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Avoiding Estate Litigation: Challenges That May Arise

BY Ali Ahmari Moghaddam

When Is A Car Incident A Car Accident?

BY Ben Azimi

What Is Down Syndrome?

BY Charles E. Gluckstein

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APRIL 2022

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Ashkan Anvari

Doctor Of Business Administration (DBA)

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Choosing a right lawyer, paralegal or an immigration consultant is one of the most important concerns for people facing a legal problem.

Given the current social, economic and cultural climate, it seems it is inevitable not to be involved in some kind of legal, judicial or immigration matter.

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Ali Ahmari Moghaddam

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It is essential to have a properly drafted estate plan that covers all of your assets and various parts of your estate. Once you visit an estate lawyer, they can review all of your personal information regarding your assets, and how to effectively bequest and how to transfer your assets to manage your expectations regarding estate issues.

There are two processes that a deceased's assets can go through following death, probate or non probate distribution. It is important to note that probate transfers of assets are subject to estate tax, and form part of the value of the estate during the probate process when making the necessary application for a Certificate of Appointment of Estate Trustee with or without a Will.

However non probate transfers are assets that can be transferred without court approval, and would include transfers such as your life insurance proceeds, transfers of registered retirement savings programs ("RRSPs"), registered retirement income funds ("RRIFs"), tax free savings accounts (TFSAs), provided that if you have designated a beneficiary thereof in the policy or plan itself.

Real estate property held as joint tenants, can also be transferred to the surviving joint tenants listed on title to the real estate without the need to go through the probate process.

It is important to understand the implications of including some assets in your will which will have to go through the probate process, and the assets that can go through non probate transfers and are passed down to your beneficiaries more easily.

There are some challenges that can occur when it comes to creating bequests in a will, and ensuring there will be effective transfers in accordance with the testator's wishes after your death. Estate litigation can often arise from disputes regarding what the testator actually intended.

Potential issues can include confusion as to whom the testator wanted to receive a specific asset, and whether or not someone was included or excluded from the will intentionally or unintentionally. If there is an interested party that feels as though they are disinherited, they may contest the will with the court to have the will provisions challenged partially, or have the will completely revoked and deemed invalid. This is why it is essential to be as clear as possible with intentions and instructions as a testator when preparing a will to ensure that you have made adequate and enforceable arrangements with your estate plan.

It is also important to make frequent and regular reviews and revisions to your estate plan and estate planning documents, which can reflect ongoing changes in life such as marriage, divorce, having children, and other major life changing events. Frequent reviews of the non probate property containing beneficiary designations should also be conducted, to ensure said assets are designated to be given to the appropriate named individual.

Estate litigation can also arise by reason of challenges to the capacity of the testator at the time the will was prepared, and to question whether the testator possessed the requisite capacity to make an estate plan and corresponding will.

It is paramount to address issues with a dealing capacity at the outset of the process, for example if an individual is known for having some memory issues or early stages of a medical condition that render them sometimes incapacitated, a formal medical assessment may be required to confirm capacity. There are tests that lawyers and doctors can conduct to see if an individual is lucid, and a lawyer must make this determination to conclude capacity, prior to beginning the drafting of the testators estate plans in their will.

Another challenge that is faced in estate litigation is whether a will has been validly executed and enforceable. It is essential to ensure that your estate documents are properly prepared by a lawyer and follow the guidelines and formal requirements according to the law where the will is being prepared.

For example, in Ontario there are a set of formal requirements for a will to be legally valid, which includes: a will being created by a person, being of sound mind, and over the age of majority in Ontario, and must be signed in the presence of two valid witnesses (there are also specific rules about who should and should not act as witness). This is important because interested parties can challenge your will if it is not executed validly, which could result in the wishes of the testator not being followed following death. There is an exception to the valid will requirement, which allows holographic wills to be made by an individual in their own handwriting, without a witness.

However, this must be completely written in the testator's own handwriting, signed and dated, and will still be subject to scrutiny. They are accepted in emergency situations such as when a testator is experiencing a life-threatening situation, and would like to express their wishes. Ultimately, for a Holographic will to be valid, it must be proven that it was written by the testator, and they had the requisite capacity to express their wishes in regards to the distribution of their estate. Ultimately, it is essential that you contact an experienced wills and estates lawyer to assist you in the planning of your estate in order to avoid any estate, trust and capacity litigation.

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World Down Syndrome Day was created and is celebrated worldwide on March 21st every year. It has also officially observed by the United Nations since 2012.

