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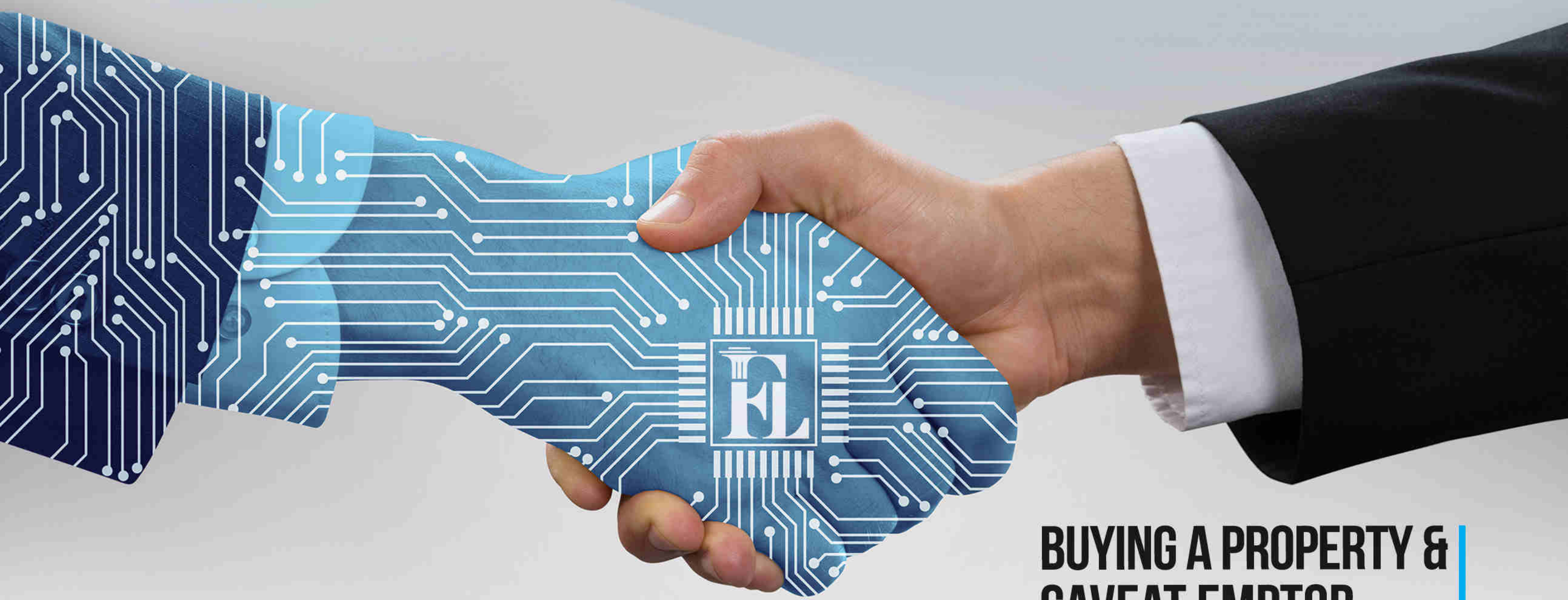

BUYING A PROPERTY & CAVEAT EMPTOR BUYER BEWARE!

BY Ali Ahmari Moghaddam

ONTARIO'S NO FAULT SYSTEM: IS IT GOOD FOR DRIVERS?

BY Aryan Kamyab

DIVISION OF ASSETS DURING DIVORCE

BY Mazinani & Associates

PHYSICIAN SEXUAL ASSAULT: DO NO HARM

BY Charles E. Gluckstein

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FACELAW . NO16

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WE are a directory of Lawyers, Paralegals and Immigration consultants, striving to bring together the best professionals in the legal field.

In today's fast paced world, where almost everyone now has the internet in the palm of their hand, finding the relevant information and assistance you require has never been easier.

Finding an experienced lawyer, paralegal or immigration consultant ("Legal Professional") to assist you with your legal matters should be no different.

Whether your legal matter is complicated or simple, Facelaw.ca is here to make the initial interaction between the client and Legal Professional just as simple.

Facelaw.ca is a website which connects those looking for a Legal Professional to assist them with a legal matter (or those just wanting to get some preliminary legal advice) with an experienced Legal Professional in the appropriate field of law.

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Ashkan Anvari

Doctor Of Business Administration(DBA)

Founder Of The Facelaw Platform

PUBLISHER'S NOTE

We are happy to share that we have had several additional lawyers that practice in a wide variety of areas, that have joined our Facelaw membership and have contributed to our publication. We are continuing to grow our roster of lawyers and we have new articles from our legal professionals in this month's issue.

Our application will be launching soon as the development is near completion, and will be released once it is ready for download on the app store both on Apple and Android phones. The application will include access to our digital magazine, articles, videos, and website content for easy access. All of our articles in this month's issue will be available for download on our website both in English and Farsi. Please visit our website to see the updated articles section and news.

We welcome any legal professional interested in joining Facelaw to visit our website and contact us, especially if you wish to contribute articles on legal issues, as well as any video uploads for our Youtube, Instagram and Facebook page.

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Ali Ahmari Moghaddam

We believe that clients should feel welcome and comfortable every time they walk into our office. Our law firm also works hard to make sure that clients are involved in all aspects of their case. We take the time to educate clients about their legal matter so that they are well informed about all aspects of their particular case.

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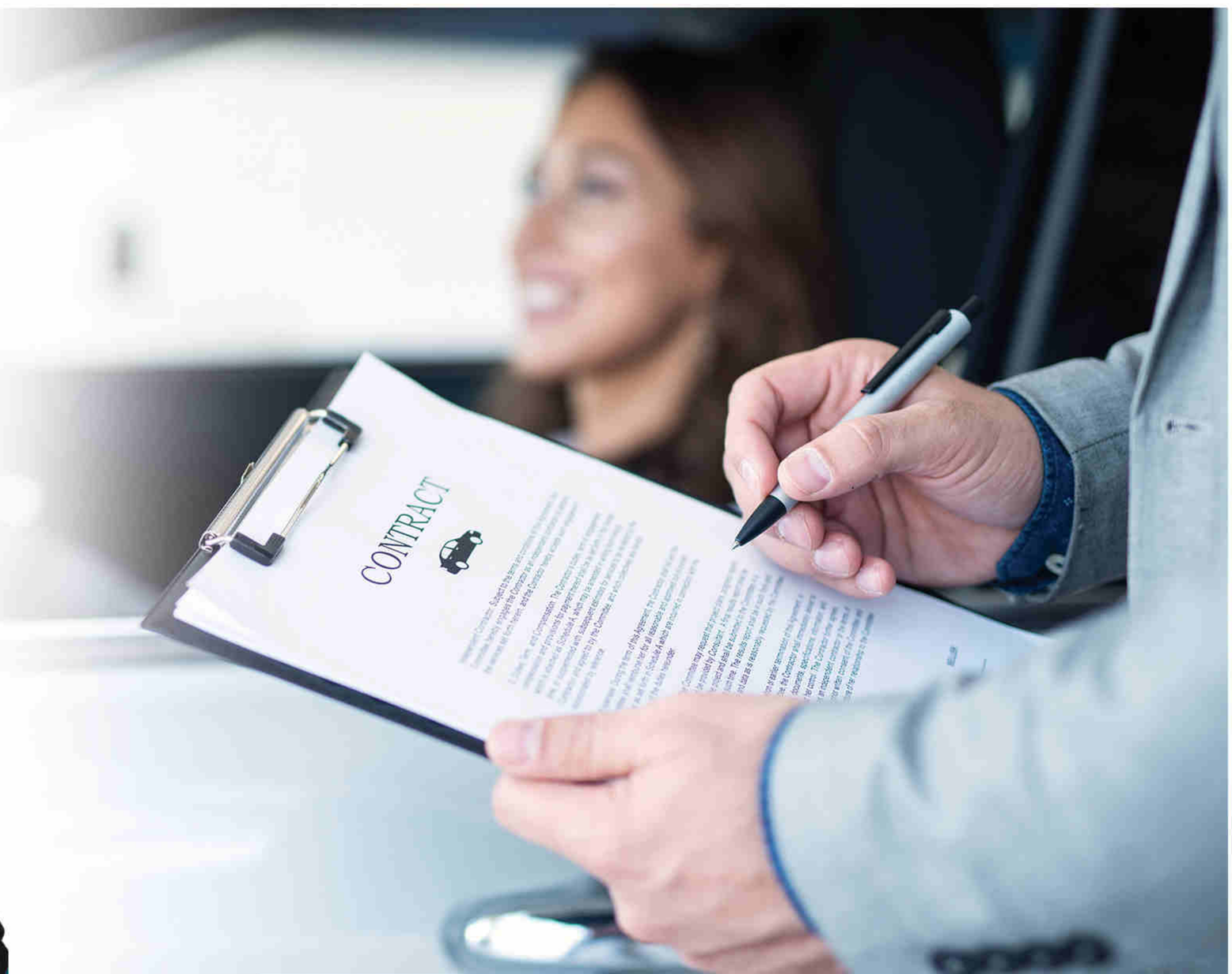


