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What Is Municipal Liability? | BY Ben Azimi

Choosing Between Federal & Provincial Incorporation | BY Ali Ahmari Moghadam

What Are Common Reactions From Sexual Abuse Survivors? | BY Charles E. Gluckstein



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Ashkan Anvari

Doctor Of Business
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Founder Of
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Choosing The Right Lawyer

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

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It is obvious that not everyone can master the substantive and formal laws. It is, therefore, prudent to entrust the defense of your rights to an experienced lawyer, paralegal or immigration consultant



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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.





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What Is Municipal Liability?

Acquire knowledge of the civil action against a government and/or its agents for accidents that occur on municipal property

General background

Municipal liability is civil liability in situations where the actions of a municipal corporation, a municipal body or agent causes someone to sustain an injury. Examples include: accidents in a recreational facility run by a municipality; slip and fall accidents on municipal venues; and MVAs involving municipal vehicles such as police cars, postal trucks and public transit vehicles.

Sometimes, in lawsuits alleging municipal liability, the issue might arise as to whether it is the government or some other entity that is responsible for the accident or for compensation – such as a third party contractor, private property owner or insurance company.

Municipalities are under a statutory duty of care to maintain roads in a reasonable state of repair. An action against a municipality for breaching its duty of care is analyzed as follows:

1 Non repair:

The plaintiff must prove on a balance of probabilities that the municipality failed to keep the road in question in a reasonable state of repair.

2 Causation:

The plaintiff must prove that the non-repair caused the accident.

3 Statutory defences:

Proof of non repair and causation establish a prima facie case of liability against a municipality. The municipality then has an onus of establishing one of the following defences:



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I. it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;

II. it took reasonable steps to prevent the default from arising; or

III. at the time the cause of action arose, minimum standards established by the Ministry of Transportation applied to the highway or bridge and to the alleged default and those standards have been met.

4 Contributory negligence:

defences, it can show that the plaintiff's driving caused or contributed to the plaintiff's injuries.

II Immunity

The Municipal Act, 2001 sets out a limitation to municipal liability for negligence.

II The Act provides an exemption

I. to "a municipality or local board ... a member of a municipal council or a local board ... or ... an officer, employee or agent of a municipality or local board",

II. for "negligence in connection with the exercise or non exercise of a discretionary power or the performance or non performance of a discretionary function, if the action or inaction results from a policy decision of a municipality or local board made in a good faith exercise of the discretion".

II Slip and fall accidents

The Act provides that "Except in case of gross negligence, a municipality is not liable for a personal injury caused by snow or ice on a sidewalk".



The concept of gross negligence has been described in many ways. One of them is that, whereas negligence involves a person failing to act with the care a reasonable person would take, gross negligence involves a person failing to act with the care a careless person would take. One way in which a municipality would be grossly negligent would be if it knew of a heightened chance of harm (e.g. posed by a snow storm) and did not have policy in place to address the potential for harm (e.g. by not having a snow removal policy).

