

e-document	T-3443-24-ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE December 06, 2024 06 décembre 2024
	D É P O S É
Court File No	Kyla Chisholm
TOR	1

FEDERAL COURT

BETWEEN:

**CAROL ROSENSTEIN, IN HER PERSONAL CAPACITY AND IN HER
CAPACITY AS SOLE TRUSTEE OF THE BRUCE GOWERS TRUST - 1990**

Plaintiff

- and -

**QUEEN PRODUCTIONS LIMITED,
SONY MUSIC ENTERTAINMENT, and
SONY MUSIC ENTERTAINMENT CANADA INC.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Issued by: _____
Registry Officer

Address of 180 Queen Street West
local office: Suite 200
Toronto, Ontario
M5V 3L6

TO: THE ADMINISTRATOR
Federal Court
180 Queen Street, Suite 200
Toronto, ON M5V 3L6

AND TO: QUEEN PRODUCTIONS LIMITED
2 Canal Reach,
London, England,
N1C 4DB, United Kingdom

AND TO: SONY MUSIC ENTERTAINMENT
25 Madison Ave,
New York, NY
10010, United States

AND TO: SONY MUSIC ENTERTAINMENT CANADA INC.
155 Wellington Street West
Toronto, ON M5V 3J7

CLAIM

1. The Plaintiff, Carol Rosenstein (“**Plaintiff**”), in her personal capacity and in her capacity as Trustee of Bruce Gowers Trust - 1990 (the “**Trust**”), claims:
 - (a) A declaration that:
 - (i) the Defendants have individually and collectively infringed the Plaintiff’s copyrights in the Gowers Videos (defined below) contrary to sections 3 and 27 of the *Copyright Act*;
 - (ii) the Defendants have individually and collectively infringed the Plaintiff’s copyrights in the Gowers Videos contrary to sections 14.1 and 28.1 of the *Copyright Act*;
 - (b) An interim, interlocutory and permanent injunction restraining the Defendants, including their employees, partners, agents, assigns, officers, directors, related, subsidiary and/or parent corporations, from:
 - (i) infringing the Plaintiff’s copyright in the Gowers Videos;
 - (ii) reproducing, performing in public, communicating to the public by telecommunication, selling, distributing, offering for sale, and otherwise exploiting the Gowers Videos, each in whole or any substantial part and including any adaptation, and any version featuring foreign subtitles, in any manner or media whatsoever, including via the Internet;
 - (iii) authorizing any of the acts in (b)(i) or (ii);
 - (iv) inducing others to do any of the acts in (b)(i) or (ii);
 - (c) An Order requiring the Defendants to disclose under oath all means and methods (including all media channels, whether traditional or online) by which they have authorized to reproduce, perform in public, communicate

to the public by telecommunication, sell, distribute, and/or offer for sale any of the Gowers Videos in Canada, in whole or substantial part, and including any adaptations;

- (d) An Order directing the Defendants to remove under oath the Gowers Videos, and any video that incorporates any of the Gowers Videos or substantial part, from the Internet, including requesting the removal from Internet search engines (Google, Yahoo!, Bing) of all such videos;
- (e) An Order awarding the Plaintiff:
 - (i) damages as suffered by the Plaintiff and an accounting of profits as made by the Defendants, pursuant to section 35 of the *Copyright Act*, in respect of its infringing activities;
 - (ii) in the alternative to (e)(i), at the election of the Plaintiff, statutory damages in the maximum amount per work infringed pursuant to section 38.1 of the *Copyright Act* for infringing copyright in the Gowers Videos;
 - (iii) punitive and/or exemplary damages;
 - (iv) pre-judgment and post-judgment interest;
 - (v) costs of this action on a scale to be determined by this Honourable Court; and
- (f) Such further and other relief as to this Honourable Court may seem just.

The Parties

2. Bruce Gowers (“**Gowers**”) was a television and music video director and producer born in the United Kingdom. He won his first Emmy in 1973 for directing the groundbreaking documentary “Hello Dali”, which captured several days in the company of renowned artist Salvador Dalí. Over his nearly 40-year career, Gowers directed many of television’s highest-profile productions, including nine

seasons of American Idol, The Emmys, The MTV Awards, The American Music Awards, The MTV Movie Awards, The Academy of Country Music Awards, The ESPY Awards, The Comedy Awards, People's Choice Awards, and The Billboard Awards. Gowers would later win another Emmy for American Idol, and earn both a Directors Guild of America (DGA) Award and Grammy for his work on "Genius: A Night for Ray Charles."