Ontario's No Fault System: is it Good for Drivers?

Auto Insurance in Canada

Canada handles car insurance and motor vehicle collisions a little differently than our neighbours to the south, where motor vehicle insurance laws and regulations vary significantly from state to state.

Car insurance in Canada is regulated, in some form or another, by the government. While some provinces, including Quebec and BC, provide a public auto insurance system; others, including Ontario and Alberta, have a private auto insurance system.

Despite these differences, basic auto insurance in Canada is mandatory and intersects with public policies and provincial statues, regardless of the province.

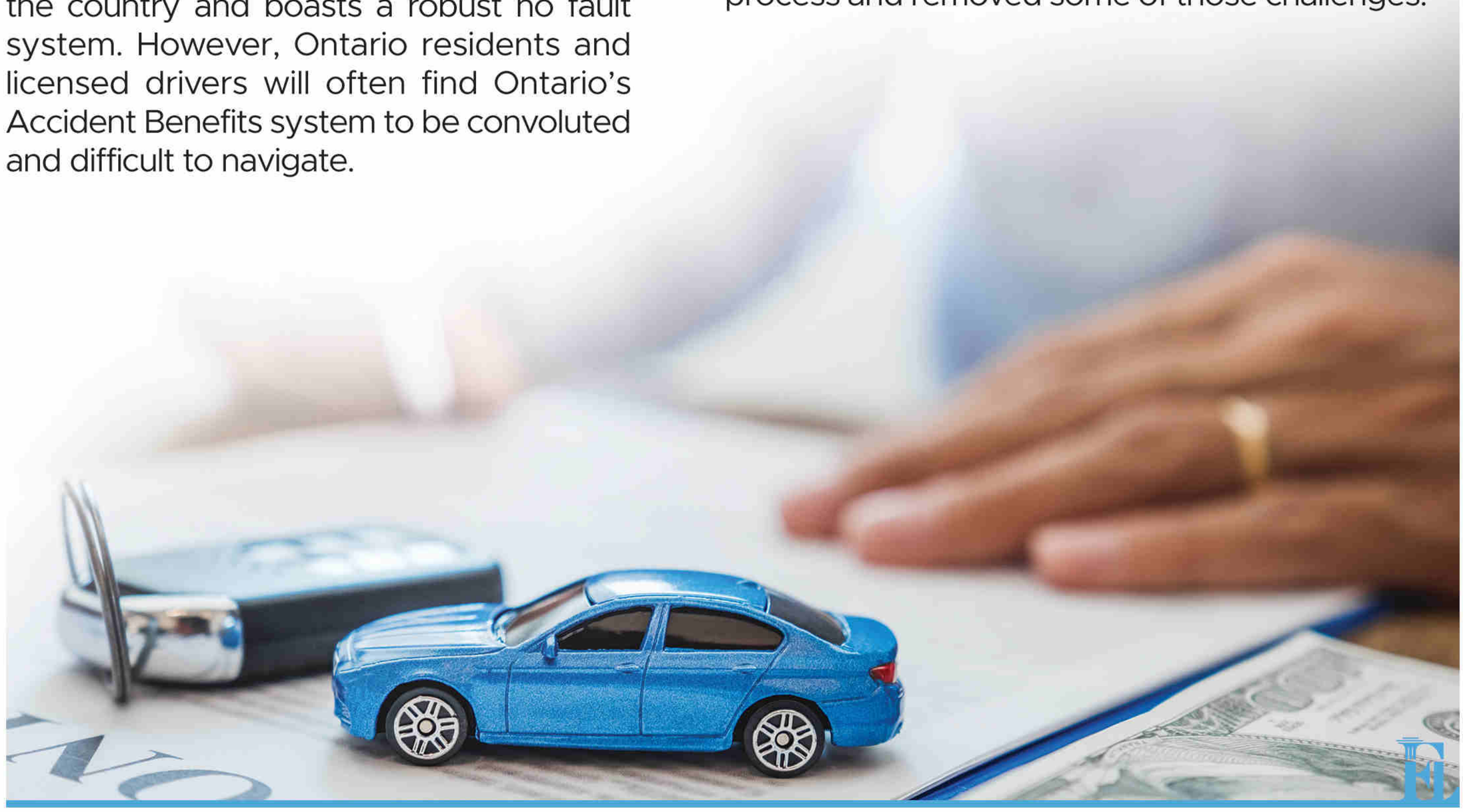
An additional hallmark of the Canadian system of auto insurance is the no fault system. Although not all provinces have an elaborate no fault system like Ontario, each province has some basic aspect of this structure.

Significant differences in provincial no fault systems merely range in the level of coverage and the extent to which tort claims are handled.

Ontario is the most populated province in the country and boasts a robust no fault system. However, Ontario residents and licensed drivers will often find Ontario's Accident Benefits system to be convoluted and difficult to navigate.

Ontario's No Fault System

The no fault system is labelled as such by virtue of the removal of a necessary determination of fault from the initial assessment of an insurance claim. Essentially, if a person is involved in an automobile accident, they deal directly with their own insurance company, regardless of fault. In turn, the insurance company has access to government regulated funds (Accident Benefits, for example) that are designed to cover the basic claims of a motor vehicle accident. Because these basic funds are publicly available, insurance companies (generally) do not engage in elaborate investigations and adversarial behaviour between one another, which usually takes a great deal of time. Prior to the no fault system, injured parties could be without compensation for long periods of time or would be required to cover costs of vehicle damage themselves and seek reimbursement later. Ontario's no fault system has expedited the process and removed some of those challenges.



