



SEGEV^{LLP}

THE KING GEORGE BUILDING
6th Floor, 905 West Pender Street
Vancouver, B.C. V6C 1L6 Canada

TEL: 1-604-629-5400
FAX: 1-604-629-5409
www.segev.ca

Stefan Kruse
s.kruse@segev.ca
Direct: 604-283-9808

April 21, 2022

DELIVERED BY EMAIL to aisabell@iabbb.org and contactus@mbc.bbb.org, and by *MAIL* to:

Better Business Bureau of Mainland British Columbia
PO BOX 49290
Suite 1000, Three Bentall Centre
595 Burrard Street,
Vancouver, BC V7X 1S8

International Association of Better Business Bureaus, Inc.
4250 Fairfax Dr. Suite 600
Arlington, VA 22203

Attention: Angela T. Isabell, Deputy General Counsel, and directors of Better Business Bureau of Mainland British Columbia

Dear Sirs/Mesdames,

Re: International Association of Better Business Bureaus, Inc. and Better Business Bureau of Mainland British Columbia (collectively, “BBB”) and 0578047 B.C. Ltd. DBA ProGas and Heating Service (“ProGas” or “our client”)

We are in receipt of Ms. Isabell’s email of October 14, 2021, in which she states that our concerns raised in our letter of October 6, 2021 (our “**October letter**”) would be addressed in a letter from BBB’s Canadian litigation counsel “in the next week or two.” Six months has now passed and unfortunately, we have not received any such correspondence.

As discussed in our October letter, our client adamantly denies that any portion of its website infringes on any of BBB’s registered trademarks, including but not limited to the “BBB” wordmark (Canadian TM Reg. No. 620664). Our client has merely referred to the rating BBB had assigned to it from the years 2014 to 2021 in plain text, which Ms. Isabell acknowledges in her letter of September 28, 2021, does not constitute infringement. At no time has our client stated or implied that it is accredited by BBB or used any registered or unregistered design trademarks of BBB, except when it was a BBB accredited business.

Accordingly, the ‘current alert regarding this business’ which the IABBB has posted to our client’s BBB profile webpage located at <https://www.bbb.org/ca/bc/langley/profile/heating-contractors/progas-and-heating-services-0037-116366> (the “**Current Alert**”, attached for reference as schedule A) since in or about December 2020 reading:

On December 3, 2020, it was discovered that ProGas and Heating Services was displaying a Better

Business Bureau logo on their website. The business is not accredited by this BBB and our policies prohibit unauthorized use of our Accredited Business Seal as well as falsely identifying as a BBB Accredited Business. BBB sent two letters to the business on December 3, 2020 and December 9, 2020 with a request to remove the BBB Accredited Business Seal from their website. As of January 13, 2021 BBB has not received a response from the business about removing the logo and their website continues to display BBB logo.

is factually inaccurate in at least three ways:

1. Our client has not, on December 3, 2020, or at any time since, displayed a BBB logo on its website;
2. Our client has not claimed or implied, on its website or otherwise, to be a BBB Accredited Business in any way or used or displayed BBB's Accredited Business Seal (except when our client was in fact a BBB Accredited Business prior to December 2020); and
3. Our client has responded to BBB regarding the removal of the alleged "BBB logo", both prior to January 13, 2021, as well as since then. As discussed in our October letter, the email correspondence with specific BBB employees that our client posted on his website confirm that our client has in fact responded. Indeed our letter of September 1, 2021 and the October letter were themselves two further responses to the IABBB on this matter.

Be advised that our client takes the position that the aforementioned content of the Current Alert is demonstrably false, and both the Current Alert and BBB's 'F' rating of our client's business are defamatory and constitute injurious falsehoods committed by BBB upon our client.

Defamation

As was held in *Walsh Energy Inc. v Better Business Bureau of Ottawa-Hull Inc.*¹ and upheld upon recent appeal to the Ontario Court of Appeal,² a "failing" grade assigned by BBB to a business is, on the plain and ordinary meaning of such grade, defamatory. The Ontario Court of Appeal based this conclusion on the fact that

The D- grade must be understood in the context of the BBB's stated purpose. The BBB website states that its mission is to be "the leader in advancing marketplace trust", which it accomplishes by, among other things, "[d]enouncing substandard marketplace behavior". The website goes on to state that it regards trust as a function of integrity and performance, and defines integrity as including "respect, ethics and intent". Performance is described as relating to a "business' track record of delivering results in accordance with BBB standards and/or addressing customer concerns in a timely, satisfactory manner".³

We note that our client has held an 'F' rating since the Current Alert was posted, and that this rating is based not on "how the business is likely to interact with customers", nor is it "significantly influenced by complaints received from the public", as BBB describes the basis for its ratings system

1 *Walsh Energy Inc. v Better Business Bureau of Ottawa-Hull Inc.*, 2016 ONSC 1606

2 *Walsh Energy Inc. v. Better Business Bureau of Ottawa-Hull Incorporated*, 2018 ONCA 383 (*Walsh*)

3 *Walsh*, at para 20.