3. As described in greater detail below, throughout Gowers' career, he directed several music videos for songs from, e.g., the Rolling Stones, Rush, and Michael Jackson. Gowers directed, produced, created, and camera-scripted at least the following music videos of Queen songs (together, the "**Gowers Videos**"):
 - (a) "Bohemian Rhapsody", in or about November 1975 (the "**Bohemian Rhapsody Video**");
 - (b) "You're My Best Friend", in or about April 1976 (the "**You're My Best Friend Video**");
 - (c) "Somebody to Love", in or about November 1976 (the "**Somebody to Love Video**");
 - (d) "Tie Your Mother Down", in or about February 1977 (the "**Tie Your Mother Down Video**");
 - (e) "Liar", in or about August 1973 (the "**Liar Video**");
 - (f) "Keep Yourself Alive", in or about August 1973 (the "**Keep Yourself Alive Video**");
 - (g) "Liar - Live at the Rainbow", in or about November 1974 (the "**Liar - Live at the Rainbow Video**");
 - (h) "Now I'm Here", in or about November 1974 (the "**Now I'm Here - Live at the Rainbow Video**"); and

- (i) “In the Lap Of The Gods”, in or about November 1974 (“**In the Lap Of The Gods - Live at the Rainbow Video**”).
4. The Gowers Videos are original cinematographic works within the meaning of “dramatic work” under section 2 of the *Copyright Act*.
 5. Gowers was the author of each of the Gowers Videos, as well as their first owner pursuant to section 13(1) of the *Copyright Act*. At the date of the making of each of the Gowers Videos, Gowers was a citizen, subject, or a person ordinarily resident in a treaty country, within the meaning of section 5(1)(a) of the *Copyright Act*.
 6. Prior to his passing, Gowers both attempted to contact members of QPL to resolve the matters herein and later instructed counsel to enforce his rights. Gowers died on January 15, 2023, in Santa Monica, California.
 7. The Trust, which Gowers set up by deed dated March 8, 1990, and amended on October 1, 2003, includes all the personal and real property, tangible and intangible, vested or contingent, including intellectual property, of Gowers. The Plaintiff, Gowers’ widow, and is the sole residual beneficiary and trustee of the Trust.
 8. As the sole residual beneficiary and trustee of the Trust, the Plaintiff is the owner of the Trust property, including all the intellectual property of Gowers.
 9. In her capacity as the sole residual beneficiary and trustee of the Trust, the Plaintiff has registered copyright in the Gowers Videos:

Registration No.	Title
1222788	Bohemian Rhapsody Music Video
1222800	You’re My Best Friend Music Video

1222806	Somebody To Love Music Video
1222812	Tie Your Mother Down Music Video
1228760	Liar Music Video
1228757	Keep Yourself Alive Music Video
1228758	Now I'm Here (Live at the Rainbow 1974) Music Video
1228756	Liar (Live at the Rainbow 1974) Music Video
1228759	In The Lap Of The Gods (Live at the Rainbow 1974) Music Video

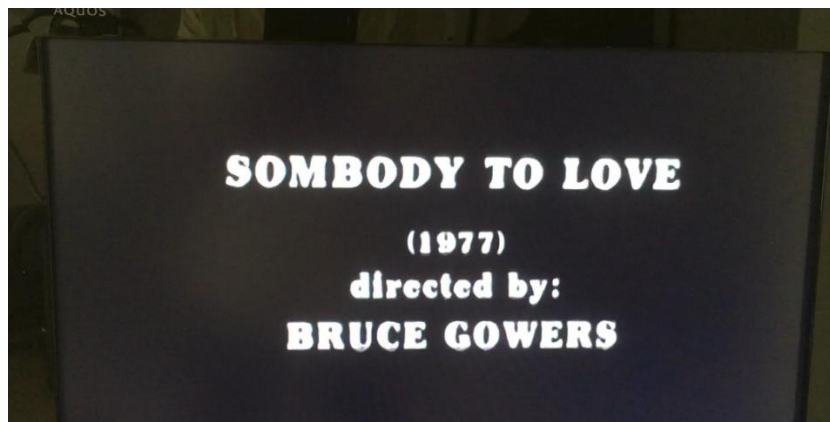
10. Pursuant to sections 53(1) and 53(2) of the *Copyright Act*, copyright subsists in the Gowers Videos and the Plaintiff is the owner of the copyright therein.
11. The Defendant Queen Productions Limited (“**QPL**”) is a limited liability company incorporated under UK law, having its registered office at 2 Canal Reach, London, England, N1C 4DB, United Kingdom. QPL is a production company that was established by Queen’s group members in 1975.
12. In or around June 2024, the Defendants, Sony Music Entertainment, a company incorporated under US law, having its registered office at 25 Madison Ave, New York, NY, 10010, United States, and Sony Music Entertainment Canada Inc., a company incorporated under Ontario law having its registered office at 155 Wellington Street West, Toronto, Ontario M5V 3J7, (together “**Sony**”) acquired QPL for approximately GBP £1 billion.
13. The precise corporate arrangement between Sony and QPL (together the “**Defendants**”) is known to the Defendants and not to the Plaintiff.