Claims in Tort

So what are the downsides of the no-fault system? One could argue that the system protects (or rather, doesn't adequately discourage) poor driving. While from a public policy perspective, this may be theoretically true, there are ways for drivers to collect damages that are beyond the scope of the Accident Benefits program in Ontario. Civil litigators are available to help pursue lawsuits on behalf of injured parties who are the victims of negligent driving. This avenue for compensation is called a tort claim. Unlike the Accident Benefits claim and the expedited no fault system, a tort claim is traditional litigation and usually requires several months or more to process. But these claims are reserved for situations where a person is seriously injured by the negligence of opposing driver. Pursuing a tort claim can be expensive and time consuming, but if the injured party has suffered and the opposing party is at fault, then a tort claim is a worth while option. Indeed, it may be the only option for a seriously injured driver to be fairly compensated because Accident Benefits will not cover the extent of the loss.

Getting Back on the Road

Ontario's bifurcated auto-insurance system is fair and efficient. With 10,617,912 licensed drivers, 9,795,303 registered vehicles on the road (2020), and 828 kilometres of the infamous 401 highway, Ontario sees its fair share of collisions. In 2020, Ontario recorded 23,689 collisions involving fatalities or personal injury; down from 34,130 in 2019. The 2021 numbers are expected to rise as more drivers are getting back on the road. Ontario produces an enormous volume of accident claims, but by dividing claims into either Accident Benefits or claims in tort, this allows the system to process these claims more efficiently. Many claims do not require litigation, as they may be limited to vehicle damage or minor injuries. The no fault system allows these claims to be processed quickly without involving the Superior Court of Ontario, while more serious claims have the option of litigation.

Regardless of whether or not a person believes their car accident is serious, it is important to seek legal advice after a motor vehicle collision. A lawyer can determine if a claim in tort is worthwhile and can also complete the entire Accident Benefits claim in a timely and stress free manner. With the efficiency of Ontario's no fault system and a skilled personal injury litigator on your side, drivers can rest assured knowing that they will be fairly and quickly compensated after a motor vehicle accident.

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He is the founder of Yazdani & Associates Immigration Firm as well as YLG – Yazdani Law Group.

He received a Master's degree in Canadian Common Law at York University, and graduated from Osgoode Hall Law School in 2016.

He obtained his Certificate of Qualification from the National Committee on Accreditation (NCA).

He is the author of several articles on matters pertaining to Public International Law, Dubai Property, Arbitration Law, and Canada Immigration Law.

Mr. Yazdani is the only lawyer in Canada with an immigration consultant diploma and three law degrees. His high-profile and celebrated cases have attracted international attention, and he is frequently consulted as an immigration expert by journalists, government and non-governmental organizations (NGOs) on matters pertaining to immigration law and policy. He recently was a television host in a biweekly show known as "Canadian Immigration from Law's Point of View".

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YLG Empowers Individuals & Business Persons to Migrate to Canada

Afshin Yazdani is a skilled advocate, trusted advisor, international barrister and solicitor with more than 20 years experience in the legal field. His career has taken him to great heights from being a law professor in Iran and the United Arab Emirates to growing Canada's largest Iranian Canadian immigration law firm. After a six year stint in Dubai, UAE, Yazdani immigrated to Canada in 2012, where he received an immigration consulting diploma in Montreal in 2013.

In the same year, he founded Yazdani and Associates Consulting in Toronto, Ontario with primary focus on providing business and immigration consulting services to international companies. He became a regulated immigration consultant (ICCRC) member in 2016 and subsequently, he worked as an international lawyer and senior consultant for WWICS, Toronto branch Canada's largest Indian immigration organisation with more than 20 branches worldwide, averaging about 25 000 Canadian visa applications annually.

After completing his postgraduate studies in Canadian Common Law at Osgoode Hall Law School and Ryerson Universities in 2018, he identified a need to represent the new generation of young, ambitious, individuals and entrepreneurs to realise their dreams in Canada and hence the concept of Yazdani Law Group (YLG) was born in 2019.

Yazdani actively participates in client cases, having advocated and consulted hundreds of successful cases and mentors a stellar team of over 200 employees with associate business in Tehran, Shiraz, Los Angeles, Toronto and Vancouver, to achieve their objectives in complex cases ranging from refugee hearings to angel investor visas, while maintaining an active and robust litigation practice to effectively resolve problems.

The father of one holds a bachelors and masters degree in law from Iran and master's degree in law and an immigration consulting degree from Canada, and is currently admitted on three international law boards namely Canada, Dubai and Iran.

As part of his astounding portfolio, Yazdani is also a regular columnist having written Canadian immigration articles for specialised publications such as Lawyers Daily, one of Ontario's most read legal publications by Lexis Nexis, was the producer of the 24-episode TV series Immigration to Canada from a Law Prospective and was featured in Law Times.

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Buying a Property & Caveat Emptor

Buyer Beware!

Caveat emptor, a famous Latin phrase and important legal concept that vendors and purchasers should be aware of when buying or selling a property. This Latin maxim means let the buyer beware, and the doctrine states that a purchaser has the responsibility to conduct investigations and inspections of the item being purchased to reveal any issues or defects that a reasonable person would have discovered through an inspection or investigation.

This is a very important principle and is especially relevant in real estate transactions. The general rule in the province of Ontario is that a reasonable person should conduct their own due diligence, inspection, investigation and research to not only ensure the property is right for them, but also to ensure that the property does not have any defects, issues, or stigma, attached to the property.

Patent vs Latent Defects

Patent defects are those that are reasonably discoverable by the purchaser, if the purchaser conducts their due diligence and investigates the property. The onus is on the purchaser to confrim the status of the property through its investigation, such as conducting a professional home inspection of the property.. Under this theory, the seller has no obligation to disclose any patent defects that are reasonably discoverable by a Purchaser. These are considered defects that would be extremely evident to anyone who performedinvestigations, inspections and due diligence searches on the property. Patent defects can arise specifically where there is a real estate transaction, and the agreement of purchase and sale has no conditions and is a firm and binding agreement. In this scenario the buyer will be required to go through with this purchase, as they have waived the right to place any conditions on the transaction, such as a satisfactory home inspection condition. The purchaser has bascially accepted the property with any patent defects that may exist. Patent defects are often not a valid reason to invalidate an agreement of purchase and sale, unless specified in the contract that it is conditional on that defect.

However, latent defects are those that are not easily or reasonably discoverable by a purchaser, and as such, the vendor has a duty to disclose those defects to a potential purchaser. For example, the vendor of a property is aware of the existence of some sort of black mold , but does not disclose it's existence or actively tries to conceal the black mold from a potential purchaser of the property. Often this does not become an issue with newer homes, but definitely can cause problems with older properties.

Newer properties often also are covered under new home warranties, but nevertheless due diligence must be completed to ensure the home is up to standard of living and that there are no defects existing. However, there are certain limitations to these new home warrantiesIn Ontario, the limitation period for bringing a an action regarding a latent defect is two years from when you discovered the defect, or ought to have discovered it.

Remedies for Defects

Patent defects are apparent and visible to a reasonable person. Latent defects however require more of a detailed inspection, and can be concealed. Damages can be sought for latent defects as long as it can be proven that there was actual knowledge regarding the defect, and attempts at concealment of the defect.