WDSD is recognized on this day to signify the uniqueness of the triplication (trisomy) of the 21st chromosome which causes Down syndrome.

What is Down Syndrome?

According to www.worlddownsyndromeday.org "Down Syndrome (or Trisomy 21) is a naturally occurring chromosomal arrangement that has always been a part of the human condition, being universally present across racial, gender or socioeconomic lines in approximately 1 in 800 live births, although there is considerable variation worldwide. Down syndrome usually causes varying degrees of intellectual and physical disability and associated medical issues".

Scientists have identified an extra copy of chromosome number twenty one to be the cause of down syndrome and there are 3 types of Down syndrome: Trisomy 21, Translocation and Mosaicism.

Why is World Down Syndrome Day so important?

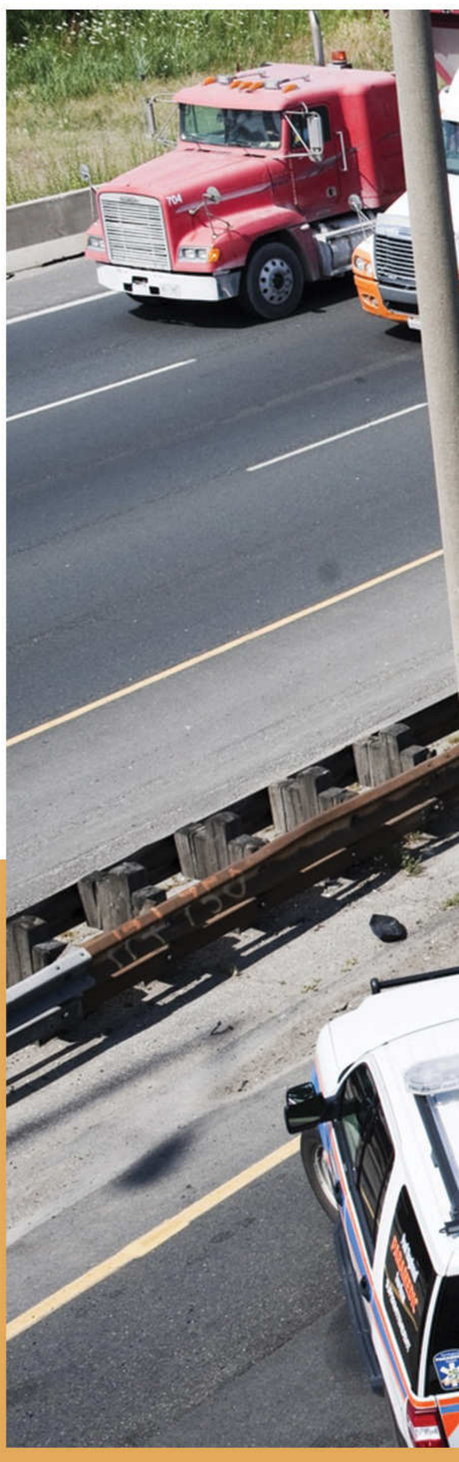
People with Down syndrome worldwide face widespread discrimination and exclusion from society, including access to basic services such as education and healthcare. In many countries, misconceptions and stigma surrounding the condition can lead to maltreatment and, in some cases, even death. While many people worldwide are working to change this, there is a long way to go to ensure that the rights of persons with Down syndrome are respected, protected and fulfilled.

WDSD provides an opportunity for people to learn more about those living with Down Syndrome, and how we can create a more inclusive world for all individuals. This day brings a chance to promote awareness around the challenges that many people face and what things can be done to remove barriers and stigma and promote kindness and acceptance.

How is World Down Syndrome Day celebrated?

There are several ways that this day is marked including lighting up local landmarks, social media campaigns targeted at inclusion and acceptance, virtual events, and much more. But perhaps the most recognizable element of WDSD is the Rock Your Socks or Lots Of Socks campaigns. In 2013, the theme of wearing funky and loud socks was initiated to raise awareness because chromosomes are shaped “like socks” and people with Down syndrome have an extra chromosome.

When Is A Car Incident A Car Accident?



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Learn about a preliminary (or threshold) issue in a statutory accident benefits case.

In a statutory accident benefits case, there is always a preliminary (or threshold) issue as to whether the incident in question is, technically, an accident.

An "accident" is defined in the legislation as follows:

"accident" means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device; ("accident")

Satisfying this legal definition is broken down into Three distinct sub issues or questions:

- Was the vehicle involved in the incident an automobile?
- Was the vehicle being ordinarily used or operated during the incident?
- Did the use or operation of the vehicle during the incident cause the injuries (or damage to medical or dental devices)?