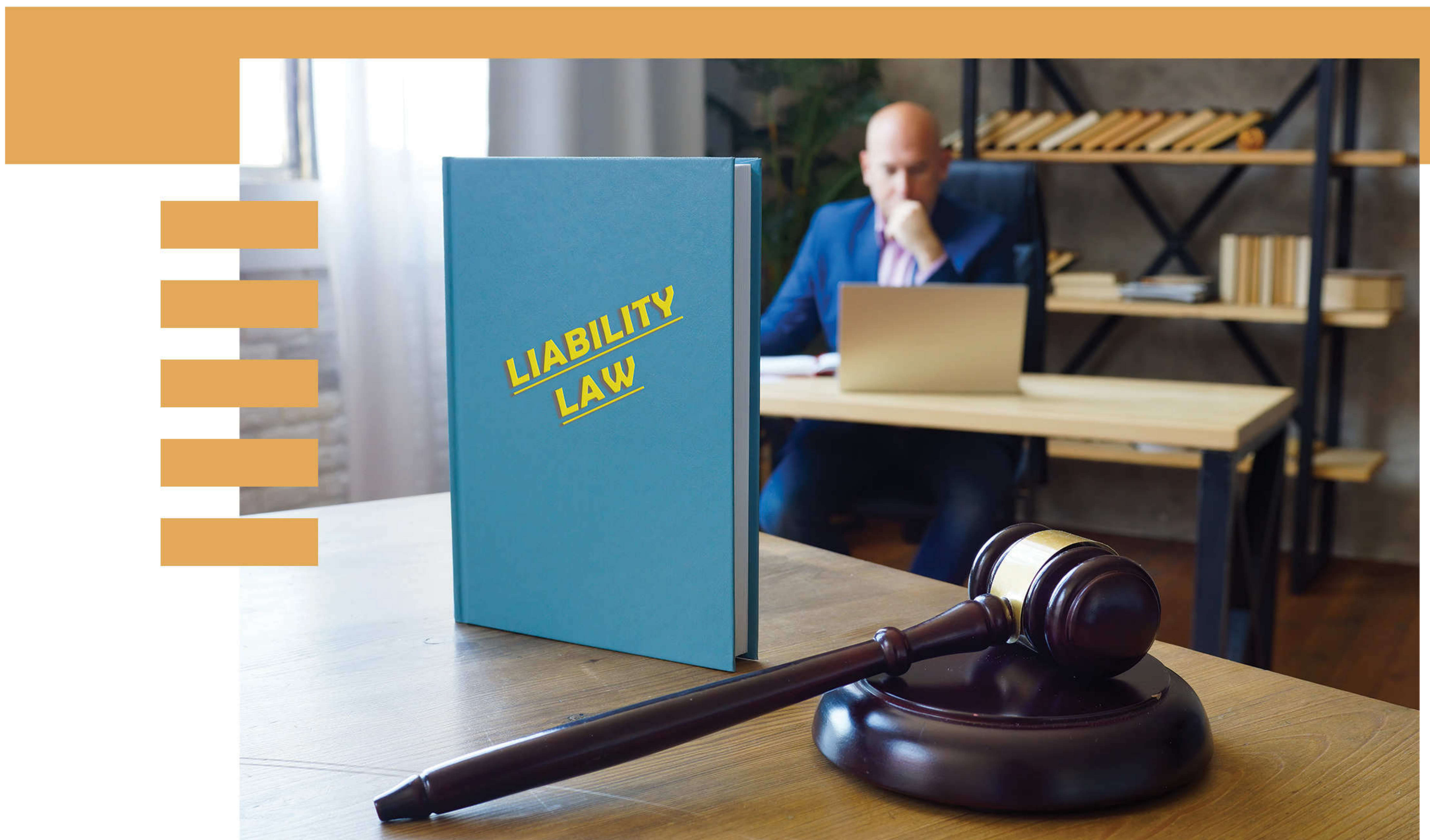
In *Vargas v. Hamilton*, the plaintiff sued the municipality and adjoining landowner for her slip and fall at 7 a.m. on a day after a night of freezing rain. The court dismissed her claim because the municipality had a bylaw requiring that landowners on a street clear their sidewalk of snow and ice within 24 hours of a winter storm event – which was reasonable – and the adjoining landowner cleared the sidewalk of snow and ice about 7-8 a.m. that day – which was also reasonable.

|| Notice period

The plaintiff is generally required to give notice to the municipality before bringing a civil suit. The Act provides that no civil suit may be commenced unless, within 10 days after the occurrence of the injury, written notice of the claim and of the injury complained of, including the date, time and location of the occurrence, has been served upon or sent by registered mail to,

|| The clerk of the municipality; or

if the claim is against two or more municipalities jointly responsible for the repair of the highway or bridge, the clerk of each of the municipalities. Failure to give notice is not a bar to the action in the case of the death of the injured person as a result of the injury. Failure to give notice or insufficiency of the notice is not a bar to the action if a judge finds that there is reasonable excuse for the want or the insufficiency of the notice and that the municipality is not prejudiced in its defence.



