

THE REAL ESTATE COUNCIL OF ALBERTA

IN THE MATTER OF Sections 34 and 39 of the *Real Estate Act* Rules made pursuant to the *Real Estate Act*, RSA 2000, c R-5

AND IN THE MATTER OF a Review of the Executive Director's decision to refuse the registration application of Fatemeh Beigi

Appeal Panel Members: Brian Klingspon, Chair  
Tony Dhaliwal  
Derek Vermette  
Christine Zwozdesky

Appearing: Andrew Bone on behalf of the Executive Director  
Fatemeh Beigi, along with her husband

Appeal Date: October 29 and 30, 2015

Witnesses: Nancy Iwasiw  
Brenda Kaughman  
Emily Drexler  
Sara Witzke  
Steven Davidson  
Joseph Fernandez

I) Introduction

1. Ms. Beigi applied to the Real Estate Council of Alberta (RECA) for registration as a mortgage associate. The Executive Director of RECA refused Ms. Beigi's application on the basis of section 34 of the *Real Estate Act* Rules. Relying upon section 39 of the *Real Estate Act* Rules, Ms. Beigi has requested a review of the Executive Director's refusal.

II) Legislation

2. Section 34(1)(a) and (e) of the *Real Estate Act* Rules is the basis upon which the Executive Director refused Ms. Beigi's application. Section 34 provides as follows:

34(1) The executive director may refuse to issue a licence or registration certificate to a person, or may recommend that a hearing panel refuse to issue a licence or registration certificate, where the executive director is of the opinion that:

- (a) the person has provided false or misleading information to the executive director in the course of applying for a licence or registration certificate or the renewal of either;
- (b) the person is someone against whom a member of the public has obtained a judgment arising out of that person's action as an industry member and no reasonable arrangements have been made to satisfy it;
- (c) deleted (Council Resolution 2010-7, Nov 2010)
- (d) it would not be in the public interest or it would harm the integrity of the industry or bring the industry into disrepute to issue a licence or a registration certificate to that person.
- (e) the person is not of good character and reputation or is otherwise unfit to be licenced;
- (f) Repealed July 3/12 Resolution 2012-3
- (g) Repealed July 3/12 Resolution 2012-3
- (h) the person is a brokerage and any director, officer, shareholder or partner, as the case may be, associated with the brokerage:
  - (i) is not of good character and reputation; or,
  - (ii) has made an application to withdraw from the industry pursuant to the Act and the application was approved.
- (i) the person has breached the Education Code of Conduct for Learners.

3. Ms. Beigi has asked for this review pursuant to section 39 of the *Real Estate Act* Rules, which states as follows:

39(1) A person:

- (a) who has had terms, conditions or restrictions imposed under section 22;
- (b) who has been refused a licence or registration certificate under section 34, or
- (c) whose licence has been suspended or cancelled pursuant to section 35 or section 38(1);
- (d) who has been suspended or expelled from a course or program in accordance with the Education Code of Conduct for Learners.

may, within 30 days after being notified in writing of the decision, request a review of the decision by an appeal panel appointed under the Act.

(2) The appeal panel will, in addition to affording the person the opportunity to make written representations, afford the person requesting the review the opportunity to make oral representations.

(3) The appeal panel may conduct any enquiries, in addition to those made by the executive director, it considers appropriate for the purposes of the review and, in the case of a refusal of a licence or registration certificate, may treat the request for review as an original application for a licence or registration certificate.

(4) The executive director shall serve in accordance with the Act the decision of the appeal panel on the person requesting the review and, where the decision upholds the decision of the executive director, the decision shall be accompanied by reasons.

(5) The appeal panel's decision is final.

### III) Issues

4. Mr. Bone proposed that the following issues need to be considered to deal with this appeal. Ms. Beigi did not raise any objection to these issues, which are as follows:

- a. What is the appropriate standard of review of the Executive Director's decision to refuse Ms. Beigi's application for registration pursuant to section 34 of the Rules?
- b. Did Ms. Beigi provide false or misleading information to the Executive Director in the course of applying for a license or registration certificate or the renewal of either?
- c. Is Ms. Beigi of good character and reputation or is she otherwise unfit to be authorized?
- d. What is the appropriate outcome in this matter?

#### IV) Standard of Review

5. Mr. Bone made the following written submissions with respect to the standard of review:

\*49. A statutory right of appeal is provided in section 39 of the Rules. Section 39(3) of the Rules states that:

'The appeal panel may conduct any enquiries, in addition to those made by the executive director, it considers appropriate for the purposes of the review [emphasis added] and, in the case of a refusal of a licence or registration certificate, may treat the request for review as an original application [emphasis added] for a licence or registration certificate.'

50. The appropriate standard of review is now 'a matter of statutory interpretation and policy'

*Steve Jaswal appeal of a section 34 review  
May 14, 2012 citing Newton v. Criminal Trial  
Lawyers' Association, 2008 ABCA 404, p4 —  
[Exhibit 1]*

51. A statutory interpretation of section 39 and specifically 39(3) of the Rules allows the Panel to consider this appeal as a *de novo* application. This is because the application is referred to as an original application and the Panel may conduct enquires beyond the initial record. As a *de novo* application we do not need to use a pragmatic and functional analysis.

That being said, the Panel may still give weight to the Executive Director's decision to refuse Mr. Begi's application for registration.

'If the Panel determines that the matter should proceed as an original application for licencing it may still give weight to the prior decision:

It is helpful to bear in mind that even before the development of the pragmatic and functional analysis, the wording de novo in an appeal provision from a statutory board did not in itself mean that no deference was to be given to the original decision. In *Lamb v. Canadian Reserve Oil & Gas Ltd.*, 1976, [1977] 1 S.C.R. 517 (SCC), (Lamb), the Supreme Court of Canada concluded that, although an appeal from the Surface Rights Board of Saskatchewan was in the form of a new hearing at which new evidence could be adduced, the appellate Judge was entitled to consider the findings of the administrative decision maker and accord them weight. The expertise of the board in determining compensation claims entitled its findings to some deference by the appellate Judge.'

*Steve Jaswal appeal of a section 34 review May 14, 2012 citing Imperial Oil Resources Ltd. v. 826167 Alberta Inc., 2007 ABCA 131 (CanLII), p. 4 — [Exhibit 1]"*

6. We note that in the *Jaswal* decision cited by Mr. Bone, the panel in that case ultimately concluded as follows:

"On the basis of the foregoing, this Panel concludes that the matter should proceed as an original application. This does not preclude giving weight to the Executive Director's opinion, however the analysis of the statutory scheme and prior decision making process suggest little or no weight should be given by this Panel to that decision." (Page 9 of that decision)

7. For the reasons that follow, even if we were to accept that we may give “little weight” to the Executive Director’s refusal decision (the words used in the *Jaswal* decision), we still find that Ms. Beigi’s application should not have been refused under section 34(1)(a) and (e) of the *Real Estate Act* Rules.
- V) False or Misleading Information (section 34(1)(a) of the *Real Estate Act* Rules)
8. Despite the significant amount of evidence and submissions the panel heard over the course of two days, and taking into account the information Mr. Bone provided in his closing submissions with respect to certain allegations that RECA was no longer pursuing against Ms. Beigi, the allegations that remain in dispute are quite narrow. The allegations in dispute regarding section 34(1)(a) of the *Real Estate Act* Rules are summarized as follows:
  - Allegation #1: RECA claims that Ms. Beigi made the false allegation that a RECA staff member discriminated against her because of her accent
  - Allegation #2: RECA claims that Ms. Beigi made the false allegation that a RECA staff member informed her that RECA would waive the English language proficiency requirement
  - Allegation #3: RECA claims that Ms. Beigi made the false allegation that RECA had waived the eligibility requirements for another applicant
  - Allegation #4: RECA claims that Ms. Beigi provided false information to RECA with respect to her inability to obtain transcripts from her out-of-country university, and also the need to obtain those transcripts in the first place in order to have her credentials assessed by the International Qualifications Assessment Services
  - Allegation #5: RECA claims that Ms. Beigi’s conduct as a whole demonstrates she breached section 34(1)(a) of the Rules

