
Tajdin’s Record, Tab 7, at para. 72**

78. Mr. Gray is seeking information about Tajdin’s computer and perhaps has a desire to seek an order to examine his computer, inferred from his questioning. The Court in *Park* relying on s. 8 of the Charter of Rights, stated that, “Everyone has a right to be secure against unreasonable search or seizure” and went on to determine that seeking a list “of all files stored in the plaintiff’s computer for the last three and one-half years” without citing any case law supporting his position.

***Park v. Mullin* [2005 BCSC 1813, 14 A.C.W.S. (3d) 791
Tajdin’s Record, Tab 9 at para. 7 and 14**

79. The court stated that “the application must be considered in light of the significant privacy concerns not only of the plaintiff, but also of other users of her computer and clients who has contracted her services.”

***Park v. Mullin, Supra*
Tajdin’s Record, Tab 7, at para. 23**

80. Tajdin states that in the questioning sought by Gray, not only his own privacy is seriously at stake, but also of his wife, and other innocent third party individuals, particularly when the Judgement does not seek them to return the books, and must be protected.
81. In light of Tajdin’s not seeking to deduct most expenses incurred by him makes the questioning irrelevant and ought not to be answered, not only on the grounds of relevance but also on grounds of serious violation of his own privacy or the privacy of third parties.
82. On the issue of confidentiality, it is noteworthy that Mr. Gray has disclosed to web sites whose aim is to condemn and incite hatred against the defendants information that ought not

to have been disclosed. The Court in *Peak Energy Services Ltd.*, stated as follows regarding the deemed undertaking rule:

“This court has long recognized that any document or information produced or given under compulsion as a result of the civil process of this court by any person, if not given in open court is confidential to that person unless and until the contrary is shown.”

Peak Energy Services Ltd. v. Douglas J. Pizycjki Holdings Ltd. (c.o.b. Predator Oilfield Rentals), 2007 FC 824

Tajdin’s Record, Tab 9, at para. 25

83. Mr. Grays’ releasing to vancouverite.com the discovery transcripts is a serious violation of the deemed undertaking rule, and of the defendants’ privacy issues particularly when the defendants are at risk of harm as evidenced by the assaults inflicted on both the defendants.

84. The Court also referring to the Supreme Court stated at para. 31 that, “it is the task of the court to weigh a non-exhaustive list of factors in determining whether the interests of justice in disclosure outweigh the right of confidentiality.”

Peak Energy Services Ltd., Supra at para. 31

85. With respect to the confidentiality orders, the Supreme Court in *Glegg* stated that:

“It would also be possible, as has already been mentioned, for the judge to order that the documents be disclosed, subject to the obligations of confidentiality that would apply at this stage of the proceedings. The judge could also order counsel not to disclose the documents to third parties or to the parties themselves.” [Emphasis added]

Glegg, Supra

Tajdin’s Record, Tab 5, at para. 30

86. Tajdin submits that Mr. Gray’s actions in:

- a. disclosing confidential information (transcripts of discoveries undertaken by Tajdin) to vancouverite.com and other information,
- b. and threatening the defendants with “widely distributing” the Affirmation if they

continue defending by saying that the Aga Khan told him to circulate it widely and then giving a copy again to vancouverite.com, and later admitting that the decision to circulate widely was his own idea and not of the Aga Khan;

- c. such information is also then used by lawsuit2010.com and Kamadia as well to incite hatred and condemnation of the defendants; and
- d. such actions have caused the defendants to be assaulted.

These are serious enough reasons to make an order that an independent professional be retained to determine the number of book printed and the amount paid to the printer and to the manufacturer of the MP3 and report to the parties his findings without divulging the name of the printers.

- 87. Tajdin submits that such an Order would provide the necessary information regarding the two material issues - number of books printed, the costs paid for the books and the MP3, being the only issues outstanding, Tajdin having undertaken that he will not seek to deduct other expenses although incurred by him to avoid the harassment.
- 88. Rule 156 provides that, "Unless the Court orders otherwise, a referee shall adopt the simplest, least expensive and most expeditious manner of conducting the reference" and Tajdin submits that by appointing an independent person the plaintiff will get the profits he wants, while the defendants and other third parties would be protected from a serious issue of breach of privacy and that the matter can be resolved without extensive discovery process as evidenced to date, also be proportionate to the end result.

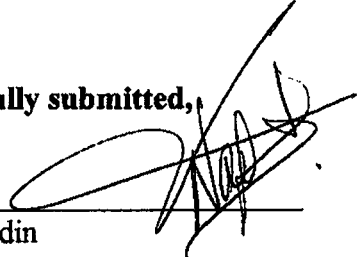
IV - ORDERS SOUGHT

- 89. This defendant asks for an order:
 - a. for Staying the Reference pending decision of the Appeal on Justice Russel's Order dated October 26th, 2011 and on Docket number A-421-11;
 - b. for an Order of Confidentiality and an Order that an independent agent be appointed

- to investigate the printing of the books and to report to the named plaintiff's counsel, the court and confirm how many books were published by this defendant and how much was the cost of the publication, costs of which to be paid by Tajdin; and
- c. an Order to restrict the remaining reference to strictly financial analysis to the specific exclusion of the names of people who bought the books.

Date: April 22, 2012

Respectfully submitted,



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