II Limitation period

A civil action can be commenced up to two (2) years from the date the claim was discovered. A claim is “discovered” on the earlier of (a) or (b):

II The day on which the person with the claim first knew,

A civil action can be commenced up to two (2) years from the date the claim was discovered. A claim is “discovered” on the earlier of (a) or (b):

- I. that the injury, loss or damage had occurred,
- II. that the injury, loss or damage was caused by or contributed to by an act or omission,
- III. that the act of omission was that of the person against whom the claim is made, and
- IV. that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

II The day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters

II Nuisance

Generally, a nuisance is a tort that involves someone interfering with someone else’s use or enjoyment of land. A nuisance is generally not actionable unless the interference is unreasonable and the plaintiff suffered some damage.

The defendant may plead the defence of statutory authority. However, this defence is narrow in that it requires not only that the activity was authorized by statute but also that the nuisance was the inevitable result or consequence of exercising that authority: “The defendant must negate that there are alternative methods of carrying out the work.

The mere fact that one is considerably less expensive will not avail. If only one method is practically feasible, it must be established that it was practically impossible to avoid the nuisance.

It is insufficient for the defendant to negative negligence. The standard is a higher one”.

II The Act also provides an exemption

- I. to “a municipality or local board ... a member of a municipal council or a local board ... or ... an officer, employee or agent of a municipality or local board”,
- II. for “nuisance, in connection with the escape of water or sewage from sewage works or water works ...”.

In *Beniuk v. Leamington (Municipality)*, the plaintiffs claimed that vibrations from truck traffic on an adjacent road caused damage to their rural property.

The court dismissed their claim of nuisance because it found them to have discovered their claim in 2009 when they commissioned an expert report, and they brought their claim in 2018, and so were outside the two-year limitation period.

The court also dismissed their claim that the municipality breached its duty of care to keep roadways safe.

This is because it is well established in the case law that the s. 44 statutory duty of care is only directed to road users, not adjoining landowners.





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What Are Common Reactions From Sexual Abuse Survivors?

● CONTENT WARNING:

This blog discusses some of the most sensitive topics in our society today, including sexual assault and abuse. We understand that these realities may be difficult for many people to discuss. We encourage you to care for your safety and well being. If you ever feel unsafe, please call 911. There is no hierarchy when it comes to sexual abuse and sexual assault. Any unwanted touch of a sexual nature is, by definition, sexual assault. In some instances, the assaults can result in physical injuries beyond the emotional and psychological damage this type of violation can cause to a person. The abuse may occur over a long period of time or be limited to a single experience. But the individual circumstances of these crimes should not be used to diminish any survivor's experience. Assault is assault. Everyone feels and responds differently after being subjected to these crimes. There is no 'right' way to respond. When my clients tell me their stories and describe how they felt or responded after an assault, they will often ask: "Is this reaction normal?" The answer is invariably: yes. Sometimes a survivor's "normal" is not society's "normal." Yet being assaulted or abused can be such a traumatic experience for a person that they will react in ways other people may not understand.



The uneven power relationship with their abuser prevents some people from revealing the abuse. For others, there may be a sense of guilt or shame about what has happened to them, and they may unfairly blame themselves or explain away their abuser's actions. For some, the assault(s) may be part of their personal narrative until life circumstances force them to deal with the trauma and damage done. A few survivors even suppress memories of the assault(s) and may only react later in life when triggered by something they see or hear. There is no single "right" way to respond to sexual abuse and assault. This attack on a person's bodily autonomy can cut to a person's very core. However, they respond, whether by choice or by circumstance, is what they feel they need to do to survive.

Coming Forward

Sexual abuse and sexual assault survivors take many different paths to recovery and healing. Some choose to go to the authorities. Others seek assistance from counsellors and/or crisis centres to help them process what has happened or while they are in treatment for other, and often related, mental health issues such as depression, anxiety disorders or PTSD. Still, others may begin to unpack the damage the abuse caused when seeking addiction treatment. They may start to understand that they have turned to certain substances or activities as a way to escape their painful trauma. Once they can deal with the underlying cause of their addictions, they often have more success in abstaining from these activities or moderating their consumption.

Disclosing what has happened to another person can be a supremely powerful moment in a survivor's life. There are times when I am, or someone else from my office is the first person to hear their story, and we always do so with compassion and without judgement. As we witness them taking back control over their lives by telling their story in their own words, we often see their relief, sadness, anger, fear, or determination. Usually, it's a combination of these complex and sometimes conflicting feelings. In the next part of this series, I discuss why coming forward can be such a difficult decision for many survivors, and I examine some common fears about what will happen when they do.