9. In the paragraphs below, we will summarize the relevant evidence and submissions presented on behalf of RECA and Ms. Beigi, and also set out our analysis and decision with respect to each of the above allegations.
10. Ms. Beigi's husband attended the hearing, and at times made submissions. In response to Mr. Bone's request to clarify Ms. Beigi's husband's role in the hearing, Ms. Beigi stated that she would agree to the submissions made by her husband throughout the hearing. Therefore, in our analysis that follows we have not distinguished between whether Ms. Beigi or her husband made certain submissions. We refer to submissions by either of them as submissions made on behalf of Ms. Beigi.
  - a. *Allegation #1 re section 34(1)(a) of the Real Estate Act Rules: RECA claims that Ms. Beigi made the false allegation that a RECA staff member discriminated against her because of her accent*
    - i. *Evidence and Submissions on behalf of RECA – Allegation #1 re section 34(1)(a) of the Real Estate Act Rules*
11. Nancy Iwasiw is the RECA staff member that is the subject of the allegation in question. Nancy Iwasiw is a RECA Professional Conduct Review Officer and she testified at the hearing. She indicated that in 2013 she held the position of Education Services Administrator at RECA, and her duties included fielding questions from the public regarding educational requirements to become an industry member. This witness's relevant testimony is summarized as follows:
  - a. One of her duties included responding to emails sent to RECA's Education Inbox. On July 28, 2013, the RECA inbox received the following email from Ms. Beigi:

"I am interested in taking mortgage broker course. I've been working as a part time Registered Nurse in Calgary for about 7 years. CARNA (College & Association of Registered Nurses of Alberta) has my Bachelor of Nursing transcript. I'd like to send you my registration with CARNA as proof of my education, a letter from Alberta health Services as a proof of my nursing experience in Calgary, a copy of my passport and my driving licence. Please let me know if with these documents I will meet the eligibility

criteria to enroll in the pre-licensing education program.”  
(Exhibit A-3)

- b. On July 29, 2013, Nancy Iwasiw emailed Ms. Beigi with a standard form email describing eligibility requirements to become a mortgage broker (Exhibit A-4). This email indicated, among other things, that:
  - i. An applicant must submit official proof that he or she holds a minimum of a Canadian high school diploma or equivalent, or post secondary diploma /degree. Transcripts must be official, signed by the Registrar or proper authority at the issuing institution. The transcripts must also state that a diploma or degree was granted, and must be mailed in a sealed envelope from the issuing institution directly to RECA. RECA will not accept transcripts that an applicant personally submits.
  - ii. The email indicated that RECA would accept different methods to officially prove the applicant’s educational prerequisite. Since Ms. Beigi held a degree from an institution outside of Canada, the relevant method of proof in this case, as described in the email sent to Ms. Beigi, is as follows:

“Relevant education from institutions outside of Canada must be assessed indicating the qualifications are comparable to a high school diploma, a two-year diploma or a degree in Canada. You may have your credentials assessed by the International Qualifications Assessment Services (IQAS) in Edmonton or by a member of the Alliance of Credential Evaluation Services of Canada (ACESC) [website omitted]”
  - iii. As English is the language of instruction in all pre-licensing education program courses and is consistent with the Alberta business environment, all industry members must be able to demonstrate proficiency in the English language. The email indicated that there were various methods to demonstrate this English language proficiency.



- c. Nancy Iwasiw sent Ms. Beigi an email dated July 29, 2013, which indicated that Ms. Beigi's professional membership with CARNA did not fulfill RECA requirements:

"We received your telephone message regarding the education eligibility requirements as outlined by my email below.

Unfortunately we are unable to accept professional designations/work history in lieu of transcripts. This applies to all applicants regardless of their designation or background.

In the same way that CARNA would be unlikely to accept your membership as an associate with RECA to prove your qualifications, RECA cannot accept your membership with CARNA in lieu of RECA's set eligibility requirements. . . ."  
(Exhibit A-5)

- d. In an email dated July 29, 2013, Ms. Beigi responded to the foregoing email by requesting the name of a RECA supervisor or manager:

"Thank you for your reply. Could you please send me your supervisor/manager phone number, so I can talk to them directly or they can call me at my cell phone: [number omitted]." (Exhibit A-6)

- e. An email on that same date was sent from another employee monitoring the RECA Education Inbox, and that email stated as follows:

"As there are no exceptions to this requirement, a phone conversation to repeat the information that has been provided below does [sic] seem prudent. Therefore, I am unable to supply you with the phone number you request." (Exhibit A-7)

- f. Nancy Iwasiw informed the panel that the email above should have read, "As there are no exceptions to this requirement, a phone conversation to repeat the information that has been provided below does not seem prudent."

- g. Nancy Iwasiw indicated at the hearing that the policy regarding eligibility requirements is well communicated, and RECA staff are told that they are able to verify requirements, without the need for a referral to a supervisor. There have not been any similar cases where there has been a referral made to a supervisor. Nancy Iwasiw is confident that a supervisor would have given the same answer in the event that Ms. Beigi was referred to a supervisor.
  - h. Nancy Iwasiw indicated that she did not have any personal visits, or telephone calls with Ms. Beigi. The above referenced emails are the extent of the communication between Nancy Iwasiw and Ms. Beigi. Nancy Iwasiw indicated that she did not discriminate against Ms. Beigi. Furthermore, Nancy Iwasiw does not believe anything she did could have been misconstrued as discrimination.
- 12. The panel heard from Brenda Kaughman who is a RECA Education Administrator. She indicated that her position involved providing information and registration for any programs in the real estate, mortgage and appraisal industries. Brenda Kaughman's relevant testimony is summarized as follows:
  - a. On July 31, 2013, Ms. Beigi appeared at the RECA office. Prior to her appearance, Ms. Beigi did not communicate that she was coming to the RECA office. Ms. Beigi asked to speak to a supervisor. A supervisor or coordinator was not available, so Brenda Kaughman met with Ms. Beigi because it was Brenda Kaughman's turn to respond to walk-in meetings.
  - b. Ms. Beigi indicated that she had provided proof of her education to her nursing association. Brenda Kaughman explained to Ms. Beigi that RECA required proof directly from the educational institution. Brenda Kaughman explained that RECA does not use assessments of educational background from other associations. Brenda Kaughman and Ms. Beigi discussed IQAS, and Ms. Beigi indicated that she believed her nursing association had used IQAS. Brenda Kaughman indicated that she suggested to Ms. Beigi that IQAS could send RECA their assessment of Ms. Beigi's education.
  - c. Ms. Beigi expressed her opinion that RECA was not professional because the emails sent by RECA did not identify which RECA employee was responding on behalf of RECA (i.e., the emails

were sent from a general address, "education inbox"). Brenda Kaughman explained to Ms. Beigi that the emails identified employee initials, and that the intent of the general inbox was that any employee in that department could monitor and respond to communications.

