**SOAR Annual Conference: Toronto - November 7, 2013**

**Session Summary: Concurrent Session 2 – Social Media 1.01: A Primer**

Moderator: **Liz Nastasi**, Financial Services Commission of Ontario

Speaker: **John Gregory,** Ministry of Attorney General

*This session dealt with the realities of information in a digital world: Who is really watching and listening to your proceedings and what to do about it; the blurring of private and public information and the implications for adjudicators and staff; uses, abuses and excesses of information.*

Mr. Gregory spoke mainly about digital evidence, noting in his introductory remarks that there was not much commonality in the area of social media, but rather much diversity.

He gave four scenarios that consisted of the scenario, questions, group work and discussion.

First scenario: Using email/excel files as evidence

Mr. Gregory canvassed the following questions:

* What will you accept, an original electronic document/PDF/printed copy, and why?
* What is an original electronic document? “Original” does not denote just anything useful in electronic format. He remarked that it is perhaps not useful to focus on the meaning of “original”, and that it might be better to evaluate the document on the basis of the integrity of the system that produced it.
* What do you need to verify, and how does this vary from the evaluation of a paper record? It is worth noting that both can be tampered with.
* How do you demonstrate authenticity/integrity? There needs to be some explanation of the process (i.e. for an excel file).
	+ Integrity may be ensured if it is possible to verify that the information has not been altered and maintained in its entirety.
	+ Metadata: Data about data content, i.e. description of specific characteristiscs about an individual data item.
	+ Assure integrity on creation: Technological means; documentation (processes); statutory presumptions (For example – a bank document would be presumed to have credibility)
	+ Demonstrate integrity at time of use:
		- Metadata
		- Documentation (processes)
		- Affidavit (credibility)
		- Expert
		- Witness
		- Internal logic

Second Scenario: During a hearing, a party wants to use a Wikipedia page as evidence.

Mr. Gregory canvassed the following questions:

* Will you accept this(ese) pages/pictures?
* What will you have to verify? How?
* What is Wikipedia/Google Street View etc? More and more social media evidence used in court in Canada. Why?
* Wikipedia makes no guarantee of validity
* Check revision history: Anyone can go in and change almost any Wikipedia page
* Wayback Machine: Internet page archiving See *ITV Technologies Inc.* v. *WIC TV* (2003 case)

Third Scenario: a party wants to produce an extract page from Facebook

Mr. Gregory canvassed the following questions:

* Will you accept the extract (1) as primary evidence, (2) to challenge a testimony?
* What will you have to verify? How?
* Consider Facebook public vs. private debate.
* Is the information obtained by fraudulent methods? Does that make the evidence unusable? “Comparative Fault Analysis”.

Fourth Scenario: Electronic media in the hearing?

Mr. Gregory canvassed the following questions:

* Can we tweet or use other similar electronic method during hearing?
* Are there different rules for different classes (accredited media vs. public)?
* Can a judge have a Facebook page?
* Can adjudicators be “Facebook friends” with counsel or representatives of parties?
* Should decisions be released on social media platforms?

Consider principles for e-media in the hearing room: Are there different classes of people in the hearing room? What are the consequences for publishing hearing decisions or proceedings during the hearing? Could it taint witnesses who are yet to testify?

Publishing decisions on Social Media are available from:

* Supreme Court
* From the Cloud
* Government