At the beginning of this post, I asked you to picture the face of a sexual abuse or sexual assault survivor. Whether you pictured someone you knew, someone you don't know, or a person in the abstract, I hope this post has encouraged you to think about how survivors deserve to be heard on their own terms, without judgment. By affirming this courageous step, they can feel empowered to continue to do whatever they need to help themselves recover from these heinous acts. Every person faces their own personal challenges in life that we may never know about. It is incumbent on all of us to be kind to each other so that we do not add to these challenges.



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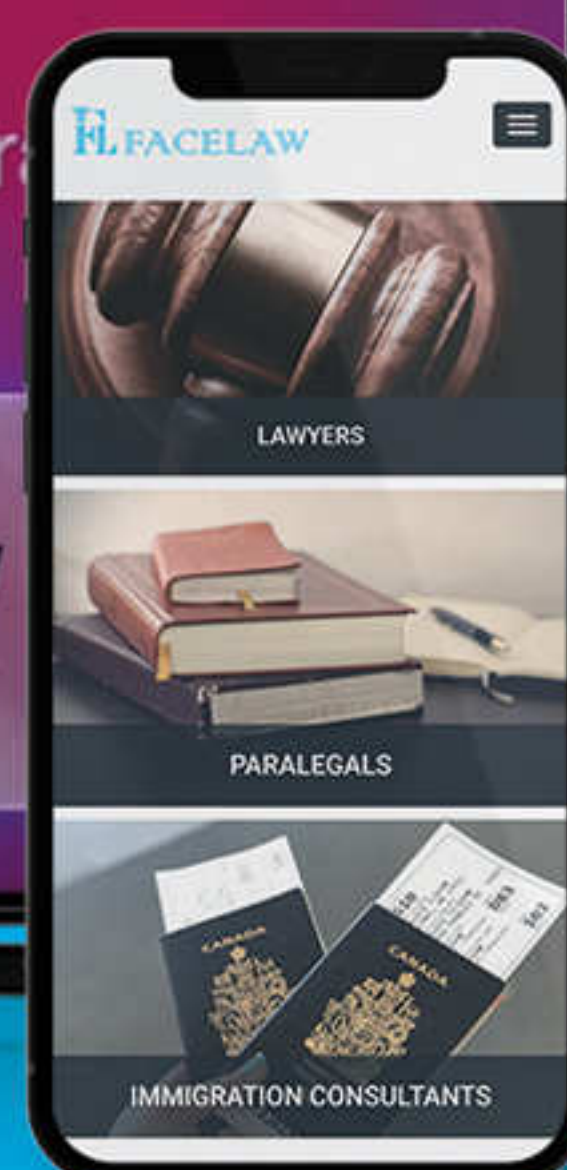
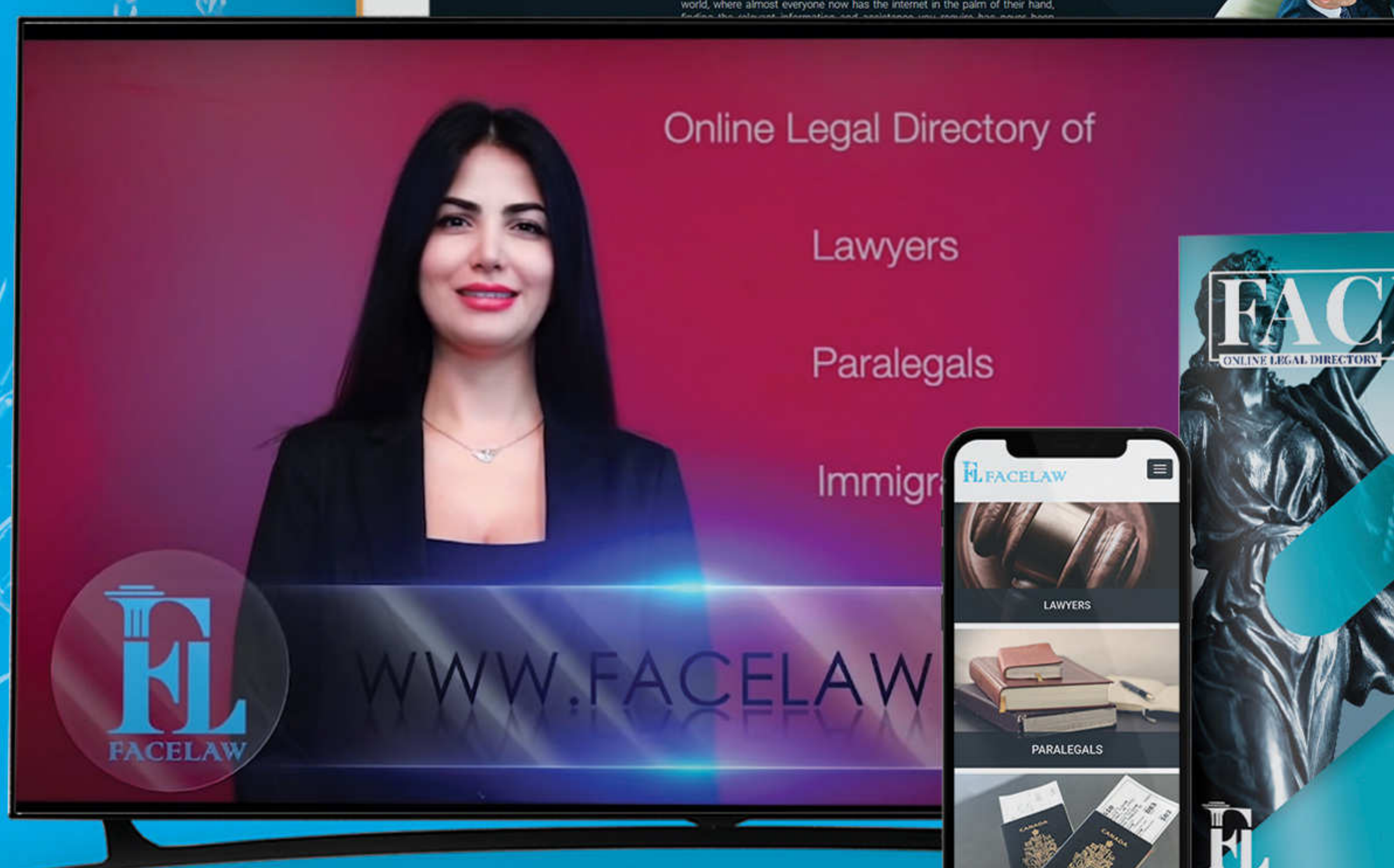
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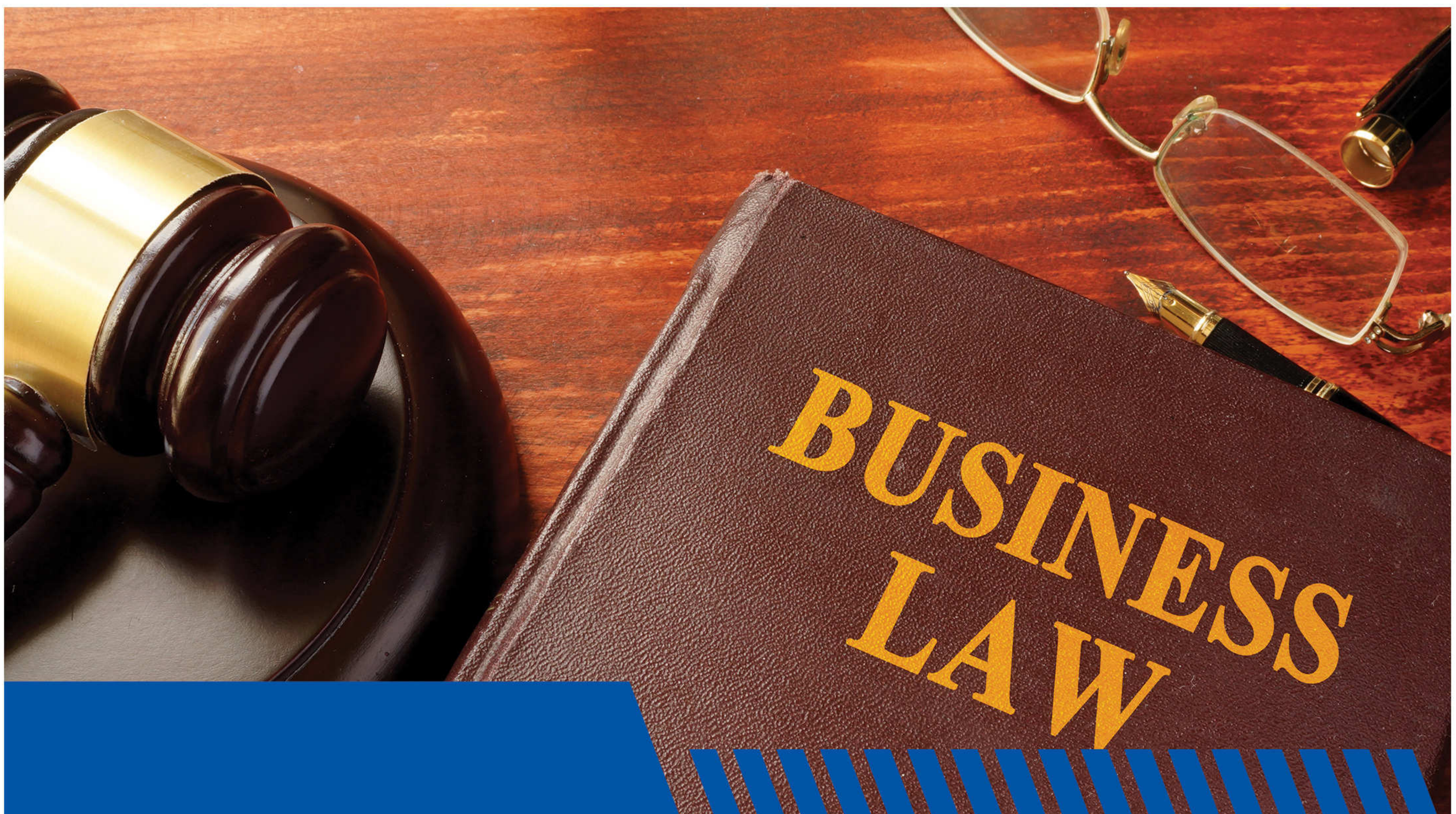
Once you have made the decision to incorporate your business, the next important decision to be made is to decide whether to proceed with the incorporation pursuant to the Canada Business Corporations Act (CBCA), which sets the rules and regulations governing federal corporations, or to incorporate pursuant to the corresponding Provincial legislative frameworks. Each province has their own legislative framework governing corporations within a given province, for example in Ontario, the Ontario Business Corporations Act (OBCA) was enacted to model after the federal statute. In simple terms, the federal and provincial statutes provide the rules and regulations that corporations must follow with respect to matters including but not limited to incorporation requirements, corporate governance and interactions with shareholders.