- d. Ms. Beigi indicated that the RECA employee she had been communicating with by email (i.e., Nancy Iwasiw) discriminated against her because of her accent. Ms. Beigi just brought this up, but did not elaborate.
- e. Brenda Kaughman explained that if IQAS indicated that her education was in the English language, then RECA would accept that as proof of English language proficiency. Otherwise, Ms. Beigi would need to take the Test of English as a Foreign Language (TOEFL).
- f. Brenda Kaughman denied telling Ms. Beigi that she was exempted from the English language proficiency requirement. Brenda Kaughman informed Ms. Beigi that if IQAS had already assessed her education, then Ms. Beigi could provide that IQAS assessment to RECA.
- g. There is no situation where someone could bypass the RECA requirements. In fact, there are instances where RECA has ordered further testing to prove English language proficiency.
- h. Brenda Kaughman considered that the meeting ended on a good note, and that Ms. Beigi was going to obtain her prior IQAS assessment.
- i. After the meeting, Brenda Kaughman told her supervisor about the meeting she had with Ms. Beigi. The supervisor subsequently asked her to provide a written summary of her meeting with Ms. Beigi, and Brenda Kaughman provided that summary to her supervisor in an email dated August 23, 2013, as follows:

"I met with Fatemeh in the lobby on August [sic] 31, 2013. She wanted to speak with Nancy's [Iwasiw] supervisor, I went out to meet with her and she asked if I was Nancy's [Iwasiw] supervisor. I answered that I was the head of the team or team leader.

She accused Nancy [Iwasiw] as being discriminating because of her accent, thought we were very unprofessional because we do not have our names on emails. She came back to these 2 points a couple of times in our conversation.

She said the nursing association had her Bachelors of Nursing assessed, she thought through IQAS. I told her to contact IQAS and have a copy sent to us and if IQAS stated instruction was in English she would need to take an English proficiency test." (Exhibit A-8)

- j. Brenda Kaughman clarified that in her email above there was a typographical error in so far as the date of the meeting was July 31, 2013, not August 31, 2013. In addition, based on her testimony at the hearing, we interpret that there appears to be another typographical error in the last sentence. We interpret that the last sentence should have read, "I told her to contact IQAS and have a copy sent to us and if IQAS stated instruction was in English she would not need to take an English proficiency test."
  - k. Brenda Kaughman indicated that she had never previously been accused of providing false information to a candidate.
  - l. Brenda Kaughman denied saying to Ms. Beigi that, "We are speaking English, so I can waive you [from the English language proficiency requirements]."
13. The panel heard from Emily Drexler, a RECA Education Administrator at the relevant time. Emily Drexler spoke with Ms. Beigi on the telephone on August 21, 2013. Emily Drexler's notes from that conversation were dated August 23, 2013, because that is the date when Emily Drexler finalized her notes of the conversation. Emily Drexler advised the panel that Ms. Beigi requested to speak to a manager or supervisor, but that Emily Drexler denied such request because the RECA requirements being discussed could not have been changed by a manager or supervisor. Emily Drexler indicated that Ms. Beigi was agitated and rude.
14. Mr. Bone made the following submissions. Nancy Iwasiw denies this allegation vehemently, and has never been accused of discrimination while with RECA. Although Ms. Beigi denies making the allegation that Nancy Iwasiw discriminated against her because of her accent, it is not probable that Brenda Kaughman would not tell the truth about this information. There is no benefit or reason for why Brenda Kaughman

would allege that Ms. Beigi made the allegation in question against Nancy Iwasiw. On the other hand, there is reason for Ms. Beigi to have made this allegation, and that reason is that it was in furtherance of her continued attempts to avoid having to fulfill the RECA English proficiency and education requirements (which take time and money to complete).

*ii. Evidence and Submissions on behalf of Ms. Beigi –  
Allegation #1 re section 34(1)(a) of the Real Estate Act  
Rules*

15. Ms. Beigi denied that she accused Nancy Iwasiw of discriminating against her because of her accent. Ms. Beigi advised that she did feel she was being discriminated against by RECA. In a letter dated October 5, 2015, Ms. Beigi provided various submissions, including the following:

- "1. Early on for my application, I attempted to discuss the opportunity of having my educational credentials waived.
2. To this end, I communicated by email with RECA for waving of my educational credentials. In response to my emails, I only received a list of eligibility requirements by email. I thought how is it possible to have my educational credentials waived when I only receive a set of repeated instructions for eligibility requirements. On July 29<sup>th</sup>, 2013, after not receiving any feedback to my inquiries for waving of my educational requirements, I inquired by email for the name of a supervisor or a manager so I could discuss this matter in person.
3. While I was sending emails, I also attempted to inquire by calling RECA office for waiving of my educational requirements. Again, in my repeated telephone calls, I was only informed of eligibility requirements by RECA.
4. On July 31st 2013, I decided to pay a visit to RECA office. My goal was to meet with one of RECA's agents who may be able to assist me in understanding how I could appeal for waiving of my educational requirement. I asked to meet and speak with the Education Manager/Supervisor. I recollect, Brenda Kaughman introduced herself as the head of department. I inquired about the procedures for waiving my educational credentials. Ms. Kaughman

explained the educational requirements to me, as it is provided on RECA website. . . ." (Exhibit B-2)

*iii. The Panel's Analysis and Decision – Allegation #1 re section 34(1)(a) of the Real Estate Act Rules*

16. Having considered the relevant evidence and submissions referred to above, we find that there is insufficient information to support that Ms. Beigi made the allegation that Nancy Iwasiw discriminated against her because of her accent. RECA has made the allegation that Ms. Beigi verbally made this comment to Brenda Kaughman. Therefore, as opposed to a comment made in writing, the panel finds that the evidence is simply lacking in specificity in terms of the context of the verbal conversation and the exact words allegedly used by Ms. Beigi. We are therefore unable to conclude on a balance of probabilities that Ms. Beigi made the alleged comment.
17. It should be noted that even if we had found that Ms. Beigi stated that Nancy Iwasiw had discriminated against her because of her accent, we would have found that such a comment would not constitute false or misleading information within the meaning of section 34(1)(a) of the *Real Estate Act Rules*.
18. It would have been our finding that the comment alleged is a general description of how Ms. Beigi felt at that point in her application process. The evidence supports that Ms. Beigi was attempting to seek additional information from RECA, and in response was being given standard form responses directing her to the eligibility requirements.
19. She wanted to have a normal conversation, and if her frustration in being unable to have such a conversation led to her opinion that she was being discriminated against, such an opinion would not constitute false or misleading information. In other words, if Ms. Beigi formed an opinion that she was being discriminated against, then RECA may well disagree with her opinion. However, just because RECA disagrees with her opinion, does not mean that her opinion is false or misleading information.
20. An example illustrates this point. The evidence indicates that Ms. Beigi also commented that she felt RECA's email communication policy was unprofessional in so far as the emails from the RECA education inbox did not identify the name or contact information of the RECA employee who authored the email. It is Ms. Beigi's opinion that the email policy is unprofessional. RECA obviously would disagree with that opinion

because RECA's purpose in not identifying an employee is so that the department can be more responsive to email communication (e.g., to avoid having communication sent to one specific employee, who might be out of the office or otherwise unavailable, RECA allows all employees to respond to the email communication). However, just because Ms. Beigi has formed an opinion that RECA does not agree with, it does not mean that Ms. Beigi's differing opinion constitutes false or misleading information.

21. The situation would be different if the allegation was with respect to a specific fact, rather than with respect to an opinion. For example, if Ms. Beigi had alleged that a specific RECA employee sent her an email calling her a racist name, then that would be an allegation that could be proven either true or false. That would be an allegation that is based on provable facts (i.e., either such an email was sent or it was not sent), rather than an allegation that is based on an opinion. The bottom line is that RECA's disagreement with an individual's opinion does not turn that opinion into false or misleading information under section 34(1)(a) of the Rules.