(the “**FAQ on BBB’s Ratings**”).⁴ Neither is our client’s ‘F’ rating “based on marketplace behaviour, including how the business responds to consumer complaints, transparency, [or] truthful advertising...”⁵ Further, BBB has consistently failed to “automatically update the letter grade”⁶ upon receipt of new information, such as the information provided by our client via its numerous emails to BBB staff, and the information in our October letter, as it claims to do in the FAQ on BBB’s Ratings.

The trial judge in *Walsh* noted that BBB’s equal and impartial treatment of businesses in applying its rating criteria is relevant to a finding of defamation:

In this regard, it is also clear that the same method of evaluation was applied to all HVAC companies. There was no evidence that BBB was in any way being discriminatory in its evaluation against Waltek, or indeed Walsh for that matter.⁷

Applied to our client’s matter, however, the same cannot be said, as BBB’s ‘Trademarks’ webpage⁸ currently lists eight businesses which BBB determines have used or displayed BBB’s trademarks without authorization, only two of which currently hold ‘F’ ratings,⁹ and one of which maintains an ‘A+’ rating.¹⁰ Likewise, more than half of these allegedly infringing businesses do not have ‘current alerts’ posted to their BBB profile webpages.¹¹ Unlike in *Walsh*, BBB has clearly failed to apply its rating criteria as rigorously for other businesses as it has against our client.

The divisional court ruling in *Walsh* determined that the qualified privilege defence was not available to BBB, stating that

...qualified privilege is very seldom available for a communication to the general public. BBB has no legal duty to rate the ethics and trustworthiness of businesses. It has set this task for itself. Having set this task for itself, it does not thereby cloak itself in a qualified privilege that permits it to defame businesses so long as it does not act with malice. BBB, having set itself up to publish ratings, has an available defence of fair comment, but the defence of qualified privilege is not available for general ratings published by BBB to the general public.¹²

This determination was upheld on appeal to the Ontario Court of Appeal.

The Court of Appeal in *Walsh* also found that the Divisional Court ruling had not erred in finding that the fair comment defence *was* available to BBB, because BBB was found to have satisfied the test for

4 See <https://www.bbb.org/frequently-asked-questions>, under “What is BBB’s Rating System?”.

5 *Supra*, note 4.

6 *Supra*, note 4.

7 *Walsh Energy Inc. (The Energy Centre) v. Better Business Bureau of Ottawa-Hull Incorporated/Bureau d’éthique commercial d’Ottawa-Hull Incorporée (Better Business Bureau Serving Eastern and Northern Ontario and the Outaouais)*, 2012 ONSC 5819, at para 20.

8 See <https://www.bbb.org/all/trademarks>

9 See <https://www.bbb.org/us/tx/richardson/profile/roofing-contractors/leedham-roofing-0875-4003689> and <https://www.bbb.org/us/co/denver/profile/granite/take-me-for-granite-inc-1296-8003853>.

10 See <https://www.bbb.org/us/fl/winter-springs/profile/solar-energy-equipment-dealers/sun-energy-0733-90195770>.

11 See, for example, <https://www.bbb.org/us/al/huntsville/profile/directory-advertising/the-better-black-business-bureau-0513-900243576> and <https://www.bbb.org/us/co/denver/profile/granite/take-me-for-granite-inc-1296-8003853>.

12 *Walsh Energy Inc. v Better Business Bureau of Ottawa-Hull Inc.*, 2016 ONSC 1606, at para. 56.

fair comment, being that:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognisable as comment;
- (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?; and
- (e) even though the comment satisfies the objective test the defence can be defeated if the plaintiff proves that the defendant was actuated by express malice.¹³

Applied to our client's matter, the elements of the test follow *Walsh*, except with respect to the "basis in fact" element, the objective test and the malice preclusion.