- **The first sub issue** is answered with reference to the definition of "automobile" in the Insurance Act :

  "automobile" includes a trolley bus and a self propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include railway rolling stock that runs on rails, watercraft or aircraft; ("automobile")

- **The second sub issue** is answered with reference to case law that has elaborated upon the meaning of the legal phrase "use or operation of a vehicle" in this context.

- **And the third sub issue** is answered using the 'but for' causation test: But for the incident with the vehicle, would the injuries (or damage to the medical or dental device) have occurred?

Causation is established if the tribunal is satisfied that if the incident involving the vehicle had not occurred, the injuries (or damage to the medical or dental device) would not have occurred.

The following two cases are recent examples where a person was injured in an incident involving a motor vehicle, the respondent insurer denied the injured person's claim for statutory accident benefits, and the injured person (applicant) applied to the Ontario License Appeal Tribunal (LAT) to dispute the denial of benefits.

In Madore v. Intact

In Madore v. Intact , the applicant was checking the caulking and slide outs on the top of his five wheel trailer, getting it ready to go on a vacation, when he fell off onto the ground and was injured.

The trailer was attached to a parked pickup truck located on his driveway. The LAT held that the vehicle in question was an automobile (see the definition quoted above which shows that an automobile includes "... the trailers ... of automobiles"); that the vehicle was being ordinarily used (as pretravel inspection, maintenance and cleaning are ordinary activities); but that the vehicle did not cause the injuries.

The incident was caused by the applicant losing his footing due to misfortune. This was an "intervening act" that broke the causal link. It was not true that, but for his inspection-maintenance of the vehicle, he would not have been injured; his fall was an independent event that caused those injuries. As a consequence of his failing the causation test, the incident was not an "accident" within the meaning of s. 3 of the Statutory Accident Benefits Schedule. Therefore, he did not pass the preliminary stage of his statutory accident benefits case.

In Montesano v. Western Assurance

the applicant was walking towards her house after smoking a cigarette when she tripped and fell and struck her face against the bumper of a parked vehicle.

Her injuries included "lacerations to her face and a septial deviation". A laceration means a cut. A septial deviation is where "the nasal septum is significantly displaced, making one nasal air Passage smaller than the other". Many people naturally already have a deviated septum.

The LAT held that the vehicle in question was an automobile; that the vehicle was being ordinarily used (since parking a vehicle is an ordinary use of a vehicle); and that the vehicle caused the injuries.

This is because, but for the vehicle being there, she would not have collided with the vehicle during her fall, and the collision with the vehicle is what directly led to her injuries.

As a result, the incident was an "accident" within the meaning of s.

3 of the Statutory Accident Benefits Schedule. Therefore, she did pass the preliminary issue in her statutory accident benefits case.

> Causation can be and often is a deciding factor in the determination of the preliminary issue.

The tribunal will look at whether the use or operation of the vehicle caused the injuries or damage in the sense that, but for that use or operation, the injuries or damage would not have happened.

In the above cases, the applicants both experienced a fall in the proximity of a vehicle but obtained different legal results; this is because the causation test was met in the second case but not in the first.

In the second case, the use or operation of the vehicle (its being parked at a particular place on the driveway) caused the applicant's injuries because, but for it being parked there, she would not have struck it and been injured.

In the first case, the use or operation of the vehicle (the applicant's inspecting and maintaining it) did not cause his injuries; rather, his fall from the top of it, which was a misfortune, was an independent event that broke the causal link.

If you have suffered injuries in an incident involving a motor vehicle, like the ones examined above, contact us to evaluate the specific details of your case's circumstances and to determine if the incident was an "accident" according to the legislation and thus whether you may be entitled to claim statutory accident benefits for injuries or damages that resulted from it.

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Facelaw has the technological ability to conduct various seminars for the community in order to increase awareness in the legal field. As well, Facelaw conducts private seminars for businesses to educate them in the different areas of law. This has the power to inspire businesses to tackle new projects and to advance their level of knowledge within the law. For these seminars, the speakers will be the direct members of Facelaw who are licensed professionals like that of lawyers, paralegals and immigration consultants.

Depending on the nature of discussion, the seminar may be led by one or more professionals.

These seminars will take place in North America. Some will be provided for free and others will require the purchase of a ticket. Facelaw will have all the details including prices, dates, and topics of discussion available on our website for your ease of reference.

Facelaw provides the opportunity for the public to read about the member's legal experience, their desired field of law and their current contact information. This unique feature will allow people to learn more about the background and professional work of the members of Facelaw.