*b. Allegation #2 re section 34(1)(a) of the Real Estate Act Rules:  
RECA claims that Ms. Beigi made the false allegation that a  
RECA staff member informed her that RECA would waive the  
English language proficiency requirement*

*i. Evidence and Submissions on behalf of RECA –  
Allegation #2 re section 34(1)(a) of the Real Estate Act  
Rules*

22. RECA claims that Ms. Beigi made the false allegation that Brenda Kaughman, described above, informed her that RECA would waive the English language proficiency requirement.
23. As referred to above, Brenda Kaughman met with Ms. Beigi on July 31, 2013. Brenda Kaughman's testimony at the hearing has been summarized above. As stated above, Brenda Kaughman denied saying to Ms. Beigi that, "We are speaking English, so I can waive you [from the English language proficiency requirements]."
24. When Emily Drexler, referred to above, spoke with Ms. Beigi on August 21, 2013, Emily Drexler indicated in her notes that Ms. Beigi insisted that Brenda Kaughman told her she could be exempt from the English language proficiency testing.

25. Joseph Fernandez, the Registrar with RECA, indicated at the hearing that Brenda Kaughman informed him that Ms. Beigi requested an exemption because she could speak English. Joseph Fernandez indicated that Brenda Kaughman said she told Ms. Beigi that RECA has never given an exemption. Joseph Fernandez confirmed that RECA would never waive someone from the English language proficiency requirement. Joseph Fernandez indicated that in fact some applicants met the English language proficiency requirements, but in speaking to those applicants, it was noted that their English was not great. In those circumstances, RECA sent those applicants for testing.
26. On August 28, 2013, Joseph Fernandez sent an email to Ms. Beigi, as follows:
- "I have spoken to Ms. Brenda Kaughman and she denies providing you with a waiver from the English proficiency requirements. Ms. Brenda Kaughman spoke to me immediately after your July 31, 2013 in respect to your demand and her response. Ms. Brenda Kaughman has no authority to waive English proficiency requirements." (Exhibit A-14)
27. Mr. Bone made the following submissions that are relevant to this allegation:
- a. No one has the authority to exempt a potential real estate professional from the English proficiency requirements. It would be highly unprofessional for Brenda Kaughman to mislead an individual with such a statement.
  - b. Brenda Kaughman has worked for RECA for six and one-half years and has never been accused of giving false or misleading information to anyone in her time at RECA. There does not appear to be a logical, rational or beneficial reason for her to start doing so in this matter.
  - c. Brenda Kaughman indicated that there was no way what she said could have been misconstrued. There was nothing to be gained by Brenda Kaughman misleading Ms. Beigi with such a statement.
  - d. On the other hand, Ms. Beigi did try to use these statements to bypass the English proficiency requirements. Ms. Beigi wanted to bypass the English proficiency requirements to save time and/or



money as evidenced by the numerous times she made the request to various parties.

- e. On a balance of probabilities, Ms. Beigi was misleading with respect to her statement that Brenda Kaughman exempted her from the English proficiency requirement.

*ii. Evidence and Submissions on behalf of Ms. Beigi – Allegation #2 re section 34(1)(a) of the Real Estate Act Rules*

- 28. In Ms. Beigi's letter dated October 5, 2015, Ms. Beigi indicated that when she met with Brenda Kaughman at the RECA office on July 31, 2013, Ms. Beigi understood Brenda Kaughman to waive her from the English language proficiency requirement. Ms. Beigi wrote, "With respect to my language proficiency test, I heard her state, 'I can waive you from an English test, because obviously we are speaking English.'" (Exhibit B-2) Ms. Beigi submits that RECA has alleged that she is lying, but it is also possible for Brenda Kaughman to be lying.

*iii. The Panel's Analysis and Decision – Allegation #2 re section 34(1)(a) of the Real Estate Act Rules*

- 29. We acknowledge that Brenda Kaughman denied that she informed Ms. Beigi that the English language proficiency requirement would be waived. We also acknowledge that RECA submits that a negative connotation should be placed on Ms. Beigi's statement that Brenda Kaughman informed her that RECA would waive the English language proficiency requirement. However, we are not persuaded that there is sufficient compelling evidence for us to find that Ms. Beigi's statement that Brenda Kaughman would waive the English proficiency requirement is anything other than a misunderstanding.
- 30. We find that imputing negative intention to Ms. Beigi's statement, as suggested by RECA, is speculative. It is just as likely that Ms. Beigi simply misheard or misunderstood the information provided to her by Brenda Kaughman. Misunderstanding a verbal conversation does not constitute false or misleading information within the meaning of section 34(1)(a) of the *Real Estate Act Rules*.

*c. Allegation #3 re section 34(1)(a) of the Real Estate Act Rules: RECA claims that Ms. Beigi made the false allegation that RECA had waived the eligibility requirements for another applicant*

*i. Evidence and Submissions on behalf of RECA – Allegation #3 re section 34(1)(a) of the Real Estate Act Rules*

31. As referred to previously, Emily Drexler spoke to Ms. Beigi on August 21, 2013. Emily Drexler indicated in her notes and at the hearing that Ms. Beigi insisted she had friends with whom RECA had negotiated on the issue of eligibility requirements. (Exhibit A-10) Emily Drexler was not aware of RECA having ever waived the education requirements, and Emily Drexler stated that the standards are the same for everyone.
32. Sara Witzke was a licensing compliance officer with RECA at the relevant time. Sara Witzke conducted the section 34 review of Ms. Beigi. In an email dated September 30, 2014, Sara Witzke informed Ms. Beigi as follows:

"Thank you for providing the Real Estate Council of Alberta (RECA) with your application for licensing and registration.

At this time, we will be conducting a review under Section 34, of the *Real Estate Act Rules*, to determine if you are eligible for licensing. During the eligibility process you stated there was another individual getting special preference during the eligibility process. Are you prepared to provide RECA with the name and contact information of this individual?

Please advise us of your intentions in this matter so that we can determine the next step in the review." (Exhibit A-17)

33. Ms. Beigi provided the following response by email on October 1, 2014:

"Thank you for your email. About your question, I decided to consult with her, if she would let me, disclose her contact information to you, but I noticed I do not have her contact info. I think it happened, after I reset my cell phone a few months ago. She introduced herself as [L.K.], who was in process of being a real estate agent. I haven't heard from her for long time now. I am sorry that I am not able to provide

you with the information you requested and hope this does not affect my registration with RECA." (Exhibit A-18)

34. Sara Witzke spoke on the telephone with Ms. Beigi on October 2, 2014, and the panel heard the audio recording of that telephone conversation. Ms. Beigi signed a sworn declaration to document the information in the phone call she provided to Sara Witzke, as follows:

"I met [L.K.]

I do not have [L.K.]'s contact information.

I met [L.K.] in a library once, and I called her once after RECA asked me to provide eligibility information.

I met [L.K.] at Thornhill Library.

I only met [L.K.] once at Thornhill Library and talked to her on the phone once.

[L.K.] is from Iran.

[L.K.] told me that she enrolled in a master's program, and had her bachelor degree back home.

[L.K.] said that she was not asked for proof of education when applying with RECA.

[L.K.] said no to you providing RECA with her contact information.

I asked [L.K.] to provide RECA with her contact information by phone.

I did not meet ever speak to [L.K.] after your phone conversation with her.

[L.K.] told me she was enrolled in a Master's program for Education.

I did not have any additional information for [L.K.], such as her address or if she was married.

I reset my phone about 4 or 5 months ago and lost [L.K.] contact information.

When I lost [L.K.] information in my cell phone I asked my close friend if she knew her.

I asked my friend [name] if she knew [L.K.], and she did not know [L.K.]

