
STATUTORY INSTRUMENTS

1976 No. 582

Solicitors (Northern Ireland) Order 1976

PART III **N.I.**

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE

Disciplinary proceedings before the Disciplinary Committee

[^{F1}The Solicitors Disciplinary Tribunal **N.I.**

43.—(1) The Lord Chief Justice, after consultation with the Council, shall appoint a tribunal, to be known as the Solicitors Disciplinary Tribunal and consisting of—

- (a) practising solicitors of not less than 10 years' standing (solicitor members); and
- (b) persons who are neither solicitors nor members of the Bar of Northern Ireland (lay members).

(2) The members of the Tribunal shall elect one of the solicitor members to be the president of the Tribunal.

(3) The Department of Finance and Personnel shall pay to lay members such remuneration and other allowances (if any) as that Department may determine.

(4) The Lord Chief Justice, after consultation with the Council, may remove a member of, and may fill a vacancy in, the Tribunal.

(5) The Tribunal may, subject to paragraph (6), act notwithstanding one or more than one vacancy in their membership and any application or complaint made to, or other matter dealt with by or before, the Tribunal may be dealt with or disposed of notwithstanding any change in the membership of the Tribunal.

(6) For the purpose of hearing and determining applications and complaints the Tribunal shall be properly constituted if—

- (a) at least 3 members are present; and
- (b) at least 1 lay member is present; and
- (c) the number of solicitor members present exceeds the number of lay members present; and
- (d) the president or another solicitor member presides.

(7) Subject to the provisions of this Order and of any rules made under paragraph (8), the Tribunal may regulate their procedure in such manner as they may think fit.

(8) The Tribunal may, with the concurrence of the Lord Chief Justice, make rules regulating applications and complaints to the Tribunal and the hearing, conduct and determination of such applications and complaints and of inquiries held by the Tribunal.

(9) Without prejudice to the powers of the Tribunal under Article 51(1)(j) and (k), rules under paragraph (8) may make provision for the payment by any party to an application or complaint made

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to the Tribunal of the costs, or a contribution towards the costs, incurred by any other party or by the Tribunal in connection with that application or complaint.

(10) The Tribunal may appoint a secretary, who shall be a member of the Society but shall not be a member of the Tribunal.

(11) Except as provided by paragraph (3), the Society shall defray the costs incurred by the Tribunal, which shall include the amount of any remuneration which the Society may agree to pay to the person appointed as secretary.

F1 1989 NI 14

Applications and complaints to Tribunal **N.I.**

[^{F1}44.—(1) The following applications and complaints shall be made to and heard by the Tribunal—

- (a) an application by a solicitor who has been suspended from practice for an order terminating the suspension;
- (b) an application by a person whose name has been struck off the roll for an order for the replacement of his name on the roll;
- (c) an application by a solicitor who is restricted from practising on his own account, whether in partnership or otherwise, under an order made under Article 51(1)(c) or (4) for an order removing that restriction;
- (d) an application by a solicitor who is^{F2} excluded from legal aid work by an order made under Article 51B for an order^{F2} terminating his exclusion;
- (e) a complaint by the Society or any other person—
 - (i) that a solicitor has been guilty of professional misconduct or of other conduct tending to bring the solicitors' profession into disrepute; or
 - (ii) that a solicitor has contravened a provision of this Order or of any regulation or order made thereunder (including an order made by or on appeal from the Tribunal), or any term or condition subject to which any certificate has been issued, or any consent has been given, to him or his suspension has been terminated, by the Lord Chief Justice, the Council, the Society, the Tribunal or the High Court under any provision of this Order; or
 - (iii) that a solicitor has been convicted in Northern Ireland of a criminal offence tending to bring the solicitors' profession into disrepute, or has been convicted outside Northern Ireland of an offence of like character which if committed in Northern Ireland would be a criminal offence;
- (f) a complaint requiring a solicitor to answer allegations contained in an affidavit;
- (g) a complaint by the Society relating to the conduct of a solicitor in connection with—
 - ^{F2}(i) the giving of advice or assistance under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981; or
 - ^{F2}(ii) the provision of services for any person receiving legal aid under Part II or III of that Order (including the provision of any such services in the capacity of agent for that person's solicitor); or
- (h) any other application or complaint which is authorised to be made to the Tribunal under any other provision of this Order or under any other enactment.