On the "basis in fact" element, BBB's comments about our client – the Current Alert and our client's 'F' rating – is clearly not based on fact, as the Current Alert contains the false statements cited above, and the 'F' rating is based on these specious claims of trademark infringement, rather than on its customer interactions or complaints. Further, the court in *Walsh* confirms that the analysis of whether the rating is based in fact involves consideration of both the comment as well as BBB's rating criteria set out on its website.¹⁴

We note that our client's 'F' rating finds no support in BBB's own FAQ on BBB's Ratings. Although BBB's website does inconspicuously state that "A business's BBB rating is lowered when the business does not, in BBB's opinion, appropriately respond to BBB advertising challenges that relate to: ...Misuse of BBB name or BBB marks...",¹⁵ our client takes the position that this does not justify or explain its 'F' rating. First, it is objectively clear that our client has not misused BBB name or infringed upon BBB's trademarks, as the statement of its past BBB rating on its website conforms to BBB's own prescriptions regarding the ability of non-accredited businesses to state their BBB rating without misuse or infringement of BBB name or marks. Second, BBB's severe weighting of the "Advertising Issues" criterion, which allows BBB to arbitrarily reduce a business from an 'A+' rating to an 'F' for a single perceived misuse of BBB name regardless of its lack of customer complaints or appropriate responses thereto, betrays BBB's well-known and widely-advertised proclamations that the ratings system is based on "how the business is likely to interact with customers", and is "significantly influenced by complaints received from the public". Thus we expect that a court would not find our client's rating to be based on fact, or that a person could honestly assign it such a rating on the facts, as it did in *Walsh* where the plaintiff's 'D-' rating was a result of his failure to respond to a customer's complaint.

Similarly, it could not reasonably be claimed that a person in BBB's position could objectively and

¹³ *Walsh*, at para 21.

¹⁴ *Walsh*, at paras. 23 and 28.

¹⁵ At point 7 entitled "Advertising issues known to BBB" on the "Overview of BBB Ratings" page at <https://www.bbb.org/overview-of-bbb-ratings>.

honestly express the statements in the Current Alert or give our client an 'F' rating based on BBB's rating system. Simply put, the Current Alert is false and the arbitrary manipulation of businesses' ratings by BBB in such fashion amounts to a betrayal of both the businesses assigned such ratings and the public trust in the impartiality of the rating system as a whole.

We further expect that a court would find, on balance of probabilities, that BBB's comment was motivated by malice towards our client, in that BBB knows or ought to know that the Current Alert contains false statements, and that these ought not affect our client's rating. As the court notes in *Walsh*, "Malice includes spite or ill-will, but may also be established by showing that a comment was made with an indirect motive or ulterior purpose, dishonestly, or in knowing or reckless disregard for the truth."¹⁶ Willful blindness to the truth also satisfies the criteria for malice. Actual premeditated intent to injure is not required to prove malice.

On the present facts, it appears clear that BBB holds, at best, a grossly reckless disregard for the truth of the Current Alert and justification for our client's 'F' rating, and at worst, an ulterior purpose of punishing our client by publishing the Current Alert and 'F' rating, in retaliation for our client maintaining a 'gripe website' regarding BBB's conduct.

For these reasons, we expect that a court would find that BBB's malicious conduct toward our client precludes the defence of fair comment that allowed BBB to avoid liability for the defamation in *Walsh*.¹⁷

Injurious Falsehood

The tort of injurious falsehood involves the "malicious publication of a falsehood concerning the plaintiff that leads other persons to act in a manner that causes actual loss, damage, or expense to the plaintiff."¹⁸ Unlike defamation, damage to reputation is not required, though the tort requires that

1. the statements were false;
2. the defendant acted maliciously; and
3. actual economic loss has occurred or will occur as a result.

As discussed above, our client takes the position that the Current Alert and its 'F' rating constitute false statements BBB has made about our client out of malice. Our client has suffered and continues to suffer lost sales due to customers' reasonable conclusions from the Current Alert and 'F' rating that our client is unresponsive, disrespectful of the intellectual property rights of others, interacts poorly with customers, has a large number of customer complaints, engages in "substandard marketplace behavior" or is otherwise dishonest and untrustworthy.

¹⁶ *Walsh* at para 33, citing *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at para. 145.

¹⁷ *Walsh*, at para 22.

¹⁸ McConchie and Potts, *Canadian Libel & Slander Actions* (Irwin Law; Toronto, 2000), chapter 32 "Related Causes of Action" at p. 899.