I did at one time have [L.K.] phone number.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath." (Exhibit A-20)

35. Sara Witzke indicated that on October 2, 2014, she conducted numerous internet searches for L.K., but could not find an individual with that name in Alberta. Sara Witzke also confirmed that L.K. was not registered with RECA, Alberta Mortgage Broker's Association or Alberta Real Estate Association. L.K. would have had to have been registered with these organizations to be eligible for the mortgage broker course or to become a mortgage broker.
36. In an email dated October 8, 2014, Sara Witzke asked Ms. Beigi to provide a copy of her phone records from August 1, 2013 to December 31, 2013, or alternatively, a single statement from the time frame when Ms. Beigi placed a call to L.K.. (Exhibit A-24) On October 8, 2014, Ms. Beigi responded that she had called L.K. at work, and that she does not usually use her cellphone to call from work. Instead, she uses her cellphone as a phone book. (Exhibit A-25) Sara Witzke indicated at the hearing that given that Ms. Beigi indicated she called from a phone at work (i.e., a hospital) it appeared impossible to obtain phone records for a large hospital.
37. Joseph Fernandez indicated that RECA applies eligibility requirements consistently, and RECA wanted to investigate Ms. Beigi's allegation so that RECA could determine whether there was a situation where eligibility requirements had not been applied consistently. Joseph Fernandez sent an email dated August 22, 2013, to Ms. Beigi asking her to provide the names and circumstances of individuals who Ms. Beigi claimed had been exempted from the education eligibility requirements. (Exhibit A-11) In an email dated August 23, 2013, Ms. Beigi replied that she was not able to provide the name of her friend as she did not have permission. (Exhibit A-12) In an email dated August 26,

2013, Ms. Beigi informed Joseph Fernandez that she had asked the acquaintance she met in the library for permission to reveal her name, but the acquaintance preferred not to have her name revealed. (Exhibit A-13)

38. Joseph Fernandez indicated that Ms. Beigi had a duty to provide the name of the acquaintance she met because she was entering the mortgage profession, and it is only fair that she provide the facts to support her allegation. The education eligibility requirement process is important because the profession deals with complex issues, and there is a minimum education level needed to be successful in the courses and also to provide competent service.

39. Mr. Bone's written submissions with respect to this allegation are as follows:

"[52.]C. Ms. Beigi falsely accused RECA of applying the eligibility requirements in a discriminatory way because her Friend who was in similar circumstances (with a CARNA or similar professional designation) was able to bypass RECA's eligibility requirements to take the MBC.

- Ms. Beigi's friend, [L.K.] did not take the MBC as she was never registered with RECA, AMBA or AREA and could not complete the MBC or REAP without registration with one of these entities.
- Ms. Beigi's story about her Friend changed significantly. When communicating with Emily Drexler, Ms. Beigi made reference to several friends, and then it was one friend, [L.K.]. Later Ms. Beigi claimed she was only an acquaintance that she had met once at a library. Further at certain times Ms. Beigi claimed her Friend used her professional designation to bypass only the education requirements other times it was education and English proficiency requirements.
- When asked for her Friends number Ms. Beigi claimed it had been erased from her cellphone. This conveniently stopped RECA from contacting her.
- When asked for her phone records to prove the alleged phone call she claimed to have used her work phone and not her cell phone to call her Friend. This conveniently

rendered it impossible for RECA to get records for the alleged phone call.

- Ms. Beigi did try to use this alleged discrimination to bypass the education and English proficiency requirements.
- Ms. Beigi did want to bypass the English proficiency and education requirements to save time and/or money as evidenced by the numerous times she made the request to various parties.
- On a balance of probabilities all of the above clearly proves Ms. Beigi was misleading about the very existence of the alleged Friend and/or the allegation her Friend was able to bypass RECA's eligibility requirements.

...

61. Further if Ms. Beigi Friend did exist and told her she was able to bypass RECA's eligibility requirements, which is not admitted but expressly denied, then Ms. Beigi should have confirmed the veracity of her representations [emphasis added] in alleging the very serious charge of discrimination by RECA. A statement a virtual stranger made to Ms. Beigi in a library one time without following up is not confirming the veracity of the statement and therefore is would still be a breach of section 34(1)(a) of the Rules." (Exhibit A-30)

40. Mr. Bone submitted that it is not likely that one would meet someone in a library for the first time, and that person would lie about the fact she was in the same situation as Ms. Beigi. Ms. Beigi's story about meeting someone in the library is very convenient, and it is also very convenient that this person's identity could not be verified.

*ii. Evidence and Submissions on behalf of Ms. Beigi – Allegation #3 re section 34(1)(a) of the Real Estate Act Rules*

41. In her letter dated October 5, 2015, Ms. Beigi made the following submissions relevant to this allegation:

"12. In one of my communications with [RECA staff member], I recollected that I had become acquainted of a certain lady, who claimed she had in a similar situation as mine, with a Bachelor

degree from Iran and was also admitted to a Master Program. I understood from her that she was not required to write an English test or go through IQAS process.

...

16. During the [section 34] review process, I fully cooperate with the RECA. One particular issue was information related to the acquaintance who has suggested she had received waiver on her qualifications. At that point I had lost her contact information. I was asked to sign a statement before a commissioner, which I did.

...

18. On December 3rd, 2014, I received a letter from Mr. Bob Myroniuk, Executive director of RECA, in which I was denied my application for the following reasons:

...

d. 'You falsely accused RECA of applying the eligibility requirements in a discriminatory way because you knew of friends in the same circumstances who were able to bypass the eligibility requirements'

My rebuttal: Unfortunately, this matter has become extremely heated in my exchanges with RECA and I am realizing I should not have brought a third party, whose credentials I could not verify, into this case.

...

- i. Allegation that 'during the licence application process RECA required you to provide the identity of the friends who were the basis of your discrimination allegation. You stated the following. There was only one friend; The name of your friend is [L.K.]; you no longer have [L.K.]'s contact information, you lost this information when you rebooted your phone about 4 months ago; you met [L.K.] at Calgary's Thornhill Library. You only met here there one time; you called her once to seek her permission to provide her name and contact information to RECA; [L.K.] was eligibilized through the real estate sector and this may explain why there might have been process differences. Furthermore,

references are made to my emails to Mr. Joseph Fernandez on August 23rd, 2013 and on August 28th, 2013 to [AMBA Education Director] and [then acting AMBA Director]’.

My rebuttal: As I have stated above, I have realized that I should not have brought a third party into my case, as I was not able to check the individual’s credentials, nor her statements. As English is my second language, what I think has to be first translated in my mind to what I want to say, and then it is verbalized.

Selection of words or terms, can at times, leads to misunderstanding. By stating one of my friends, I meant an acquaintance of my mine. Surely, an individual I meet only once is not a friend. Also, by stating one of my friends, it did not mean I have many friends who are members of RECA.” (Exhibit B-2)

42. At the hearing, Ms. Beigi indicated that she struck up a conversation with L.K. because she was from Iran. It is typical for one to introduce oneself when encountered with someone from back home. It is typical to speak about work. Ms. Beigi is not certain whether she had the correct name or spelling for L.K.. In reference to comments made by Ms. Beigi to RECA that L.K. was in the exact same situation, Ms. Beigi meant to convey that she was someone who had a bachelor degree from back home, not necessarily that L.K. was enrolled in the mortgage broker course.

*iii. The Panel’s Analysis and Decision – Allegation #3 re section 34(1)(a) of the Real Estate Act Rules*

43. The panel is not persuaded by RECA’s submissions with respect to this allegation. We find that there is insufficient evidence to support that Ms. Beigi provided false or misleading information to RECA. The information that is the subject of this allegation is that Ms. Beigi conveyed that she was told by someone she met named L.K. that L.K. received a waiver of the eligibility requirements.
44. Ms. Beigi simply conveyed what she was told by L.K. during a conversation. There is no compelling evidence to support that Ms. Beigi did not have the conversation with L.K. that she has described. RECA might not believe that the conversation took place, but this belief is speculative. RECA has offered no compelling evidence to support that the conversation did not take place.
45. In any event, all Ms. Beigi did was convey that someone she met told her that she had her eligibility requirements waived. The information



may well have been inaccurate, as it appears to be. However, Ms. Beigi was always clear that she was simply passing on information she received from another individual. That is all she was doing.