The Plaintiff's Rights

14. As described above, Gowers was an acclaimed director and producer, whose work made a lasting mark on the music and television industries. Gowers' work as a director and producer earned him international recognition and numerous awards.
15. During his life, Gowers directed and produced videos for numerous music artists, including Queen, Genesis, the Rolling Stones, Rod Stewart, the Bee Gees, Journey, Rush, Michael Jackson, KISS, Prince, and Whitney Houston.
16. For each of the Gowers Videos, a representative of the band Queen contacted Gowers, or his agent, to engage Gowers to direct, produce, and create a video. In each case, Gowers understood that the Gowers Videos would only be provided to broadcast television stations without remuneration to Queen. Gowers and Queen did not enter into any agreement that granted rights to Queen to monetize or exploit the Gowers Videos in the manner complained of herein.
17. By way of illustrative example, in or about November of 1975, Queen approached Gowers to direct and produce the Bohemian Rhapsody Video and Gowers agreed. The Bohemian Rhapsody Video was made at Elstree Studios in England.
18. At the time that Gowers was asked to direct and produce the Bohemian Rhapsody Video, Gowers understood that the video would be used for the sole purpose of being broadcast on the UK TV show "Top of the Pops," as Queen would be on tour at the time of the show's recording and could not perform the song live.
19. The Bohemian Rhapsody Video has had a lasting influence on the music and audiovisual industries and is widely credited as causing an explosion in the popularity and production of music videos following its broadcast on Top of the Pops.
20. By way of further examples:
 - (a) In or about July 1973, Queen approached Gowers to direct and produce the Liar Video and Keep Yourself Alive Video, and Gowers agreed. The

Liar and Keep Yourself Alive Videos were created using multi-camera footage from Queen's faux live performance at Brewer Street Studios in London, England in August 1973.

- (b) In or about October 1974, Queen approached Gowers to direct and produce the Liar - Live at the Rainbow Video, Now I'm Here - Live at the Rainbow Video, and In the Lap Of The Gods - Live at the Rainbow Video, and Gowers agreed. These Videos were created using multi-camera footage from Queen's live performances at the Rainbow Theater in London, England in November 1974.
 - (c) In or about March 1976, Queen approached Gowers to direct and produce the You're My Best Friend Video and Gowers agreed. The You're My Best Friend Video was filmed at Elstree Studios in England in April 1976.
 - (d) In or about August 1976, Queen approached Gowers to direct and produce the Somebody to Love Video and Gowers agreed. The Somebody to Love Video contains combined footage of a staged recording session at Sarm East Studios in Wessex, England and a Queen concert held at Hyde Park in London, England in September 1976.
 - (e) In or about January 1977, Queen approached Gowers to direct and produce the Tie Your Mother Down Video and Gowers agreed. The Tie Your Mother Down Video was created using live multi-camera footage from Queen's live performance at Nassau Coliseum in Long Island, New York in February 1977 during Queen's US arena headline tour.
21. Gowers' status as director and producer of the Gowers Videos has consistently been publicly acknowledged. For example, Gowers was credited from the outset as director of the Bohemian Rhapsody Video and Somebody to Love Video, as can be seen in the end credits of the Queen Greatest Hits VHS video editions in the still images below:



22. Gowers camera scripted, selected the crew and equipment, directed the filming, supervised the production, and controlled the editing to create the Gowers Videos. In making the Gowers Video, Gowers used his skill and judgment, including by using innovative visual techniques; creatively framing, staging, and choosing angles for the shots; and supervising the editing of the video. Queen member Brian May has publicly acknowledged that “Bruce [Gowers] was, of course, the architect of our Bohemian Rhapsody video, and quite a few others as well”.
23. Having created the Gowers Videos through his exercise of significant skill and judgment, Gowers is their sole author. Gowers (and now the Plaintiff) also has a right to the integrity of the Gowers Videos, and a right to be associated with the Gowers Videos as their author by name.
24. Queen and its members authorized the creation of the Gowers Videos, and readily and willingly participated in the creation of the Gowers Videos.