Conclusion

This is why it is important to ask the right questions when purchasing real estate, and to do your research and due dilligence. Conduct proper inspections of a property with the help of qualified inspectors.

Hire the right professionals to assist you, such as your real estate agent and retaining a lawyer to conduct proper searches prior to closing. It is also essential when selling a property, to know your obligations and rights for disclosing defects and any other important information regarding the property to avoid future legal troubles.

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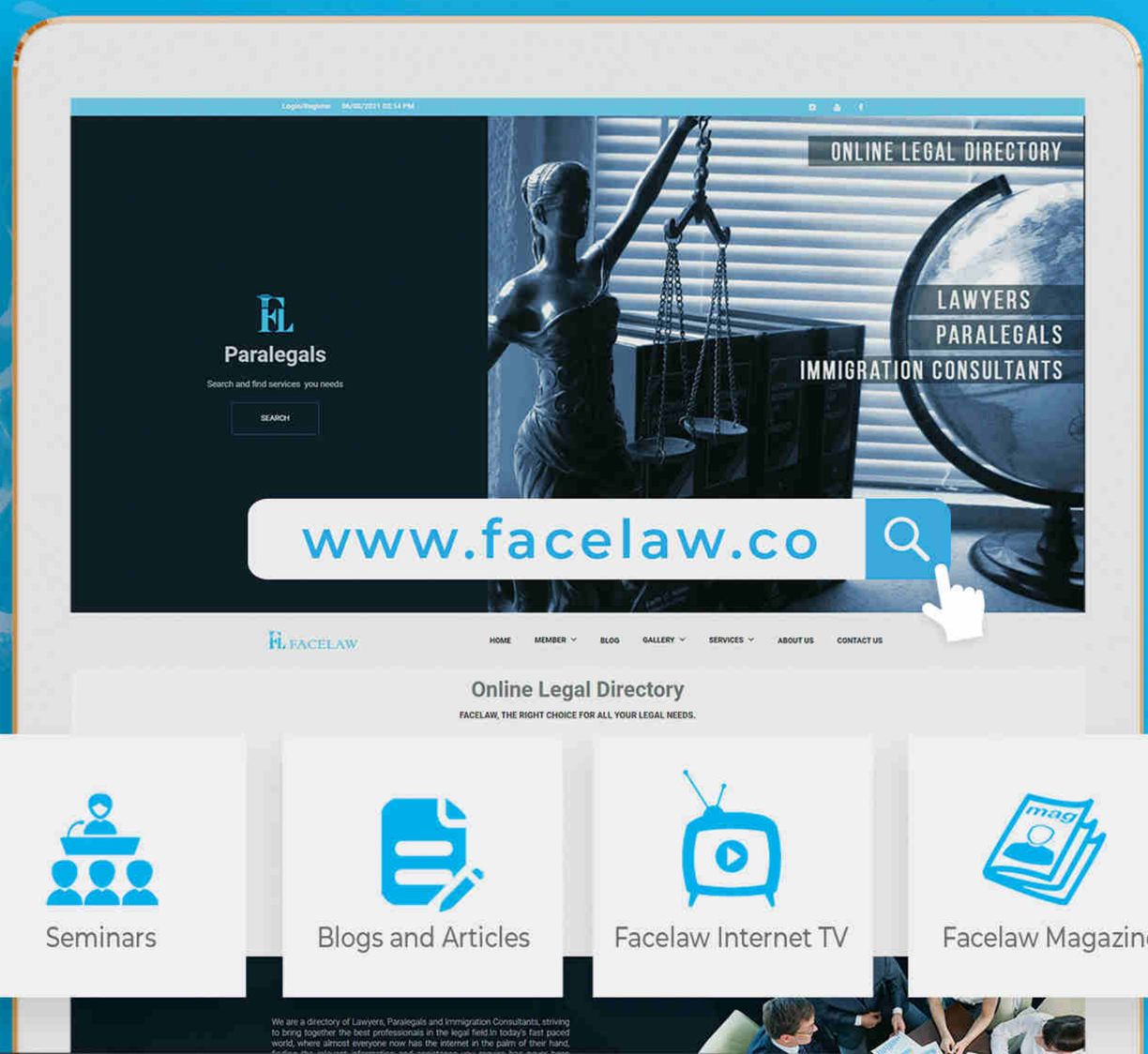

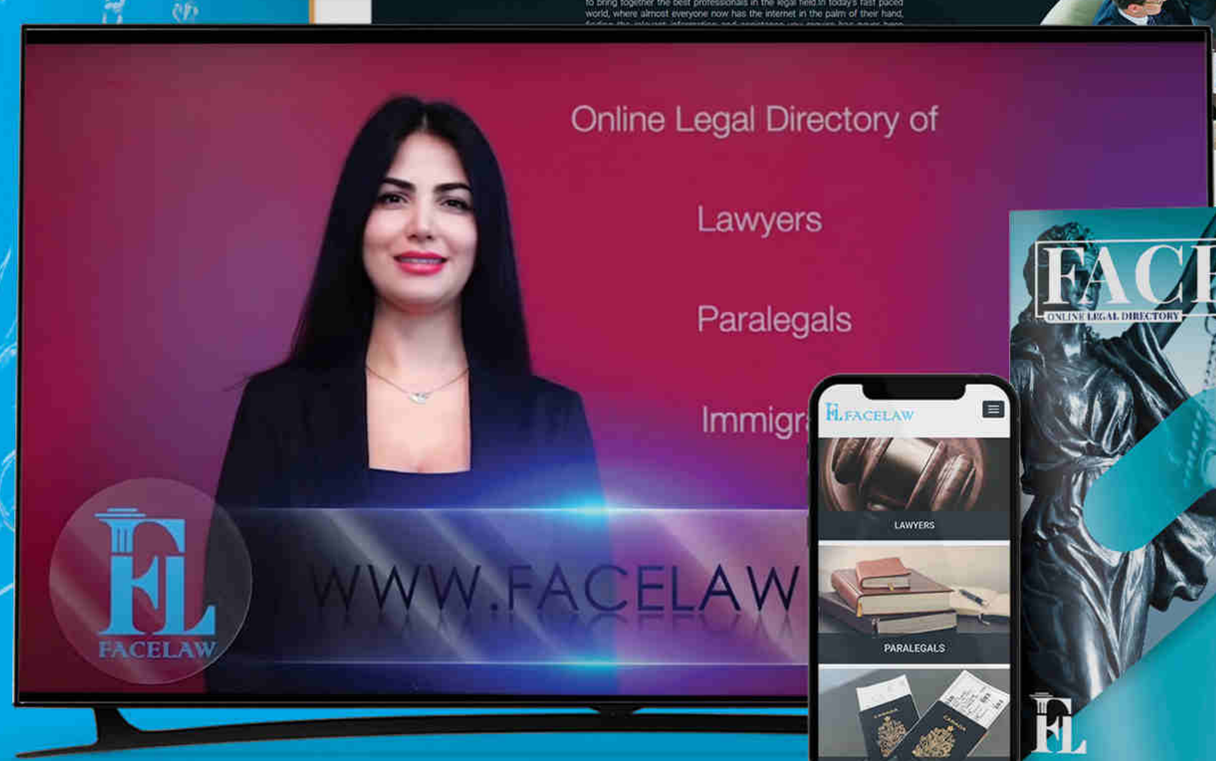

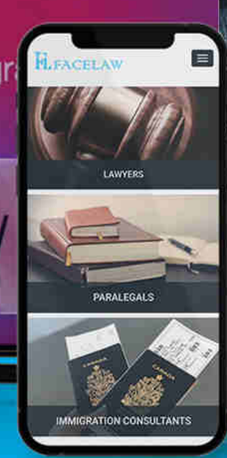

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Division Of Assets During Divorce

Property

In Ontario, the division of property owned by married spouses is governed by the Family Law Act. Property and assets acquired during a marriage is generally split equally when a marriage ends, subject to certain exemptions. Property means anything of value, and this includes:

- Car(s)
- Business
- Furniture
- Pension
- Money and Bank Account Funds
- Land and Real Estate
- Gold and Jewelry

Such property can be located within or outside of Canada.