46. In other words, the information that Ms. Beigi conveyed to RECA was that someone named L.K. told her that the eligibility requirements were waived for her. RECA has not given the panel sufficient evidence to support that L.K. did not tell Ms. Beigi this information. Again, L.K. might have misspoken or told an outright lie, but that is not the issue. Ms. Beigi made it clear that she was simply passing on information received from another individual, so we fail to see how a false or misleading information allegation can be proven on that basis (unless of course, RECA could prove that Ms. Beigi did not receive that information, but again, RECA has failed to establish that a conversation between Ms. Beigi and L.K. did not take place).
47. We are not persuaded by RECA's submission that Ms. Beigi had a duty to investigate the veracity of the information L.K. told her. She was upfront with RECA that she was simply passing on information she was told by someone else, so we fail to see why Ms. Beigi has to conduct an investigation to determine whether that information is true. Ms. Beigi simply told RECA that another individual told her certain information. RECA replied that the information she was given by that individual must not be accurate because RECA does not waive eligibility requirements. The fact that Ms. Beigi received inaccurate information from someone does not support that Ms. Beigi should be found to be in breach of section 34(1)(a) of the Rules. Ms. Beigi did not provide false or misleading information because she simply stated that she received certain information from someone named L.K..

*d. Allegation #4 re section 34(1)(a) of the Real Estate Act Rules: RECA claims that Ms. Beigi provided false information to RECA with respect to her inability to obtain transcripts from her out-of-country university, and also the need to obtain those transcripts in the first place in order to have her credentials assessed by the International Qualifications Assessment Services*

*i. Evidence and Submissions on behalf of RECA – Allegation #4 re section 34(1)(a) of the Real Estate Act Rules*

48. As referred to above, Emily Drexler spoke with Ms. Beigi on August 21, 2013. Emily Drexler's notes from that conversation indicate that Ms.

Beigi queried why RECA would not accept her previous education assessment done from an assessment institution. The notes also indicate that Ms. Beigi insisted that she could not obtain her transcripts. The notes indicate that Emily Drexler suggested that Ms. Beigi contact the assessment agency to see if she could retrieve the original transcript to submit it to an approved assessment agency. (Exhibit A-10)

49. In an email dated November 5, 2014, Sara Witzke inquired with Ms. Beigi, as follows:

"The Real Estate Council of Alberta (RECA) has received correspondence from IQAS regarding your submission. You provided IQAS with original documentation for your assessment. You portrayed to RECA, AMBA, and Service Alberta that original education credentials were required and were impossible to obtain. You stated your university did not send education credential documents overseas. Can you please explain the process of how you were able to provide original documents to IQAS?" (Exhibit A-26)

50. Ms. Beigi emailed the following response on that date:

"The original copy for me means document in a sealed envelope sent by school, as I stated before the University that I went to, do not send documents overseas. IQAS accepted the document, sent by me. Could you please explain what are trying to achieve here?" (Exhibit A-26)

51. Sara Witzke indicated at the hearing that she was surprised IQAS had accepted Ms. Beigi's document.
52. Joseph Fernandez indicated that RECA tried to contact Ms. Beigi's university, and also hired a translator to communicate with the university, in an attempt to verify the information provided by Ms. Beigi with respect to the inability to obtain transcripts. Joseph Fernandez indicated that the university website seemed to indicate the university could provide transcripts, but acknowledged that the information was not clear.
53. Joseph Fernandez indicated that it was his belief that Ms. Beigi's education would meet IQAS qualification, but his role was to nonetheless have her education validated. In the past, RECA reviewed degrees that looked legitimate, but after further investigation realized

the degrees were forged. The government of Alberta created IQAS to help with validating credentials.

54. Mr. Bone submitted that Ms. Beigi was suggesting that she was unable to obtain her transcript in order to force the use of her CARNA designation, and he also suggested that Ms. Beigi should have followed up with IQAS to confirm the need for transcripts.

55. Mr. Bone's written submissions with respect to this allegation are as follows:

"53. During the eligibility process Ms. Beigi provided false or misleading information to RECA staff, AMBA and Service Alberta.

- A. Ms. Beigi could not obtain educational credentials as her university does not send university credentials overseas.
- Ms. Beigi made the above statement in the context she would not be able to provide IQAS her education credentials. She later admitted she had the necessary education credentials all along.
  - Ms. Beigi did try to use this statement to bypass the education requirements.
  - Ms. Beigi did want to bypass the education requirements to save time and/or money as evidenced by the numerous times she made the request to various parties.
  - On a balance of probabilities the above evidence clearly proves Ms. Beigi was misleading about access to her education credentials." (Exhibit A-30)

*ii. Evidence and Submissions on behalf of Ms. Beigi – Allegation #4 re section 34(1)(a) of the Real Estate Act Rules*

56. In her letter dated October 5, 2015, Ms. Beigi made the following submissions relevant to this allegation:

"17. On November 5th, 2014, as part of the review process, I received an inquiry about my educational credentials, in which I was asked how I was able to provide original documents to IQAS. I explained that my understanding of the original is document is in a sealed envelope sent by school, and since the university I attended do no send documents overseas, IQAS accepted the copy of my transcripts.

18. On December 3rd, 2014, I received a letter from Bob Myroniuk, Executive director of RECA, in which I was denied my application for the following reasons:

...

h. 'You could not obtain education credentials as your university does not send university credential overseas.' & 'It takes 12 weeks for your country to provide education credentials'.

My rebuttal: It is correct that educational credentials are not sent overseas, it is no correct that it takes 12 weeks for country to provide educational credentials as that is most likely misunderstood. The Iranian universities I attended do not forward education documents overseas. One major reason is that the country is under sanction and money for transaction and processing fees are not allowed. The Bachelorette degree transcripts that I brought with me to Canada nine years ago were rigorously examined by the College of Association of Registered Nurses of Alberta. University of Alberta reviewed and approved my educational documents from Iran. IQAS, the very institution selected by RECA, for verification of my educational documents reviewed my degree and educational transcripts and verified them. It appears the RECA's approval board is not aware of the circumstance and difficulty an applicant faces coming from Iran. They may have been too quick to misjudge my character, stating I have provided false information, without giving me an opportunity to explain my situation, even though I tirelessly attempted to meet and discuss my situation with someone at RECA, who is in a decision making position." (Exhibit B-2)

57. At the hearing, Ms. Beigi provided the following information:

- a. She is not able to pay the university for the service of sending transcripts because the country is under sanction.
- b. When she left Iran, Ms. Beigi took two sealed envelopes containing her transcripts. Ms. Beigi used both of her sealed envelopes for CARNA and the University of Calgary, so she did not have any more sealed envelopes containing her transcripts.
- c. This is why Ms. Beigi was so insistent on trying to find a substitute process to validate her qualifications.

- d. IQAS accepted a copy of her transcripts. She was surprised, but IQAS accepted the copy.

*iii. The Panel's Analysis and Decision – Allegation #4 re section 34(1)(a) of the Real Estate Act Rules*

58. At the hearing, Mr. Bone conceded that this allegation was not RECA's strongest allegation against Ms. Beigi. Mr. Bone indicated that, to be fair, he could recognize how Ms. Beigi might have understood that she needed the university to send her transcripts. Mr. Bone is reasonable and correct in making these concessions. Indeed, we find that it was reasonable for Ms. Beigi to have understood that she would need to have her university send original transcripts. That was the information she was receiving from RECA. Ms. Beigi explained why she did not have a sealed transcript and why she could not obtain one, and that she was ultimately able to submit a copy of her transcript, which IQAS accepted. We note that Sara Witzke indicated at the hearing that she was surprised IQAS had accepted Ms. Beigi's document, so it is not reasonable to have expected Ms. Beigi to have known that a copy would be sufficient for IQAS from the outset.