Choosing the appropriate statute to incorporate under is not a simple task, and there are some important factors, as well as advantages and disadvantages, that should be considered when contemplating this decision including your business name, nature of your operations, future plans for your corporation and the start up costs involved.



Federal incorporation of your business will provide your corporation with the ability to operate and conduct business throughout all of Canada under the same business name. This can be a good option for those who want to move freely and conduct their business within all of Canada, as it will not limit the organization's operations and will allow for expansion across the entire country in the future.

Incorporation under the Federal Statute can also provide greater credibility when trying to compete in an international market. A federal incorporation will also allow for flexibility in the event of changes to the location of the registered head office of the corporation.



The above benefit does not apply to incorporations under provincial legislation, especially if your business is strictly local and operates solely within a given province. Should you incorporate under a provincial statute, your corporation will only be allowed to operate the business in same provincial jurisdiction which the incorporation took place.

Furthermore, a provincial corporation will not have name protection outside of that province of which it was incorporated. Corporations receive naming rights within the specific jurisdiction of incorporation, whether it is in a province or in Canada federally. This may be particularly important in situations of planned expansion and nation wide commerce. Under the provisions of CBCA, at least 25% of directors of a federal corporation must be resident Canadians. However, in 2020 Ontario eliminated director residency requirements under the OBCA, meaning that Ontario Corporations are no longer required to satisfy director residency requirements. Bill 213 was introduced in October 2020 to simplify the process for incorporation in Ontario, specifically with respect to foreign ownership within companies. In addition to the removal of the requirement for Canadian resident directors discussed above, Ontario also has removed the requirement for

written resolutions to require 100% approval. With the current changes, written resolutions can be implemented with the same level of approval without the need for a shareholder's meeting. This will bring forward more efficiency for corporations and will allow for business to be conducted more conveniently with respect to resolutions. Something to note about federal incorporation, is the higher cost for incorporating as it involves more paperwork and fees. In Ontario there are no extra-provincial registration fees if you have already incorporated federally, and are now extra provincially registering.

- 2** Create your articles of incorporation which establish the structure of your corporation. This step will require decisions to be made relating to the classes and any maximum number of shares that the corporation is authorized to issue, restrictions on share transfers, minimum and maximum number of directors, as well as any restrictions on the business the corporation may carry on.



Steps to Incorporate Federally

Below is a simplified process for federal incorporation under the CBCA in Canada.

- 1** You must name your corporation, or operate under a corporate number. If you decide to choose a name, you must complete a NUANS search report and name reservation. Should the proposed corporate name be acceptable and available, this reservation holds the proposed business name for 90 days, until the incorporation process is completed.

- 3** Complete and file the necessary Form 2 providing information with respect to the initial registered office address and the first board of directors.

- 4** Organize the corporate minute book, including preparation of by laws, resolutions as well as issuance of share certificates as applicable.



Steps to Incorporate Provincially in Ontario

Below is a simplified process for federal incorporation under the CBCA in Canada.

1 You must name your corporation, or operate under a corporate number. If you decide to choose a name, you must complete a NUANS search report and name reservation. Should the proposed corporate name be acceptable and available, this reservation holds the proposed business name for 90 days, until the incorporation process is completed.

2 Create your articles of incorporation which establish the structure of your corporation. This step will require decisions to be made relating to the classes and any maximum number of shares that the corporation is authorized to issue, restrictions on share transfers, minimum and maximum number of directors, as well as any restrictions on the business the corporation may carry on.

3 Complete and file the necessary Form 2 providing information with respect to the initial registered office address and the first board of directors.

4 Organize the corporate minute book, including preparation of by laws, resolutions as well as issuance of share certificates as applicable.

What is Required After Incorporation?

Under the CBCA and OBCA, there are several legal requirements to maintain active and valid incorporation status.

Both within the province of Ontario and federally, there must be a validly maintained minute book and share record, company updates, as well as annual returns and annual resolutions.

There are various important components within your minute book such as your bylaws, resolutions, ledgers, registers, and many other significant internal corporate documents that you are required to maintain by law and that may differ depending on whether your corporation was incorporated federally or provincially.

Directors of a corporation are responsible for ensuring your corporation is maintaining a valid minute book.

Incorporation is a significant part of creating a business, and must be done with careful planning and consideration.

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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.

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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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The Law Office of Dr. Naser Abedi was established in 2001 as a law firm operating from the Greater Toronto Area, Ontario, Canada and primarily practicing Family Law, Immigration Law, Business Law, and Wills and Power of Attorney. Our firm maintains many affiliates in other key areas of law, as well.

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Jenna Lee obtained her J.D., graduating cum laude, from the William S. Richardson School of Law, University of Hawaii (USA). Jenna next obtained her LL.M. in International Tax Law from Queen Mary University of London (UK). Jenna also holds an MBA from San Francisco State University (USA) and an MA from the Hankuk University of Foreign Studies in South Korea.

Jenna is a member of the Law Society of Ontario, the New York State Bar Association and the Hawaii State Bar Association. In addition, Jenna is a Chartered Professional Accountant and Licenced Public Accountant in Ontario, and is also a Certified Public Accountant in California, USA.(Inactive)

Jenna is fluent in written and spoken English, Korean and Japanese, and has worked for the international accounting firm, Price water house Coopers (PwC), in both Tokyo and in London, UK. At PwC, Jenna worked on consulting, and the audit and regulatory compliance reviews of major international financial institutions and IT corporations.