For property that you owned before the marriage, any increase in value is usually divided equally.

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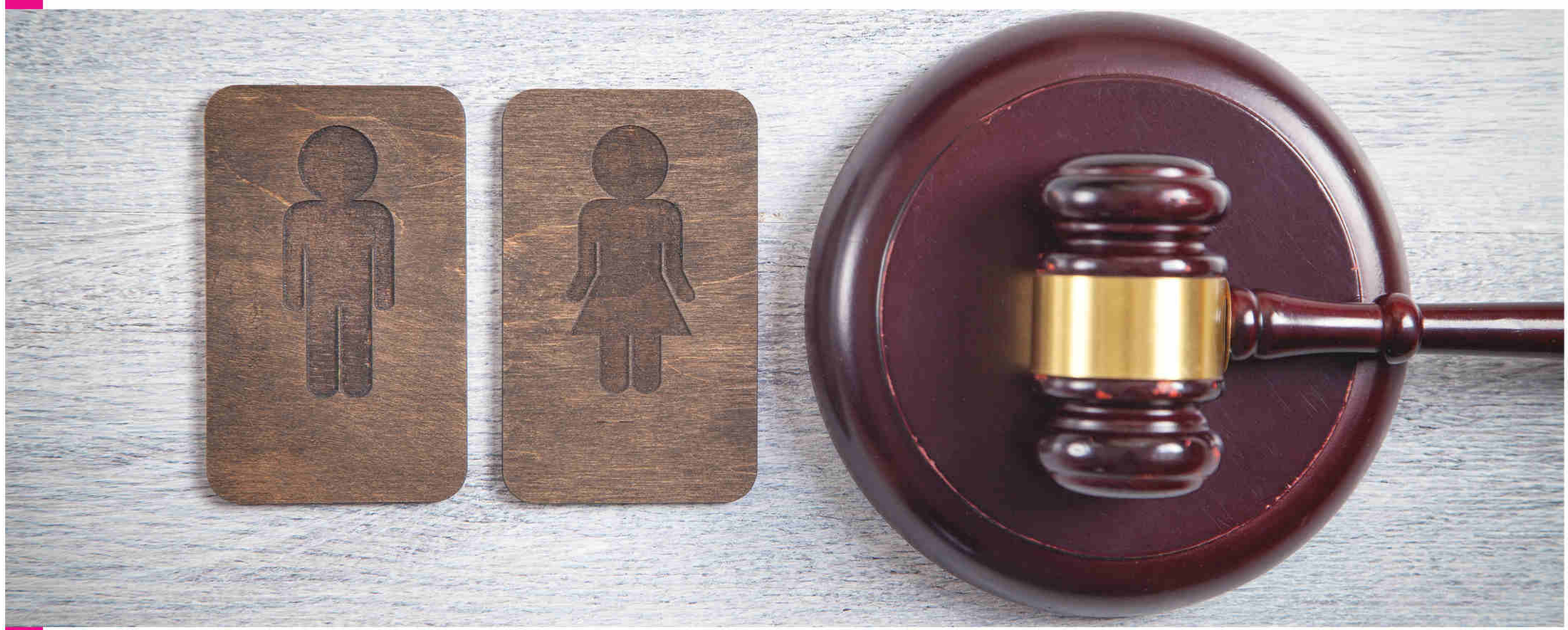
Equalization

Once the division of assets has been calculated, the monetary payment made by one spouse to another to equalize the property acquired during the marriage is referred to as an equalization payment. Money owed to either spouse is called an equalization payment, or an equalization of net family property.



Matrimonial Home

The matrimonial home is afforded special treatment under the Family Law Act.

A matrimonial home is every property in which either spouse has an interest and which is currently, or was at the time of separation, **"ordinarily occupied by the person and his or her spouse as their family residence."** There can be more than one matrimonial home.

For example, in addition to a primary residence in the city, a cottage can also be considered a matrimonial home.

Unless you have a domestic contract that explicitly states otherwise, you must equalize the full value of the matrimonial home, even if:

- One of you owned the home before you got married
- You received it as a gift
- You inherited it

Time limits

There is a time limit for making an equalization claim in Ontario. You must make a claim for equalization within six years from the date you and your spouse separated with no reasonable prospect of resuming cohabitation, or two years from the date that your divorce was finalized.

It is important to note that in Ontario, separation does not necessarily mean physical separation. In other words, you and your spouse can be legally separated, while still residing in the same household.

Excluded Property

Certain property is excluded from equalization, meaning that the spouse who owns these assets gets to keep it outright.

Examples of excluded property include:

- Property (other than the matrimonial home) that you inherited or were gifted from someone other than your spouse during your marriage
- Money you received from an insurance company because someone died and you were the beneficiary of the life policy
- Money you received on account of a personal injury settlement
- Property that you and your spouse have agreed to exclude through an agreement