We expect that proving our client's economic losses will be straightforward given that BBB's stated mission is to provide accurate information on businesses upon which the public ought to base their consumer choices. BBB's rating system is relied upon even more heavily by consumers looking for service businesses such as our client's.

We note that the statement of our client's past BBB rating on its website, which is the subject of BBB's spurious claims of trademark infringement, is in fact an attempt by our client to mitigate the losses caused by BBB's injurious falsehoods contained in the Current Alert and 'F' rating. If BBB had not falsely and maliciously posted the Current Alert and lowered our client's rating to the lowest possible rating available, with complete disregard regard to our client's complaint history and customer interactions, it would not need to display its past BBB rating, or post the explanations of its history with BBB in its defence.

Our Demand

Given that our client has been in contact with BBB regarding the Current Alert and 'F' rating since at least as early as December 3, 2020, and given that BBB has not removed the Current Alert or ceased repressing its rating based on claims of trademark infringement, BBB's ongoing conduct in this regard is willful and knowing, and has caused and continues to cause our client to sustain provable losses and damage to goodwill. Take notice that BBB may be subjected to punitive and exemplary damages because of such blatant disregard for our client's reputation and economic losses.

Our client takes BBB's continued and willful publishing of the Current Alert and 'F' rating very seriously and is not prepared to drop this matter short of full compliance with the demands set out in this letter. In order to avoid the commencement of legal proceedings against BBB, our client hereby demands that it immediately and fully:

1. remove the Current Alert from BBB's website, and refrain from publishing accusations that our client has not responded to BBB, or of misuse or infringement of BBB's name or trademarks by our client;
2. cease and desist from making any deduction of rating points from our client's BBB rating in respect of infringement of BBB's trademarks (i.e. permitting our client's business to assume a rating based upon the twelve rating elements other than "BBB Trademark Infringement", as discussed at bbb.org/overview-of-bbb-ratings); and
3. post to our client's BBB profile website, in place of the Current Alert and with equal prominence, a full retraction and apology for BBB's error and the damage it caused, which shall remain displayed on our client's BBB profile website for a period equal to the time which the Current Alert and 'F' rating were displayed.

While our client is entitled to demand the payment of damages for BBB's defamatory statements, the economic harm and damage to goodwill caused by them, and the legal costs incurred with respect to dealing with this matter, our client is prepared to forgo such payment of damages and legal costs if BBB promptly complies with the above demands.

The foregoing is not intended to be a recitation of all of the facts pertaining to this matter or all of our client's claims against you or any other party. Furthermore, the foregoing shall not be deemed a waiver of any claim, in law or at equity, which our client may have against Better Business Bureau of Mainland British Columbia, International Association of Better Business Bureaus, Inc. or any other party, each of which is expressly reserved.

We await a response from you to the above on or before 5:00pm PST, May 6, 2022, failing which we will advise our client as to its legal rights, including the right to initiate court proceedings, the right to immediate interlocutory injunctive relief, the right to damages including punitive and exemplary damages, and seek instructions to pursue such rights without further notice.

Any response or communication regarding this matter should be directed to the undersigned at s.kruse@segev.ca.

Sincerely,

SEGEV LLP

per:



Stefan Kruse

/smk

Cc: client



Business Profile

ProGas and Heating Services

Heating Contractors

Multi Location Business [Find Location](#)

CURRENT ALERTS FOR THIS BUSINESS

- Alert:** Content relating to BBB including the names of BBB employees published on the business' website has not been authorized nor has consent been given. Details provided by the business are of their personal opinion which does not illustrate the entirety of each situation described. IABBB has taken action to contact the ... [Read More](#)
- Alert:** On December 3, 2020, it was discovered that ProGas and Heating Services was displaying a Better Business Bureau logo on their website. The business is not accredited by this BBB and our policies prohibit unauthorized use of our Accredited Business Seal as well as falsely identifying as a BBB Accredited Business. BB... [Read More](#)

ADDITIONAL BUSINESS INFORMATION [See all additional business information](#)

Additional Information: The BBB reports that this company, Pro Gas & Heating in Surrey, is not affiliated with Pro Gas North Shore Ltd located in North Vancouver. To view the BBB Business Review for Pro Gas North Shore Ltd, please visit <https://www.bbb.org/ca/bc/surrey/profile/heating-system-repair-pro-gas-heating-services-0037-116366>