(2) An application or complaint under paragraph (1) shall be in writing, shall be signed by the person making it and shall be sent to the Tribunal together with—

- (a) an affidavit by that person setting forth the facts giving rise to the application or complaint; and
- (b) the documents relied on in support of the application or complaint, or duly authenticated copies of those documents;

and the Tribunal shall take into consideration every such application or complaint together with such affidavit and documents as aforesaid.

(3) Where a judge of the^{F3} Supreme Court, a county court judge or a resident magistrate reports to the Society any case where it appears to him that a solicitor is prima facie guilty of professional misconduct, the Society shall make a complaint to the Tribunal under paragraph (1) with respect to the solicitor.]

F1 1989 NI 14

F2 prosp. subst. by 2003 NI 10

F3 prosp. subst. by 2005 c.4

Procedure on application by solicitor or former solicitor **N.I.**

45. Where an application is made under Article 44(1)(a), (b), (c) or (d), the Tribunal—

- (a) shall inform the Society of the application; and
- (b) shall hold an inquiry.

F1 1989 NI 14

Procedure on application or complaint against solicitor **N.I.**

46.—(1) Where an application or a complaint is made under Article 44(1)(e), (f) or (h) by a person other than the Society or a lay observer, the Tribunal—

- (a) if they decide that a prima facie case has not been shown, shall so notify the applicant or complainant and the solicitor and take no further action; or
- (b) if they decide that a prima facie case has been shown shall serve on the solicitor—
 - (i) a copy of the application or complaint;
 - (ii) a copy of the affidavit;
 - (iii) copies or, at the discretion of the Tribunal, a list of the relevant documents; and
 - (iv) a notice requiring the solicitor to send to the Tribunal, within a specified period, an affidavit by him in answer to the application or complaint, together with any documents, or duly authenticated copies thereof, on which he may rely in support of his answer.

(2) Where an application or a complaint is made under Article 44(1)(e), (f), (g) or (h) by the Society or a lay observer, the Tribunal shall serve on the solicitor the documents mentioned in paragraph (1)(b)(i) to (iv).

(3) Where the notice mentioned in paragraph (1)(b)(iv) is served, any party to the application or complaint may inspect the documents furnished by any other party.

(4) After the expiration of the period specified in such notice, the Tribunal shall consider such (if any) affidavit and documents as have been furnished by the solicitor and—

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- (a) if they decide that there is no cause for further inquiry shall so notify the applicant or complainant and the solicitor and shall take no further action; or
- (b) if they decide that there is cause for inquiry, shall hold an inquiry.

(5) Where an applicant or complainant or a solicitor against whom an application or complaint is made has been notified under paragraph (1)(a) or paragraph (4)(a), the Tribunal shall, if so required in writing by the complainant or the solicitor, make a formal order embodying their decision.]

F1 1989 NI 14

Powers of^{F4} Tribunal] on inquiry being held **N.I.**

48.—(1) Subject to the provisions of paragraph (2) with respect to the exercise of certain of the powers conferred by this paragraph, the^{F4} Tribunal] shall, on an inquiry being held by them, have the like powers, rights and privileges as are vested in the High Court in respect of—

- (a) the summoning of witnesses and their examination on oath;
- (b) the requiring of the production of documents; and
- (c) the issuing, subject to rules of court, of a commission or request to examine witnesses out of Northern Ireland;

and a summons signed by a member of the^{F4} Tribunal] may be issued and served on any person for the purposes of securing his attendance as a witness at, or the production by him of any document necessary for the purposes of, any such inquiry.