Within the seminars, you will have a direct connection with the speakers by having the ability to ask questions during the seminars. The speakers will also provide their contact information so that you can contact them for further legal information and clarification. In doing so, Facelaw will provide a special discount to those who attend the seminars. Please visit our website for further details regarding the discounts. The highlights of each seminar will be displayed on Facelaw's website so that the public can determine if the topics, location, professionals among other details are of interest to them.

Facelaw values education and community and maintains these values at the core of all of its efforts. As a result, Facelaw will have business networking events in which all Facelaw members who are experienced professionals in the legal field will have the opportunity to meet and learn from one another. This will allow them to advance their current expertise and to better serve the public as their legal knowledge will be up to date and expanded.

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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.

Afshin Yazdani has been certified as a distinguished 2021 member of Lawyers of distinction. 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 was the former member of the Iranian Bar and former practitioner in the united Arab Emirates. He is currently is currently a member of Ontario Law Society. 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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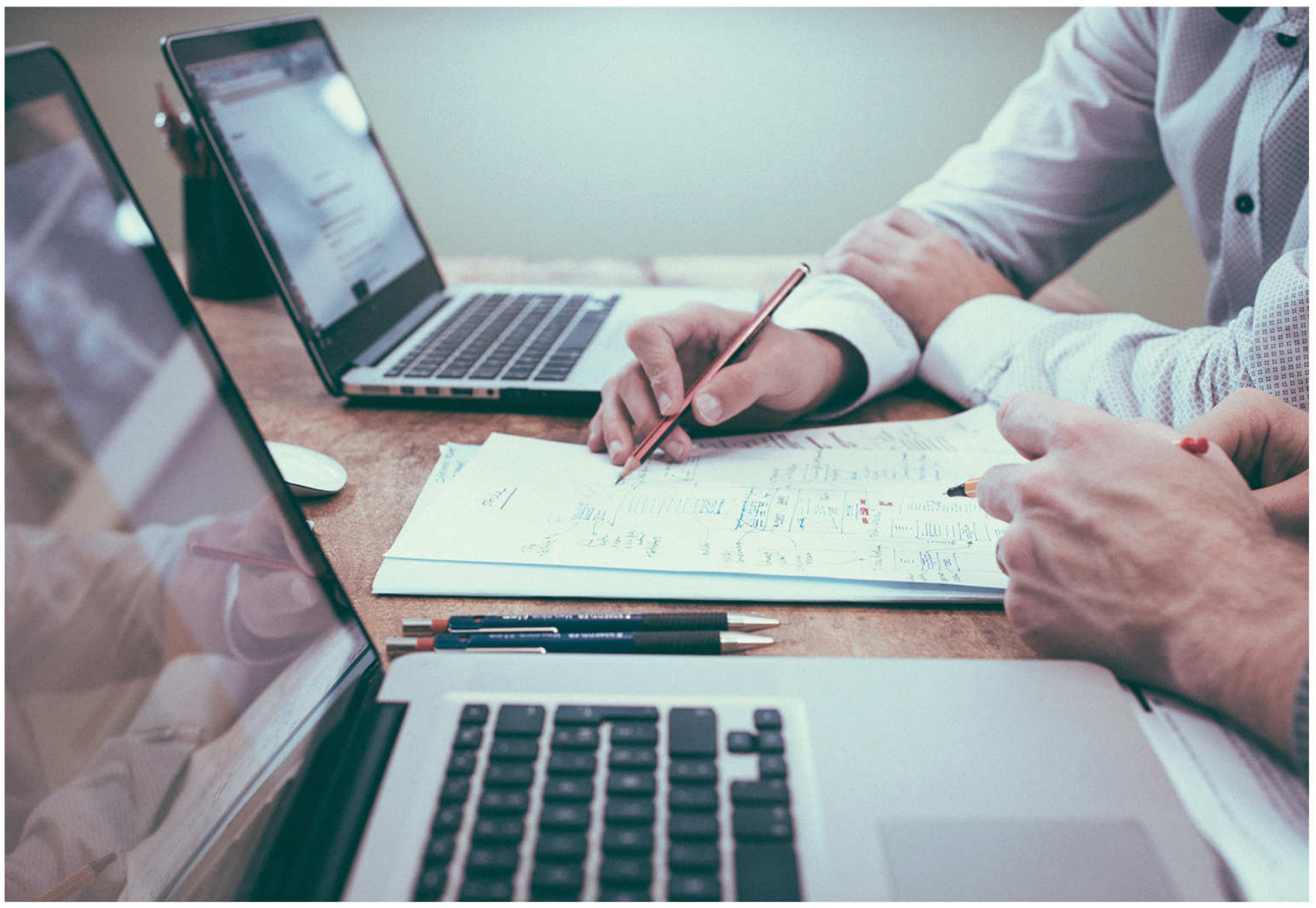