<p>Contact Information</p> <p>PO Box 56034 Langley, BC V3A 8V3</p> <p>http://www.pghs.ca</p> <p>(604) 200-8043</p>	<p>Customer Reviews</p> <p>2.85/5</p> <p>Average of 13 Customer Reviews</p> <p>Read Reviews Start a Review</p>	<p>BBB Rating & Accreditation</p> <p>F</p> <p>THIS BUSINESS IS NOT BBB ACCREDITED</p> <p>Years in Business: 35</p> <p>Customer Reviews are not used in the calculation of BBB Rating</p> <p>Reasons for BBB Rating</p>
<p>Customer Complaints</p> <p>11 complaints closed in last 3 years 3 complaints closed in last 12 months</p> <p>Read Complaints File a Complaint</p>		

Business Details

This is a multi-location business. [Need to find a different location?](#)

Location of This Business
PO Box 56034, Langley, BC V3A 8V3

BBB File Opened: 7/1/1993
Years in Business: 35
Business Started: 11/1986
Business Incorporated: 11/1986

Licensing Information: This business is in an industry that may require professional licensing, bonding or registration. BBB encourages you to check with the appropriate agency to be certain any requirements are currently being met.

Alternate Business Name
0578047 BC Ltd
PGHS

Business Management
Ed Lowe, Director

Contact Information
Principal
Ed Lowe, Director
Customer Contact
Ed Lowe, Director

Additional Contact Information
Phone Numbers

[Read More Business Details and See Alerts](#)

Customer Complaints

11 Customer Complaints

Need to file a complaint? BBB is here to help. We'll guide you through the process. [How BBB Processes Complaints and Reviews](#) [File a Complaint](#)

Most Recent Customer Complaint
Complaint Type: Billing/Collection Issues **Status:** Answered

16/06/2021

My elderly father hired the company to inspect his furnace. They proceeded to replace a fully functional wall thermostat as well as charging exorbitant prices for replacement parts... [Read More](#)

[Read 10 More Complaints](#)

Customer Reviews

13 Customer Reviews

What do you think? Share your review. [How BBB Processes Complaints and Reviews](#) [Start a Review](#)

Most Recent Customer Review
daron k. ★☆☆☆☆ (1 star)
12/01/2021

*****. Do not do business with this company. Asked them to service my furnace, hot water tank, and fireplace. Technician came in and spent less than a minute before calling me to tell me I need to replace my furnace. I told him to pick... [Read More](#)

[Read 12 More Customer Reviews](#)

Business Categories

[Heating Contractors](#) [Gas Contractors](#)

Local BBB

BBB of Mainland British Columbia

[More Info on Local BBB](#)

BBB Reports On

BBB reports on known marketplace practices.

[See What BBB Reports On](#)

BBB Business Profiles may not be reproduced for sales or promotional purposes.

BBB Business Profiles are provided solely to assist you in exercising your own best judgment. BBB asks third parties who publish complaints, reviews and/or responses on this website to affirm that the information provided is accurate. However, BBB does not verify the accuracy of information provided by third parties, and does not guarantee the accuracy of any information in Business Profiles. When considering complaint information, please take into account the company's size and volume of transactions, and understand that the nature of complaints and a firm's responses to them are often more important than the number of complaints.

BBB Business Profiles generally cover a three-year reporting period. BBB Business Profiles are subject to change at any time. If you choose to do business with this business, please let the business know that you contacted BBB for a BBB Business Profile.

As a matter of policy, BBB does not endorse any product, service or business.

<p>For Consumers</p> <p>Select Language Translate</p> <p>Search for a Business</p> <p>Get a Quote</p> <p>Start a Review</p> <p>File a Complaint</p> <p>BBB Scam Tracker</p> <p>File an Auto Warranty Complaint</p> <p>BBB Ad Truth</p> <p>Sign up for Scam Alerts</p> <p>Frequently Asked Questions (FAQ)</p>	<p>For Businesses</p> <p>Search Business Profiles</p> <p>Get Accredited</p> <p>BBB EU Privacy Shield</p> <p>Get Your Business Listed</p>	<p>About BBB</p> <p>Covid-19 Prevention Policy</p> <p>Contact Us</p> <p>BBB Directory</p> <p>International Association of Better Business Bureaus</p> <p>BBB Institute for Marketplace Trust</p> <p>BBB Business Partner Code</p> <p>BBB National Programs</p> <p>f in v yt</p>
--	---	--