25. In the interest of certainty only, Gowers was not an employee of Queen or the Defendants when he made the Gowers Videos. None of the Gowers Videos were made in the course of employment or under a contract of service. In fact, no written agreement was entered into between Gowers and Queen or the Defendants relating to the Gowers Videos. Accordingly, pursuant to section 13(4) of the *Copyright Act*, at the time he created the Gowers Videos, Gowers did not assign his copyright, nor was he was under any contractual obligation to assign his copyright to any person.

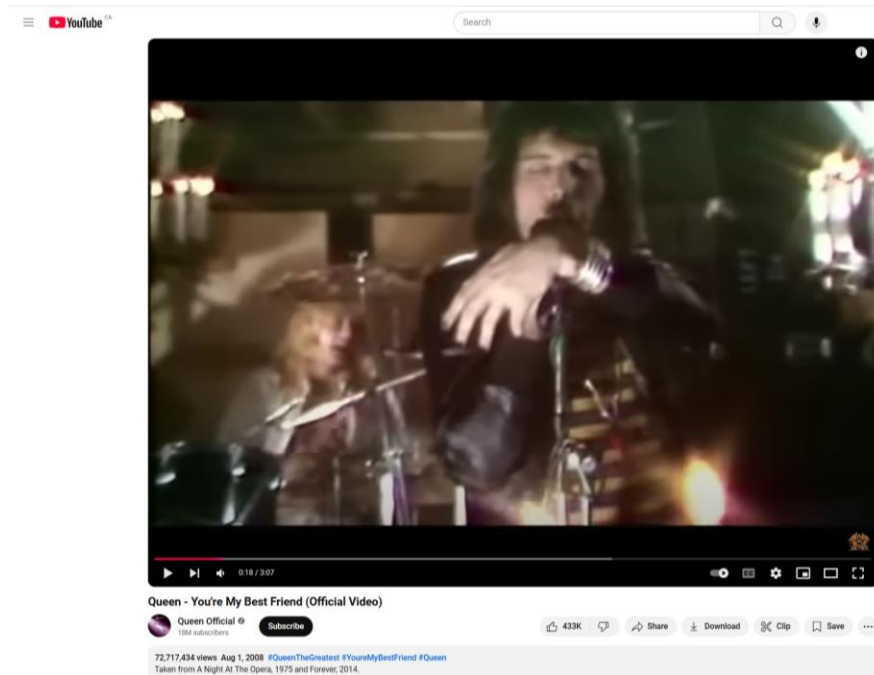
The Defendants' Infringing Activities

26. In or about August 2008, unbeknownst to Gowers, and without the authorization, consent or permission of Gowers, the Defendants posted the Bohemian Rhapsody Video on a (then) new website called YouTube. In particular, the Bohemian Rhapsody Video was posted to the Defendants' YouTube channel, dedicated to the band, entitled "Queen Official". This video, viewed almost 1.9 billion times as of December 6, 2024, is currently available on the Defendants' YouTube channel in Canada and to Canadian viewers as "Queen – Bohemian Rhapsody (Official Video Remastered)":



27. In or about August 2008, again unbeknownst to Gowers, and without the authorization, consent or permission of Gowers, the Defendants posted the You're

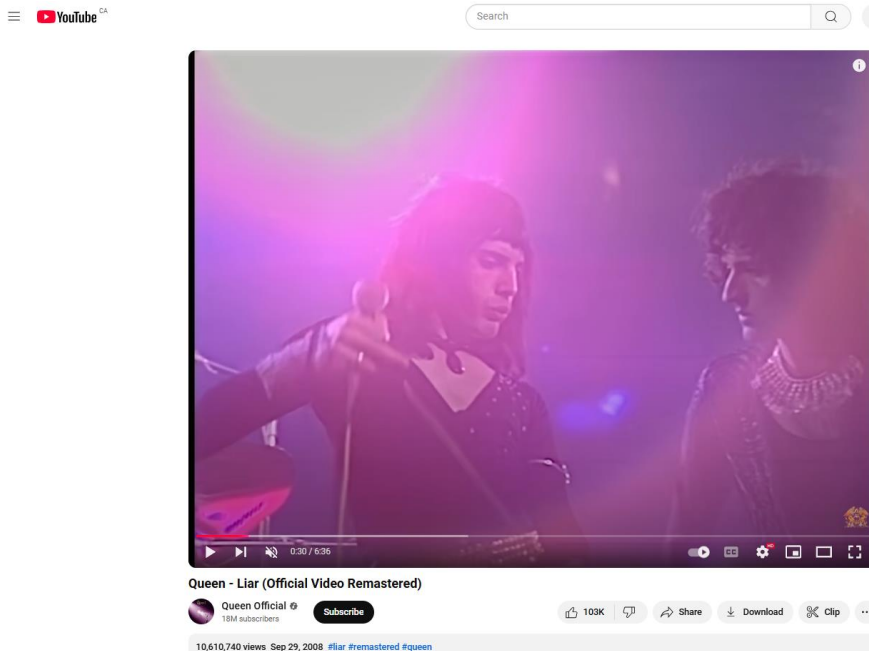
My Best Friend Video on the “Queen Official” YouTube channel. This video, viewed over 72 million times as of December 6, 2024, is currently available on the Defendants’ YouTube channel in Canada and to Canadian viewers as “Queen – You’re My Best Friend (Official Video)”:



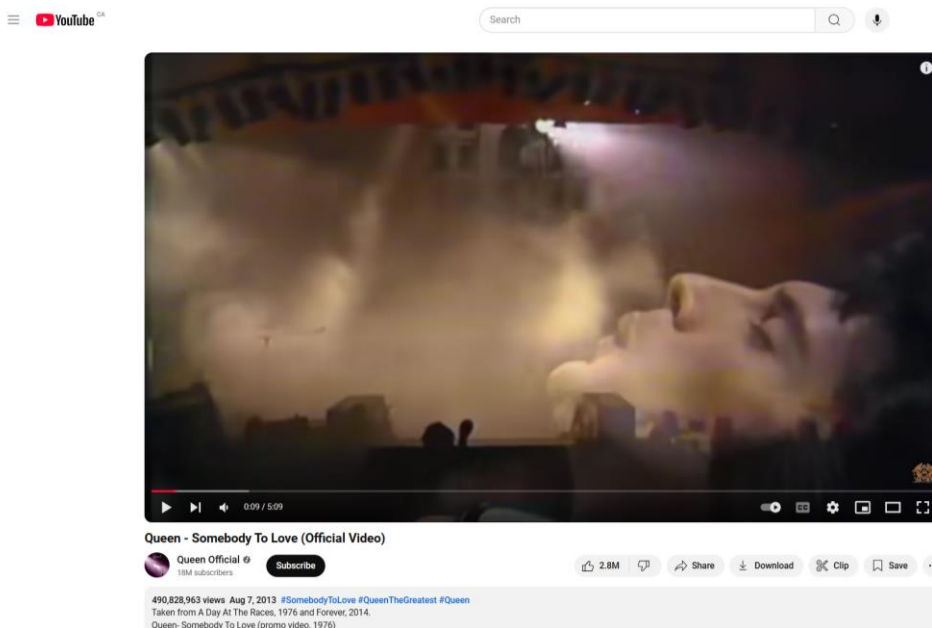
28. In or about September 2008, yet again unbeknownst to Gowers, and without the authorization, consent or permission of Gowers, the Defendants posted the Tie Your Mother Down Video on the “Queen Official” YouTube channel. This video, viewed over 11 million times as of December 6, 2024, is currently available on the Defendants’ YouTube channel in Canada and to Canadian viewers as “Queen - Tie Your Mother Down (Official Video)”:



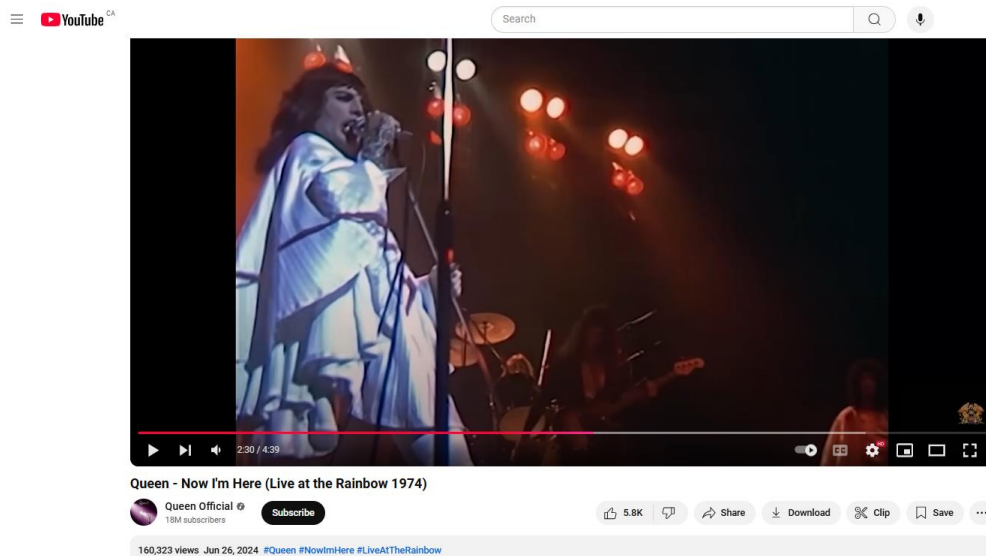
29. In or about September 2008, again unbeknownst to Gowers, and without the authorization, consent or permission of Gowers, the Defendants posted the Liar Video on the “Queen Official” YouTube channel. This video, viewed close to 11 million times as of December 6, 2024, is currently available on the Defendants’ YouTube channel in Canada and to Canadian viewers as “Queen - Liar (Official Video Remastered)”:



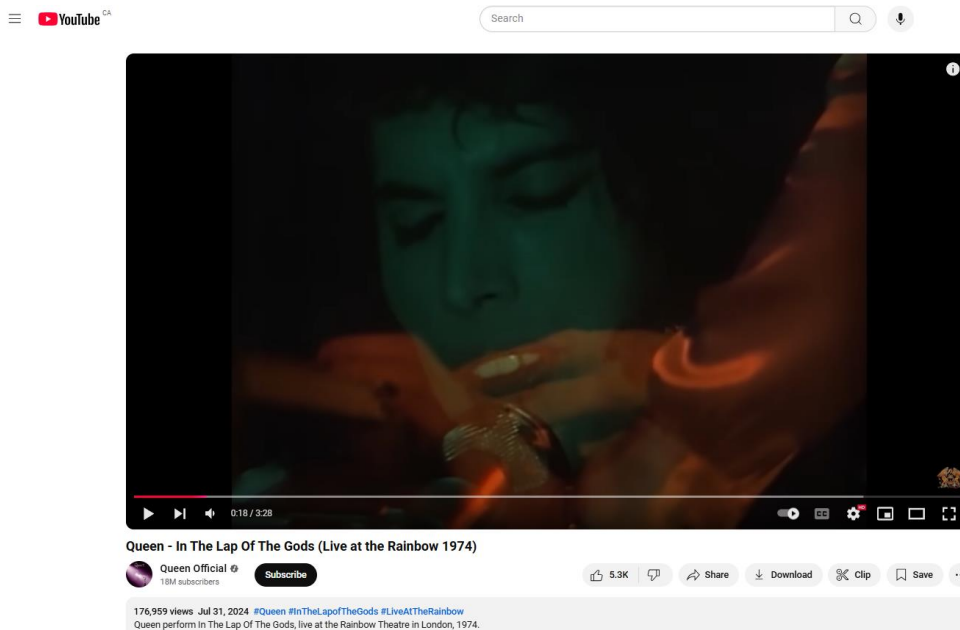
30. In or about August 2013, in another instance unbeknownst to Gowers, and without the authorization, consent or permission of Gowers, the Defendants posted the Somebody To Love Video on the “Queen Official” YouTube channel. This video, viewed almost 500 million times as of December 6, 2024, is currently available on the Defendants’ YouTube channel in Canada and to Canadian viewers as “Queen - Somebody To Love (Official Video)”:



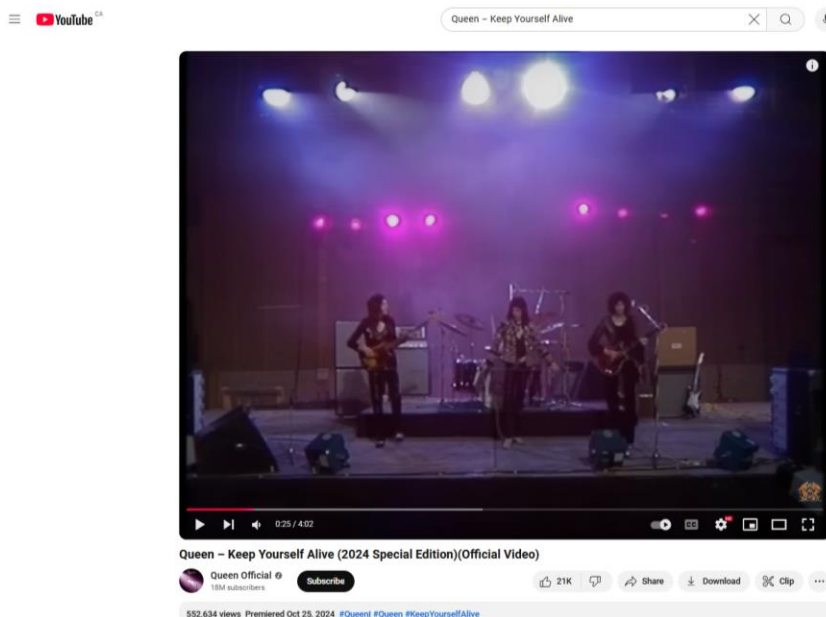
31. In or about June 2024, after Gowers' passing, and unbeknownst to the Plaintiff, and without the authorization, consent or permission of the Plaintiff, the Defendants posted the Now I'm Here - Live at the Rainbow Video on the "Queen Official" YouTube channel. This video, viewed over 150,000 times as of December 6, 2024, is currently available on the Defendants' YouTube channel in Canada and to Canadian viewers as "Queen - Now I'm Here (Live at the Rainbow 1974)":