*e. Allegation #5 re section 34(1)(a) of the Real Estate Act Rules: RECA claims that Ms. Beigi's conduct as a whole demonstrates she breached section 34(1)(a) of the Rules*

*i. Evidence and Submissions on behalf of RECA – Allegation #5 re section 34(1)(a) of the Real Estate Act Rules*

59. Mr. Bone provided general submissions with respect to the above allegations, urging the panel that we could consider Ms. Beigi's conduct as a whole, rather than as separate allegations, in determining whether Ms. Beigi breached section 34(1)(a) of the Rules:

"54. It is the ED's position that with regards to each allegation levied by the ED above, on a preponderance of evidence, we have met our burden. That said to find any of the above lone allegations meets the evidentiary burden for the ED is not necessary.

55. The Panel may consider the evidence as part of a wider pattern that, only when viewed aggregately, meets the evidentiary burden. The case of *Soderberg v. Shaw* outlines this legal principle:

'It will be seen that it is the defendant's position that the plaintiff was not a credible witness; that there were simply too many inconsistencies, and answers to questions which were simply not plausible. Counsel points out that while many of the inconsistencies and implausible answers on their own would be of little import, cumulatively they show a pattern of evidence tailored to the plaintiff's needs[emphasis added] and it follows that she is simply not a reliable witness. I agree."

*Soderberg v. Shaw*, 1994 CanLII 170 (BC SC) p33 -  
[Exhibit 33]

56. While the Panel may find some of the allegations against Ms. Beigi in isolated instances could be the result of inconsistencies or misunderstandings when one views how often the misrepresentations were repeated to multiple persons and entities from this totality of evidence a clear and unescapable pattern emerges. The ED submits that every misrepresentation Ms. Beigi made was for the singular purpose of bullying RECA into allowing her to bypass the English proficiency and education requirements to save time and/or money.

57. The ED's decision to refuse to grant Mr. Beigi's registration renewal is in keeping with a prior Appeal Panel decision in the matter of Dave Minh Huynh dated June 18, 2009.

58. In the Huynh Decision, Huynh applied to become a licensed mortgage broker associate in Alberta. He did not deal honestly with RECA and provided false and misleading information.

*Dave Minh Huynh appeal of a section 38 review July,3 2009* - [Exhibit 4]

59. As a result of his failure to be honest with RECA, the Appeal Panel denied Huynh review application and affirmed the decision of the ED, stating in part:

'As a professional person, Mr. Huynh ought to have known the importance of dealing honestly and directly with RECA as a governing body. If there was any doubt as to the veracity of his representations, Mr. Huynh ought to have consulted with RECA.'

*Dave Minh Huynh appeal of a section 38 review July,3 2009, p6* - [Exhibit 4]

60. It is submitted that at no stage of the eligibility process did Ms. Beigi engage with RECA honestly and directly:

- Ms. Beigi falsely accused Ms. Iwasiw of discriminating against her because of her accent;
- Ms. Beigi falsely accused Ms. Kaughman of representing herself as the head of the Education Services Unit and of having exempted her from the English proficiency requirements;
- Ms. Beigi falsely accused RECA of applying the eligibility requirements in a discriminatory way because her Friend who was in similar circumstances (with a CARNA or similar professional designation) was able to bypass RECA's eligibility requirements to take the MBC;
- Ms. Beigi provided false or misleading information to RECA staff, AMBA Service Alberta.

61. Further if Ms. Beigi Friend did exist and told her she was able to bypass RECA's eligibility requirements, which is not admitted but expressly denied, then Ms. Beigi certainly should have confirmed the veracity of her representations [emphasis added] in alleging the very serious charge of discrimination by RECA. A statement a virtual stranger made to Ms. Beigi in a library one time without following up is not confirming the veracity of the statement and therefore is would still be a breach of section 34(1)a of the Rules.

62. The public and fellow mortgage professionals expect and place a high level of trust on real estate professionals. As such industry members should possess a high level of honesty and integrity.

63. Mortgage Associates are often acting in a fiduciary capacity when exercising their responsibilities. Their agency obligations and fiduciary duties require them to be honest and to provide full disclosure. Often clients are unaware of processes and options and trust their representatives to act in their best interests, to be honest and to provide complete and accurate information.

64. Based on the foregoing it is submitted that it was justified and correct for the ED to refuse Mr. Beigi's application based on section 34(1)a of the Rules." (Exhibit A-30)

*ii. Evidence and Submissions on behalf of Ms. Beigi –  
Allegation #5 re section 34(1)(a) of the Real Estate Act  
Rules*

60. Ms. Beigi's evidence and submissions with respect to Allegations #1 through #4 have been detailed above in this decision. As will be detailed below under the section dealing with RECA's allegation that Ms. Beigi breached section 34(1)(e) of the Rules, Ms. Beigi submits that she is a professional with high ethical standards, and that she is frank and honest. We interpret that Ms. Beigi disagrees that her conduct as a whole supports a breach of section 34(1)(a) of the Rules.

*iii. The Panel's Analysis and Decision – Allegation #5 re  
section 34(1)(a) of the Real Estate Act Rules*

61. Mr. Bone submitted that, "While the Panel may find some of the allegations against Ms. Beigi in isolated instances could be the result of inconsistencies or misunderstandings when one views how often the misrepresentations were repeated to multiple persons and entities from this totality of evidence a clear and unescapable pattern emerges." (emphasis added) For the reasons explained above in this decision, we do not find that the weight of evidence supports that Ms. Beigi engaged in misrepresentations. It would be an odd result to find that even though the weight of evidence supports that none of RECA's allegations can be supported, somehow the weight of evidence as a whole nonetheless supports a breach of section 34(1)(a) of the Rules.
62. We find the *Huynh* decision cited by Mr. Bone to be distinguishable from Ms. Beigi's circumstances. In *Huynh*, a RECA panel dealt with circumstances surrounding disclosure of a criminal record. A criminal record is different from the circumstances that form the basis of the allegations against Ms. Beigi. Whether or not one has a criminal record is a fact. On the other hand, the allegations against Ms. Beigi can be explained away on the basis of:
- a. constituting her feelings or a label she placed on a situation (i.e., Allegation #1 dealing with the fact she felt discriminated against).
  - b. a misunderstanding of a conversation (i.e., Allegation #2 dealing with Ms. Beigi interpreting the conversation such that she would be waived from the English language proficiency requirement).



- c. a description of what another person told Ms. Beigi (i.e., Allegation #3 dealing with Ms. Beigi conveying information she received from someone else).
- d. uncertainty about documents needed by another organization (i.e., Allegation #4 dealing with the suggestion that Ms. Beigi should have determined earlier whether IQAS would accept her copy of the transcript).

**VI) Character/Reputation/Unfit for Authorization (section 34(1)(e) of the Real Estate Act Rules)**

***a. Evidence and Submissions on behalf of RECA re section 34(1)(e) of the Real Estate Act Rules***

63. Joseph Fernandez indicated that the totality of the evidence needs to be considered. He indicated that sometimes issues in isolation could be trivial, but the totality of the evidence might present a clear picture. Joseph Fernandez suggested that the totality of the evidence in this case demonstrates:
- a. Someone who has the intention in mind to go the wrong way.
  - b. Falsehoods and false accusations.
  - c. Lack of cooperation and transparency.
  - d. A pattern of behavior to force the hand of RECA to do something she wants, and a question about whether she will force a client to go with a certain lender.
  - e. That this is not a situation of mistake or misunderstanding.
  - f. That there is a stigma associated with Ms. Beigi's allegations, and the allegations affect RECA's and staff's integrity.
  - g. That there is a duty to cooperate and there is no right to maintain privacy. A failure to cooperate affects governability.
  - h. That there has been no acknowledgment by Ms. Beigi of wrongdoing. If she had acknowledged wrongdoing perhaps there would have been a "right touch" and there would have been supervision conditions put in place against Ms. Beigi.
64. With respect to the meaning of "good character", Mr. Bone referenced the decision of *Jonathon Bruce Payne v. Law Society of Upper Canada*, 2012 ONLSHP 81 at paragraph 53 (CanLII):
- "1. An appreciation of the difference between right and wrong;
  - 2. The moral fibre to that which is right, no matter how uncomfortable the doing may be and not to do that which is

wrong no matter what the consequences may be to oneself;  
3. A belief that the law at least so far as it forbids things which are malum in se (wrong) must be upheld and the courage to see that it is upheld.”