Marriage Contracts

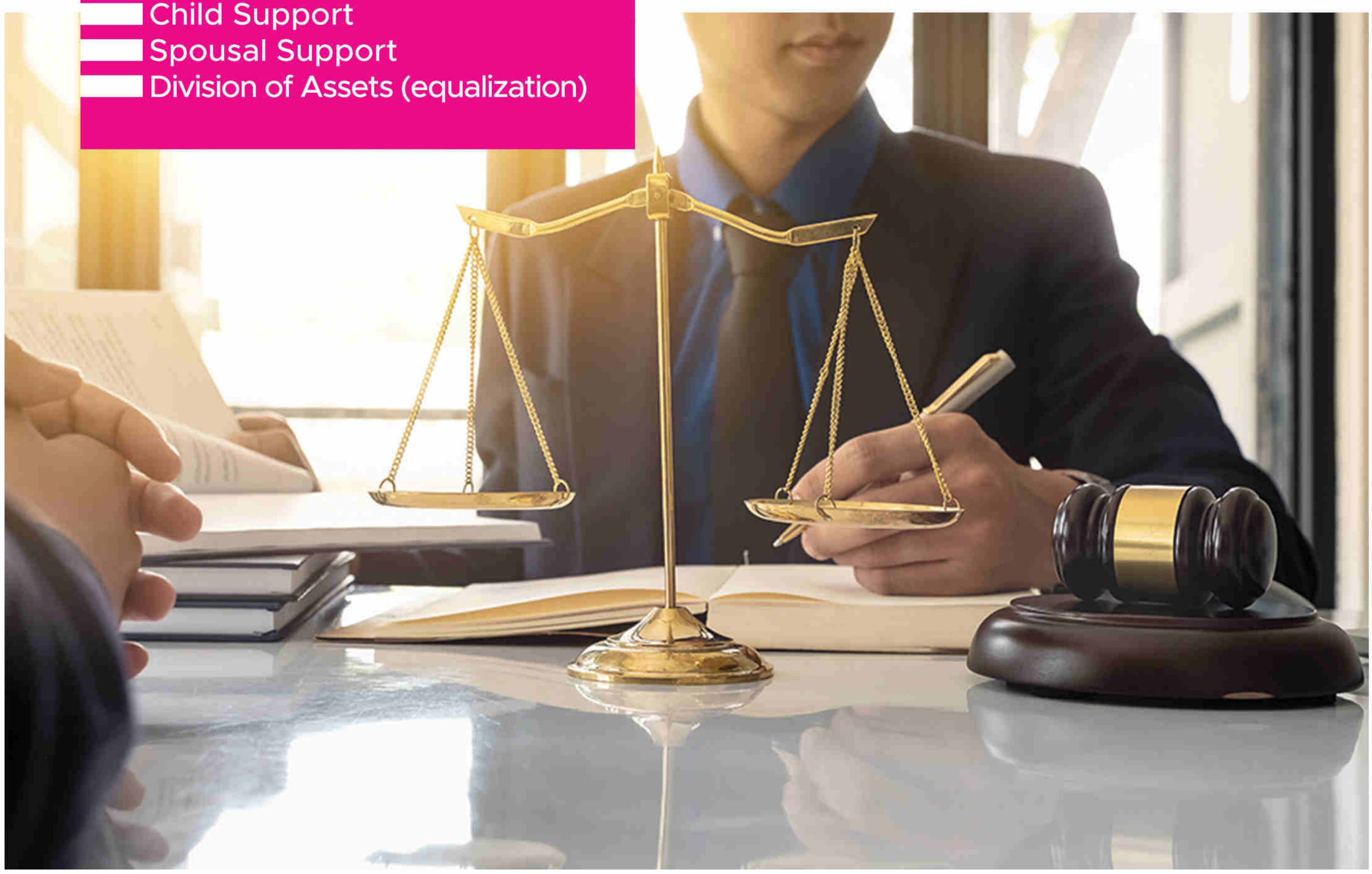
A marriage contract is an agreement that is signed with two spouses either prior to or during the marriage, which specifically outlines the parties' rights and obligations in the event of separation.

A marriage contract can set out the parties' rights and obligations in the event of separation, including:

- Child Support
- Spousal Support
- Division of Assets (equalization)

There are certain limitations to what can be contracted in a marriage contract. For example, a marriage contract cannot specify the spouses' rights to decision-making responsibility (custody) or parenting times (access) for the children, as these are issues that must be addressed at the time of separation in a manner that is in the children's best interest.

Both spouses must sign a marriage contract in front of a witness for it to be legally enforceable pursuant to the Family Law Act. The witness must also sign the contract/agreement. You and your partner should speak to different lawyers and exchange financial information before signing a marriage contract, otherwise a Court may not enforce the agreement if it determines that one party did not understand the nature and effect of the agreement because they did not speak to a lawyer.



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Shirin is a Toronto based lawyer & founder of Taghavi Law. She holds a Master of Laws degree from Osgoode Hall Law School, York University, and a Bachelor of Laws from Tehran University.
Shirin is a licensed lawyer in Ontario and after several years of experience in Toronto, opened her own law practice.
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In today's technologically advanced world, social media has become the new phenomenon to connect the world on all levels. The world has technologically moved forward in a way that people no longer just rely on radio or TV to access their favorite program.

Now more than ever, smartphones, tablets, laptops, computers, and any device that connects to the internet have the ability to provide us with the latest information on a given topic within seconds. Likewise, social media platforms, such as internet, TV and radio, are now instrumental for businesses to advertise their services to the public. This process is not only less costly than conventional methods of advertising such as radio or TV, but also provides an opportunity for businesses to maintain direct relationship with their audience.

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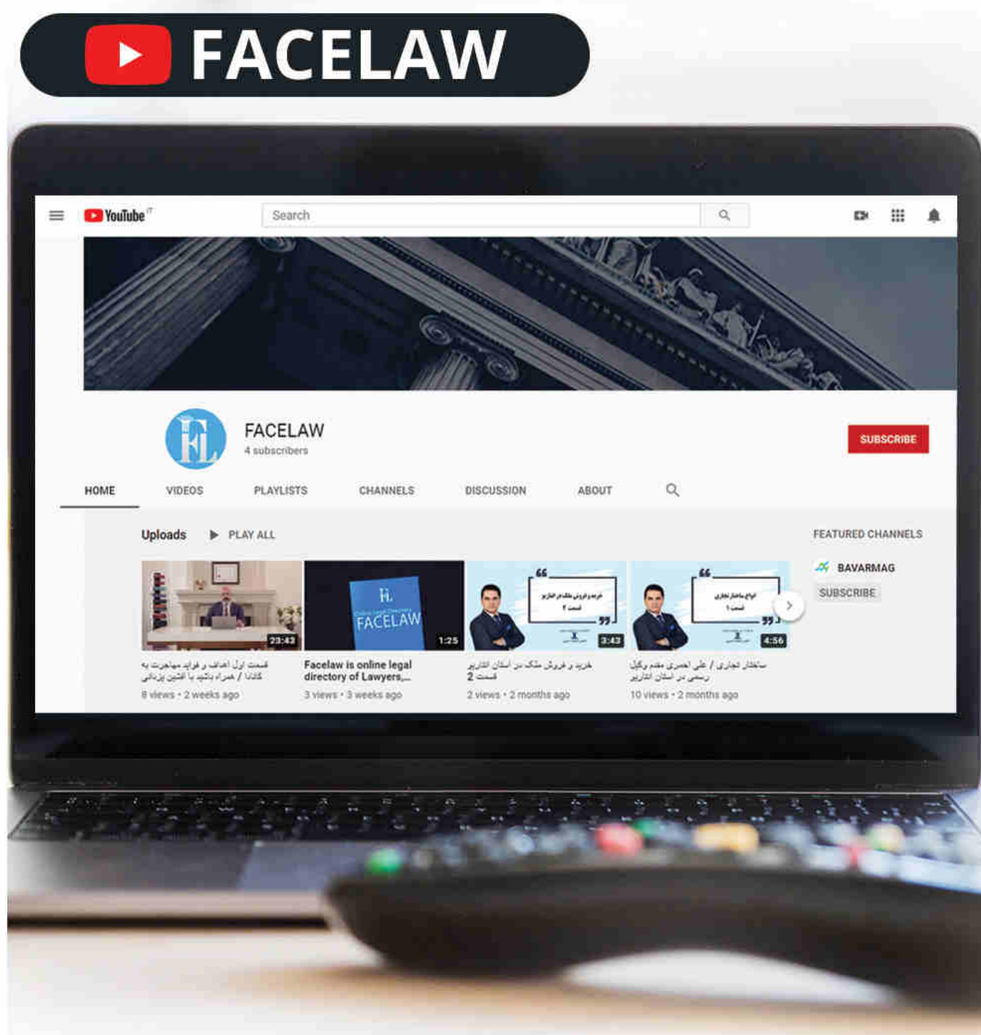

In this regard, Facelaw has launched its online TV and radio, with the objective of providing reliable legal information, prepared by our members who are trained legal professionals. Information will be provided via video, audio and podcasts to the public on a timely basis.