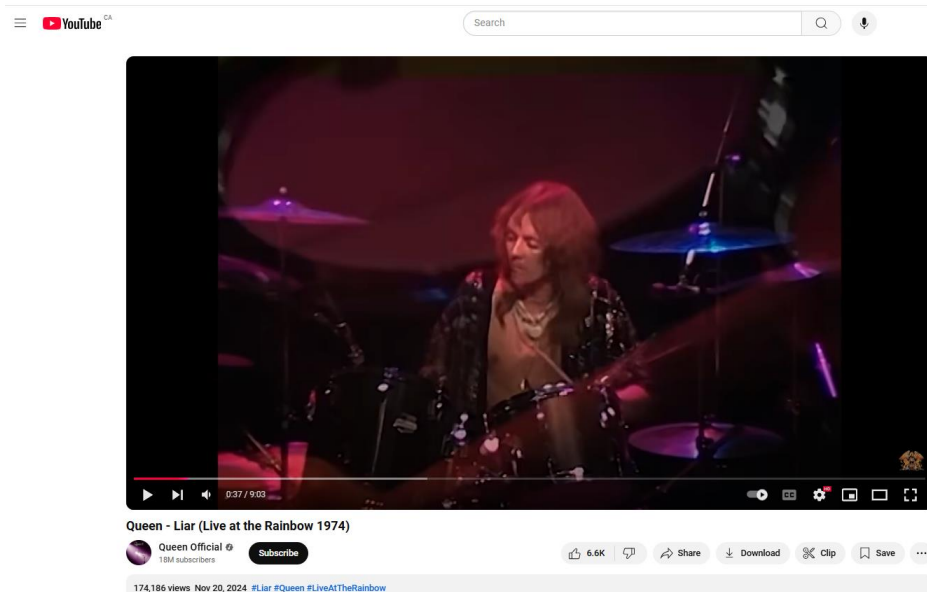
32. In or about July 2024, after Gowers' passing, and again unbeknownst to the Plaintiff, and without the authorization, consent or permission of the Plaintiff, the Defendants posted the In the Lap Of The Gods - Live at the Rainbow Video on the "Queen Official" YouTube channel. This video, viewed almost 200,000 times as of December 6, 2024, is currently available on the Defendants' YouTube channel in Canada and to Canadian viewers as "Queen - In The Lap Of The Gods (Live at the Rainbow 1974)":



33. In or about October 2024, after Gowers’ passing, and yet again unbeknownst to the Plaintiff, and without the authorization, consent or permission of the Plaintiff, the Defendants posted the Keep Yourself Alive Video on the “Queen Official” YouTube channel. This video, viewed over 500,000 times as of December 6, 2024, is currently available on the Defendants’ YouTube channel in Canada and to Canadian viewers as “Queen – Keep Yourself Alive (2024 Special Edition)(Official Video)”:



34. In or about November 2024, after Gowers' passing, and once again unbeknownst to the Plaintiff, and without the authorization, consent or permission of the Plaintiff, the Defendants posted the Liar - Live at the Rainbow Video on the "Queen Official" YouTube channel. This video, viewed almost 200,000 times as of December 6, 2024, is currently available on the Defendants' YouTube channel in Canada and to Canadian viewers as "Queen - Liar (Live at the Rainbow 1974)":



35. As seen above, starting in or about August 2008, the Defendants made the Gowers Videos available on the "Queen Official" YouTube channel, and continue to do so with the last Gowers Video having been posted in November 2024.
36. Other versions of the Gowers Videos have been made available by the Defendants on the "Queen Official" YouTube channel, including versions containing English song lyrics, versions containing song lyrics in other languages such as Spanish, and compilation videos containing one or more of the Gowers Videos.
37. Nether Gowers nor the Plaintiff authorised, consented or granted permission to the Defendants to copy, upload, stream, monetize, or otherwise exploit the Gowers Videos – in whole or in substantial part – in the manner detailed above.