In this section of Facelaw you can access useful legal information, and articles you may wish to read that have been published by our members, comprised of lawyers, paralegals and immigration consultants. The intent of Facelaw is to provide a platform to educate the public and to provide a medium for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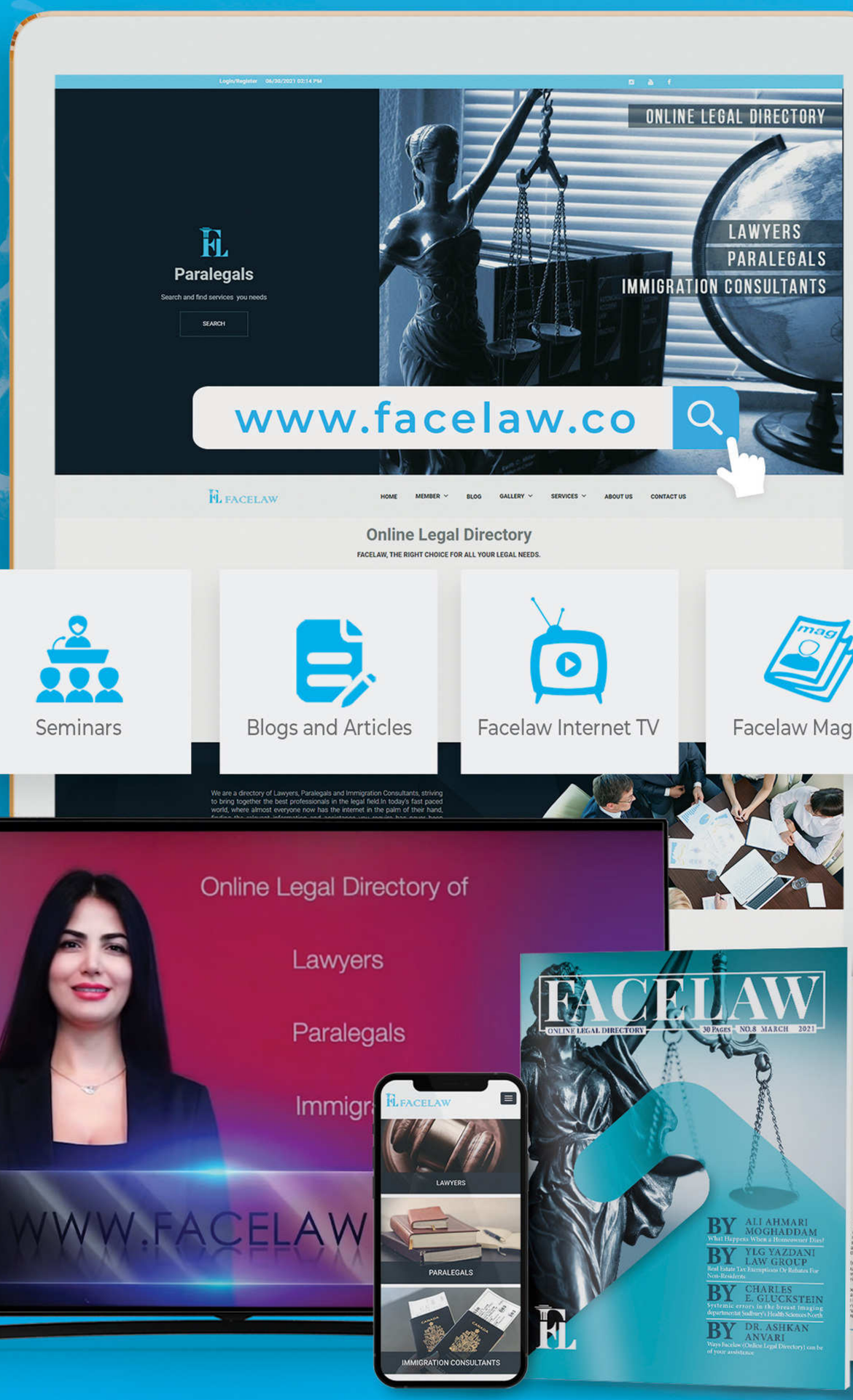

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