If connecting with legal professionals in divergent fields and learning more about their services is of interest to you, you are encouraged to follow our social media, website, and YouTube channel to have access to our professional programs. Facelaw is excited to introduce this new medium for legal professionals to educate and connect with the public.

Ario legal services is owned by Rihana Lajevardi, a licensed paralegal in good standing with the Law Society of Ontario.

With over 7 years of experience in the legal segment, Rihana is proud to offer professional and reliable legal services to all clients. She speaks Farsi and English and offers services in both languages.

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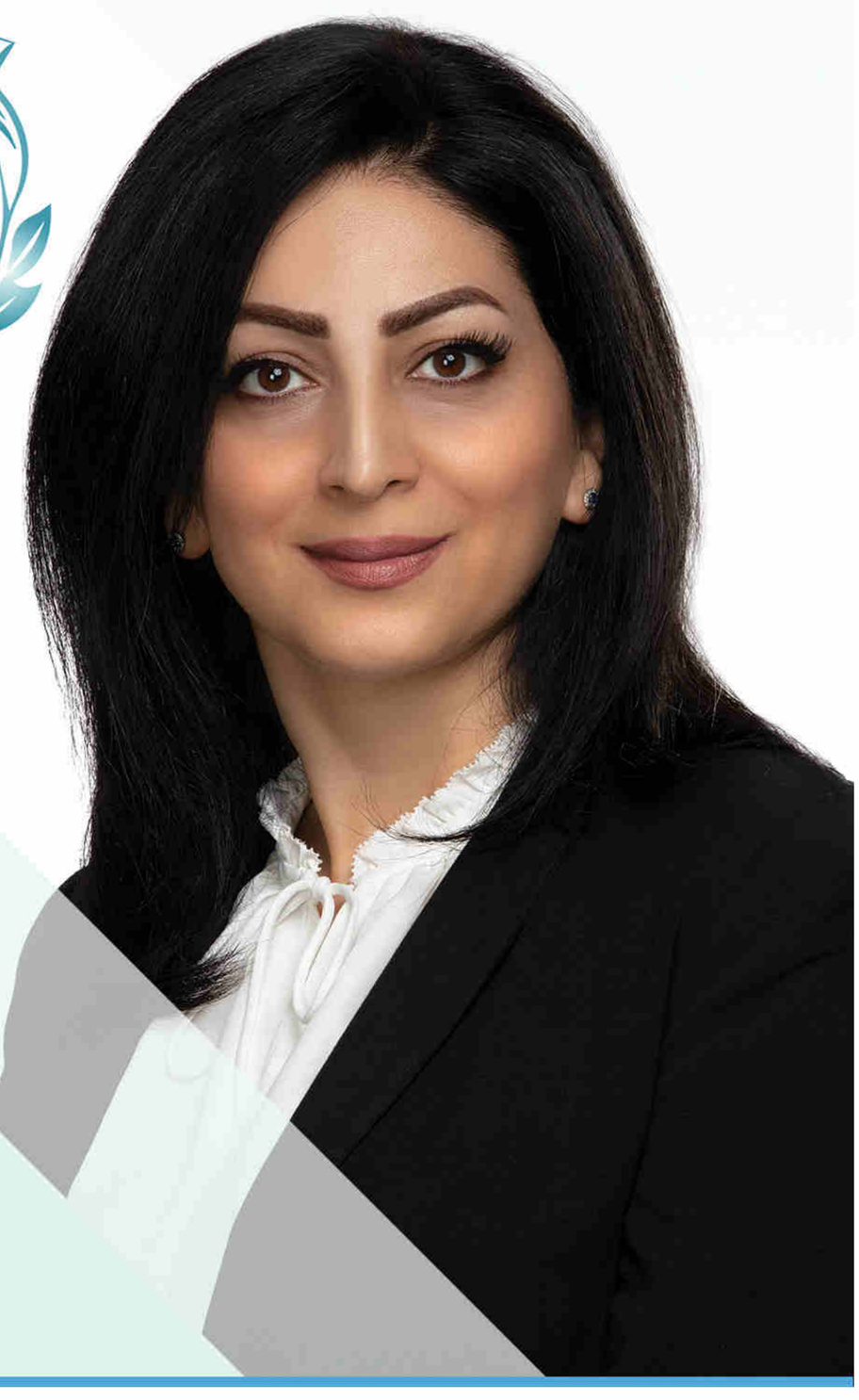
Paralegal



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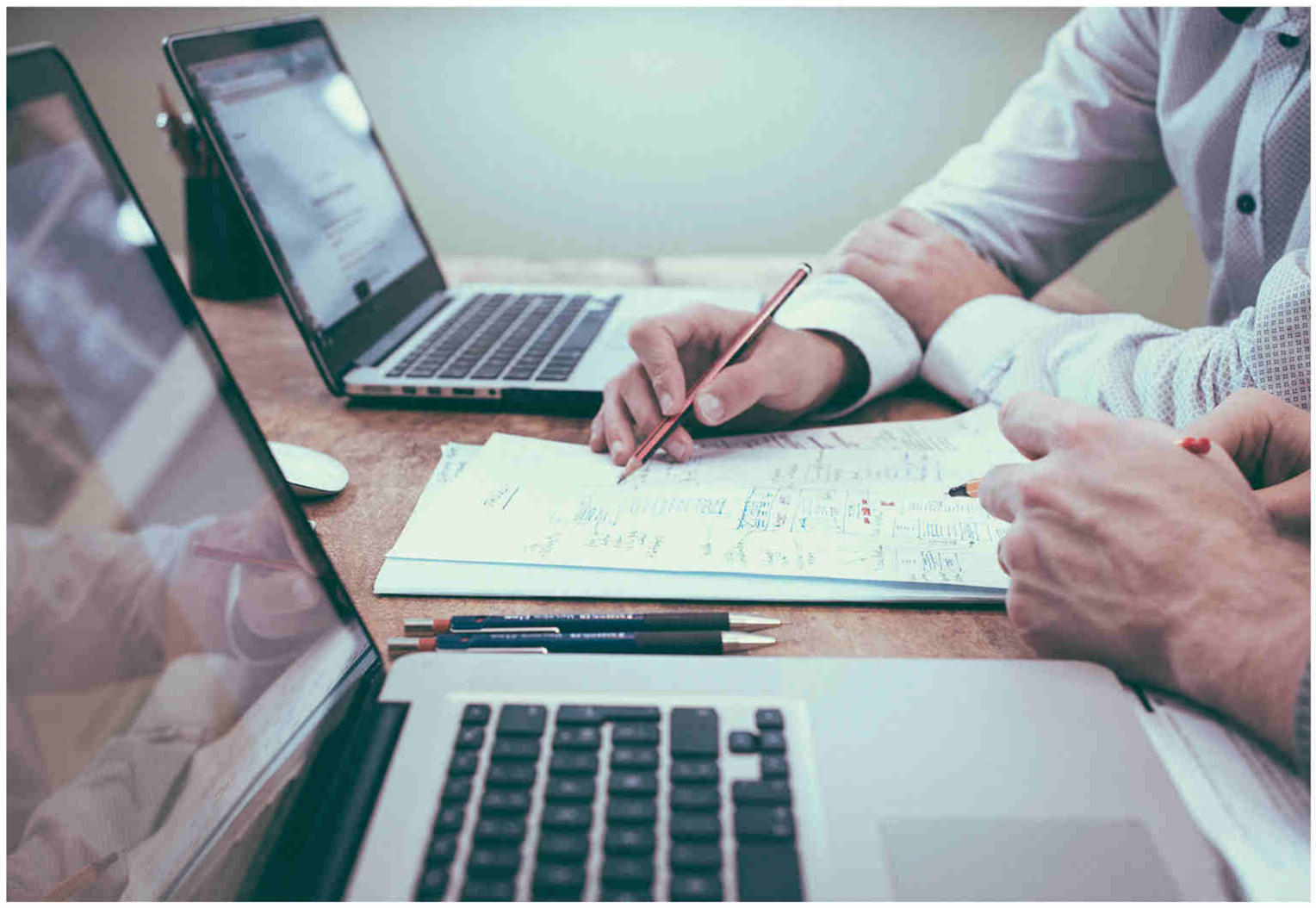