65. Mr. Bone’s written submissions with respect to this allegation are as follows:

“66. It is submitted that Ms. Beigi does not pass any of those tests [in the *Payne* decision] at this time. During the eligibility process Ms. Beigi made very serious false accusations against RECA and its staff. Ms. Beigi also provided false information to RECA. This was all done to bypass the education and English proficiency requirements for the MBC in or to save time and/or money.

67. The above false allegations were made numerous times to RECA, AMBA and Service Alberta and Ms. Beigi continued to make these false allegations. To date Ms. Beigi has showing no remorse for her actions.

68. Finally during the eligibility process it was extremely difficult to get information from Ms. Beigi supporting her allegations. Further Ms. Beigi seemed to refuse to accept the eligibility process at every turn. This does not convey the persona of someone with the moral fibre to do that which is right, no matter how uncomfortable the doing may be [emphasis added].

69. Based on the foregoing it is submitted that it was justified and correct for the ED to refuse Ms. Beigi’s application based on section 34(1)(e) of the Rules.” (Exhibit A-30)

***b. Evidence and Submissions on behalf of Ms. Beigi re section 34(1)(e) of the Real Estate Act Rules***

66. Ms. Beigi submitted that she has an extensive educational background and history of public service as a nurse. Ms. Beigi submitted that if RECA is attempting to protect the public, it does not need to protect the public from a nurse. Ms. Beigi stated that it is not right for her application to be denied when she has a gold standard in terms of her qualifications. She also submitted that the lack of training of RECA staff created confusion, and misperceptions created problems.
67. In her letter dated October 5, 2015, Ms. Beigi made the following submissions relevant to this allegation:

"18. On December 3rd, 2014, I received a letter from Bob Myroniuk, Executive director of RECA, in which I was denied my application for the following reasons:

...

j. Allegation that 'The evidence suggests you systematically embarked in a scheme to force RECA to waive you from having meet RECA's eligibility requirements. At first the scheme involved providing false information and making false accusations against RECA staff and was exclusively targeted to RECA's management. When you failed to achieve your objective, you directed your efforts to external entities such as the Alberta Mortgage Brokers Association, Service Alberta and the Human Rights Commission.'

My rebuttal: I believe I have addresses the allegations by providing a chronological list of events and in my rebuttal statements above. I have had no intentions and do not have any intention to falsify any information, as I am a professional, and a Registered Nurse and I do take offence when my intentions are misunderstood or misrepresented. My only goal was to reach out to RECA staff and management for clarification and explain my situation with respect to waiving my educational credentials. In items 4 and 6 above I made reference to my interactions with Ms. Kaughman on July 31<sup>st</sup> and then with Mr. Fernandez. How is it, when I spoke with Ms. Kaughman on July 31<sup>st</sup>, I heard her state my English test is waived, yet I was later informed by Mr. Fernandez, that Ms. Kaughman has denied my waiver of English test. As a result, I felt I was denied the opportunity for waiving of my educational credentials, without any explanation by RECA management or staff. I therefore I reached out to external entities.

k. Allegation that 'The evidence demonstrates you do not hesitate to use deceit to achieve what you want with disregard to the harm that you may cause others. You do not hesitate to use deceit to hide past deceit. This demonstrates you are untrustworthy and fail to take responsibility for your actions'.

My rebuttal: I disagree with this allegation. Furthermore, the psychological and mental pressure that I and my family have endured for the past two years have been extremely painful and

it is only because of being a professional and a trained nurse that I believe, I have been able to endure such pain.

Therefore, as stated above, I am a professional, I admire the fact that all my credentials have been examined by three independent institutions (College and Association of Registered Nurses of Alberta, The University of Calgary, IQAS), and practice as a Registered Nurse, working for over eight years with Alberta Health Services (AHS). As a professional, I adhere to high ethical standards, including being frank and honest. My present position as a Registered Nurse requires me to associate with patients of all ages and accurately and candidly assist Doctors and senior staff in my daily work. Although I was sure that I meet all the educational and language requirements, my main goal was to expedite my application process, unfortunately it caused misunderstanding and longer processing time, leading to the denial of my licence." (Exhibit B-2)

68. Ms. Beigi indicated at the hearing that the IQAS process takes some time, but that it does not cost any money. Therefore, Ms. Beigi disputes that she was attempting to save money, as alleged by RECA.

*c. The Panel's Analysis and Decision re section 34(1)(e) of the Real Estate Act Rules*

69. Much of RECA's submission with respect to this allegation is based on RECA's position that Ms. Beigi has breached section 34(1)(a) of the Rules. For the reasons explained above, we have found that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) of the Rules.
70. Ms. Beigi was persistent in her efforts to seek clarification and resolution of her concerns and questions surrounding the eligibility requirements. This does not demonstrate bad character.
71. Contrary to RECA's submissions, the evidence supports that Ms. Beigi was responsive to RECA's communications. RECA might not have liked Ms. Beigi's answers (e.g., that she phoned her acquaintance from work and therefore phone records were not obtainable, or that her acquaintance's contact information was lost), but that does not mean that Ms. Beigi was not responsive or that she is not cooperative.
72. It was indicated by Joseph Fernandez that there has been no acknowledgment by Ms. Beigi of wrongdoing. However, we have found


in this decision that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) or (e) of the Rules.

VII) Appropriate Outcome and Sanction in this matter

73. As explained above, we have determined that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) and (e) of the *Real Estate Act* Rules. We therefore find that the basis upon which the Executive Director refused Ms. Beigi's application cannot be supported. It follows that if Ms. Beigi has met all the applicable eligibility requirements, then her application should be granted.

This decision was made on December <sup>14</sup>14, 2015

  
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Brian Klingspon, Chair

  
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Tony Dhaliwal

  
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Derek Vermette

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Christine Zwozdesky

in this decision that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) or (e) of the Rules.

VII) Appropriate Outcome and Sanction in this matter

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This decision was made on December 14<sup>th</sup>, 2015

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Brian Klingspon, Chair



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Tony Dhaliwal



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Derek Vermette

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Christine Zwozdesky

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**VII) Appropriate Outcome and Sanction in this matter**

73. As explained above, we have determined that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) and (e) of the *Real Estate Act* Rules. We therefore find that the basis upon which the Executive Director refused Ms. Beigi's application cannot be supported. It follows that if Ms. Beigi has met all the applicable eligibility requirements, then her application should be granted.

This decision was made on December 17<sup>th</sup>, 2015

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Brian Klingspon, Chair

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Tony Dhaliwal



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Derek Vermette

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Christine Zwozdesky

in this decision that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) or (e) of the Rules.

VII) Appropriate Outcome and Sanction in this matter

73. As explained above, we have determined that the weight of evidence does not support that Ms. Beigi breached section 34(1)(a) and (e) of the *Real Estate Act* Rules. We therefore find that the basis upon which the Executive Director refused Ms. Beigi's application cannot be supported. It follows that if Ms. Beigi has met all the applicable eligibility requirements, then her application should be granted.

This decision was made on December 14<sup>th</sup> 2015

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Brian Klingspon, Chair

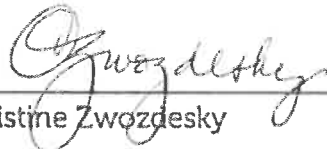
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Tony Dhaliwal



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Derek Vermette



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Christine Zwozdesky