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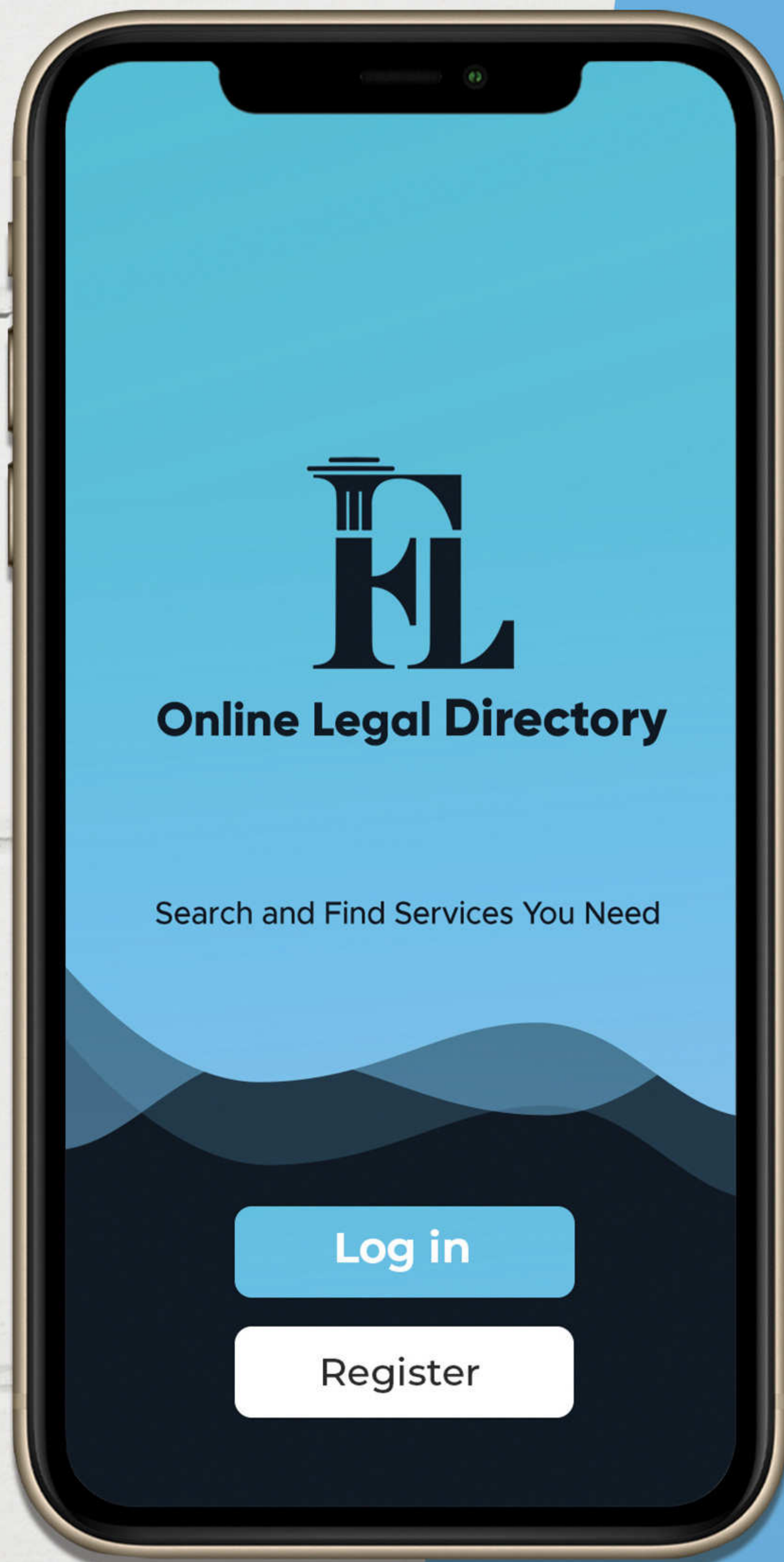
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