In this section of Facelaw you can access useful legal information, and articles you may wish to read that have been published by our members, comprised of lawyers, paralegals and immigration consultants. The intent of Facelaw is to provide a platform to educate the public and to provide a medium for legal needs to be properly addressed pursuant to the laws of Ontario.

The blog is sectioned into different legal topics in which information is provided from different professionals. Facelaw strives to provide you with a wholesome perspective so that you can be guided by different professionals in order to make the best possible decisions involving your legal matters. In doing so, if you have questions you can directly contact the professionals with the information provided on Facelaw. The professionals can help answer your legal questions and guide you in the right direction with respect to your legal matter.

Facelaw has provided an easy access search function that with a simple keyword search you can locate useful information on the legal topic you require information about. We are grateful that we have connected with these professionals to compile valuable resources to share with the public to ensure that you are provided quick and accurate guidance and information.

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Physician Sexual Assault: Do No Harm

All around the world, doctors are highly respected for their ability to save lives and treat injuries and conditions. Physicians are viewed by many as the modern world superheroes, with whom you can be especially vulnerable. In the course of discussing ailments and concerns regarding physical and mental conditions with our bodies, patients typically do not second guess a doctor's opinion or knowledge.

One might say that they place their trust in doctors somewhat blindly. While most doctors are deserving of this type of trust, this vulnerability, coupled with the power imbalance between the patient and the doctor, could leave room for exploitation of the patient by the doctor.

Patients may not realize when they have become a victim of sexual violence due to the dynamic of the relationship between a doctor and patient. Physical contact is required for doctors to conduct examinations and assess their patients. This blurs the line, and it could become difficult to distinguish which behaviours are sexual in nature. To know when a boundary has been crossed, one must understand what behaviours amount to physician sexual assault.

In these circumstances, physician sexual assault includes any misbehaviours that include sexual impropriety, such as gestures or expressions that are seductive, sexually suggestive, disrespectful of patient privacy, or demeaning of a patient. A doctor's conduct may not be outwardly sexual in nature but can still amount to sexual assault. This includes a doctor performing unnecessary examinations or intentionally failing to wear gloves during an examination.

Physician sexual assault is not recognized as widely as it should be – mainly because we tend to tie the term sexual assault to an unknown and/or rogue perpetrator rather than a trusted medical professional. Unfortunately, physician sexual assault is much more prevalent than it seems, as it is widely unreported. By requesting that a nurse accompany the doctor during examinations (a cautionary practice that many physicians will prudently adopt on their own), one can prevent sex crimes from being committed against them. However, on a larger scale, physician sexual assault continues to remain a matter of concern that must be addressed.

Failure to report, however, allows the predator to continue preying on susceptible patients. A few options are available for victims who wish to seek justice for any sex crimes committed against them by a doctor. This includes making a complaint through the College of Physicians and Surgeons of Ontario (CPSO), reporting the incident to the police, starting a civil lawsuit against the offender and institution, or any combination of these.

Reporting the Incident

The main reason why this issue persists is that many sexual assault incidents go unreported. Victims are usually shocked and in disbelief once they are subjected to sexual assault by their trusted doctor. Like most sex crimes, victims may fear that they do not have enough evidence of the incident to take action against their offender. However, unlike other alleged sex crimes, consent does not provide a defence for a doctor who engages in sexual relations with a patient. The laws in Ontario establish that any sexual relations between a doctor and patient are prohibited, whether or not those relations are consensual. This prohibition is a universally recognized ethical principle in the field of medicine.

CPSO

The College of Physicians and Surgeons of Ontario regulates the practice of medicine in Ontario. To practice in Ontario, physicians must be a member of the CPSO. The CPSO establishes standards and policies for practice based on legislation such as the Regulated Health Professions Act (RHPA) and the Health Professions Procedural Code under the RHPA and the Medicine Act. The CPSO plays a vital role in regulating the medical profession and possesses the authority to penalize medical professionals, including doctors, for non compliance with its standards and policies. Ultimately, the CPSO is obligated to protect the public. Therefore, victims of physician sexual assault can make a complaint to the CPSO, which will then be investigated and, if deemed meritorious, submitted to the Discipline Committee. The Discipline Committee may conduct a hearing, and restrictions may be imposed on the doctor's ability to practice. This may include an indefinite or temporary suspension to practice medicine.

Criminal

Similar to other sex crimes, victims of physician sexual assault also have the option of reporting the sexual assault to the police. The police will then investigate the incident independently and notify the CPSO. It should be noted, however, that studies show that less than half of the sexual assault cases in adult criminal court result in a guilty verdict. This is because in criminal cases, the standard of proof is very high, meaning that all of the elements of the particular crime must be established by proof beyond a reasonable doubt. The CPSO is not bound by such a standard of proof and may therefore impose sanctions on a doctor even if acquitted of any criminal charges.

Civil

Victims of sexual assault also have the option of suing their doctors directly. A civil lawsuit will allow for the victim to receive the appropriate financial compensation. When a hospital or other corporation employs the doctor, both the doctor and employer may be financially liable. Civil lawsuits of these types are often settled out of court for the benefit of the parties involved.

Reporting the Incident to the Hospital / Institution

In instances where the offender works for a hospital or another institution, victims of physician sexual assault have the option of making a complaint to the physician's employer. Hospitals and medical facilities have a responsibility to provide their patients with a safe environment. Complaints made to the facility will be investigated and the physician's employment may be terminated if a complaint is found to have merit.

Since the physician's employer may itself be exposed to civil liability where the physician has been found liable for, or guilty of, a sexual assault, hospitals and medical facilities have a further interest in preventing such physician behaviour, and complaints made by patients will typically be taken seriously.

Becoming a victim of sexual assault is always traumatizing, but especially when the offender is a trusted professional such as a doctor. Reporting the crime can change the future for others by bringing the offender's conduct to light, thereby hopefully preventing other patients from suffering a similar fate.

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NO 16 . NOVEMBER 2021
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