38. Aside from the Liar Video, the Gowers Videos on the “Queen Official” YouTube channel do not credit Gowers as the videos’ author, contrary to Gowers moral right of attribution. Further, any adaptation or other reproduction of the Gowers Videos in which Gowers is not credited as the video’s author is an infringement of that right, contrary to sections 14.1 and 28.1 of the *Copyright Act*.
39. The activities of the Defendants described herein constitute copyright infringement of the Gowers Videos. Without any license or permission from Gowers (and later the Plaintiff), the Defendants continue to reproduce all or a substantial part of the Gowers Videos, contrary to sections 3 and 27 of the *Copyright Act*.
40. The Plaintiff is unaware of the full extent of the Defendants’ acts of infringement with respect to the Gowers Videos. Full particulars of the Defendants’ acts of infringement are within the knowledge of the Defendants and not within the knowledge of the Plaintiff. The Plaintiff claims in respect of all infringing activities of the Defendants.

Efforts of Gowers (and later the Plaintiff) to address the Defendants’ Infringement

41. In or about 2019, Gowers (then nearly 80 years old) was contacted by reporters calling to congratulate him and request a comment on the Bohemian Rhapsody Video reaching a billion views on the “Queen Official” YouTube channel. Gowers was unaware of the release of the Gowers Videos on the Internet until that time.
42. In or around that same time, to celebrate the Bohemian Rhapsody Video reaching over a billion views on YouTube, the Defendants released a newly remastered HD version of the Bohemian Rhapsody Video on the same YouTube channel, without the authorization, consent or permission of Gowers.
43. On or about August 2, 2019, after learning of the Defendants’ infringing activities, Gowers wrote to each of the living members of Queen (Brian May, Roger Taylor, John Deacon) and Jim Beach in letters addressed to the head office of QPL, asking

to be “fairly compensated for the use of [his] work.” There was no response to these letters.

44. Gowers and his lawyers renewed and repeated these requests in or about March 2022, but these requests were once again ignored (and later refused).
45. Gowers passed away in 2023 without Queen or QPL recognizing the rights that Gowers legally had in the Gowers Videos, even refusing to attribute or acknowledge Gowers’ contribution to the Gowers Videos. The Defendants’ conduct amounts to intentional and willing infringement.
46. On or about August 7, 2024, Canadian counsel for the Plaintiff wrote to the Defendants to request them to immediately cease reproducing, broadcasting, using, and distributing the Gowers Videos. There was no substantive response to this request.
47. On or about September 12, 2024, Canadian counsel wrote again to the Defendants reiterating the request to cease infringement of the Gowers Videos. The Defendants refused this request and continue to persist with their unlawful activities.
48. By reason of the acts detailed in this claim, the Defendants have made and will make a profit, and the Plaintiff has suffered and will continue to suffer damages.
49. Unless restrained by this Court, the Defendants will continue their unlawful activities and will continue to profit while the Plaintiff continues to suffer damage.
50. The Defendants at all material times knew, or had reasonable grounds for knowing, that copyright subsisted in the Gowers Videos and that Gowers, and later the Plaintiff, was the owner of the Gowers Videos. Further, the Defendants knew or had reasonable grounds for knowing that their activities (as detailed in this claim) infringed the copyright in Gowers Videos.

51. The conduct of the Defendants, in knowingly engaging in infringing activities contrary to the Plaintiff's rights, justifies an award of punitive and exemplary damages.
52. The Plaintiff confirms that the monetary relief sought herein, exclusive of interest and costs, exceeds \$50,000 such that this action is not being pursued as a simplified proceeding.
33. The Plaintiff proposes that this action be tried at Toronto, Ontario.

DATED: at Toronto, Ontario this 6th day of December, 2024.



LENCZNER SLAGHT LLP

Barristers

Suite 2600

130 Adelaide Street West

Toronto, ON M5H 3P5

Sana Halwani (shalwani@litigate.com)

Sarah Gupta (sgupta@litigate.com)

Solicitors for the Plaintiff

Court File No.:

FEDERAL COURT

B E T W E E N:

**CAROL ROSENSTEIN, IN HER PERSONAL
CAPACITY AND IN HER CAPACITY AS
SOLE TRUSTEE OF THE BRUCE GOWERS
TRUST - 1990**

Plaintiff

- and -

**QUEEN PRODUCTIONS LIMITED,
SONY MUSIC ENTERTAINMENT, and
SONY MUSIC ENTERTAINMENT CANADA
INC.**

Defendants

STATEMENT OF CLAIM

LENCZNER SLAGHT LLP

Barristers

Suite 2600

130 Adelaide Street West

Toronto, ON M5H 3P5

Sana Halwani

Sarah Gupta

Solicitors for the Plaintiff