(2) Where any person—

- (a) on being duly summoned as a witness before the^{F4} Tribunal] makes default in attending;
- (b) being in attendance as a witness before the^{F4} Tribunal] refuses to take an oath lawfully required by the^{F4} Tribunal] to be taken, or to produce any document in his power or control lawfully required by the^{F4} Tribunal] to be produced by him, or to answer any question to which the^{F4} Tribunal] may lawfully require an answer; or
- (c) does any other act which, if the^{F4} Tribunal] were a court of law having power to commit for contempt, would be contempt of court;

the^{F4} Tribunal] may, by certificate signed by any two members thereof, certify such default, refusal or act (as the case may be) to the High Court, and the High Court may thereupon inquire into the matter so certified and, after hearing any witness who may be produced against or on behalf of the person aforesaid and any statement that may be offered in his defence, may punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

(3) A witness at an inquiry held by the^{F4} Tribunal] shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

F4 1989 NI 14

Representation before^{F5} Tribunal] **N.I.**

49.—(1) A party to any proceedings before the^{F5} Tribunal] shall be entitled to appear and be heard by that^{F5} Tribunal] either in person or by counsel or solicitor.

(2) The Society may appear and be heard upon any application or complaint made to the^{F5} Tribunal].

(3) Any counsel or solicitor appearing in proceedings before the^{F5} Tribunal] shall have the same rights, privileges, immunities and duties as if he were appearing in an action in the High Court.

F5 1989 NI 14

Application of Bankers' Books Evidence Act 1879 N.I.

50. An application to or an inquiry or other proceeding before the^{F6} Tribunal] shall be a legal proceeding within the meaning of section 10 of the Bankers' Books Evidence Act 1879 .

F6 1989 NI 14

^{F1}Orders of Tribunal on inquiry N.I.

51.—(1) Where the Tribunal hold an inquiry, they may make an order providing for one or more than one of the following—

- (a) the dismissal of the application or complaint;
- (b) the admonishing of the solicitor and, if they think fit, the imposing on him of a fine not exceeding £3,000 to be paid to and applied for the purposes of the Society;
- (c) the restricting of the solicitor from practising on his own account, whether in partnership or otherwise;
- (d) the removal of a restriction on the solicitor from practising on his own account, whether in partnership or otherwise;
- (e) the suspension of the solicitor from practice;
- (f) the termination of the solicitor's suspension from practice;
- (g) the striking off the roll of the name of the solicitor;
- (h) the replacement on the roll of the name of a former solicitor whose name has been struck off the roll;
- ^{F7}(i) the termination of the solicitor's exclusion from legal aid work;
- (j) the payment by any party to the inquiry of the costs of any other party to be measured by the Tribunal, or of a stated sum as a contribution towards such costs;
- (k) the payment by any party to the inquiry of a sum to be measured by the Tribunal for the costs incurred by the Tribunal, or of a stated sum as a contribution towards such costs;
- (l) the making by any party of such restitution or satisfaction to any aggrieved party as the Tribunal think fit.

(2) Paragraph (1) does not apply where the Tribunal hold an inquiry into an application under Article 42(5A).

(3) Where the Tribunal hold an inquiry into a complaint under Article 41A(8) relating to a direction given under Article 41A, they may, without prejudice to their powers under paragraph (1) or Article 51A, make an order providing for the direction to be treated for the purposes of this Order as if it were contained in an order of the Tribunal.

(4) An order made by the Tribunal under paragraph (1)(f) or (h) may impose the restriction that the solicitor shall not practise on his own account, whether in partnership or otherwise.

(5) An order made by the Tribunal under paragraph (1)(k) for the payment by any party of the costs of the Tribunal or of a sum towards those costs shall direct such payment to be made by that

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party to the Society; and any money so paid shall be appropriated by the Society towards the defrayal of the costs referred to in Article 43(11).

(6) The Tribunal may postpone the making of an order under this Article, Article 51A or Article 51B.

(7) Where the making of an order is postponed under paragraph (6), the Tribunal may, on request made to them in that behalf when the matter is considered after such postponement, allow the application or complaint to be withdrawn without any order being made.

(8) The Tribunal may, on the application of the solicitor to whom an order under this Article, Article 51A or Article 51B relates, or of any other party, suspend in whole or in part the operation of the order pending an appeal under Article 53.

(9) Where an order is suspended under paragraph (8)—

- (a) nothing in Article 52(1), (2) or (3) shall apply to the filing, enforcement or lodgment of copies of, or to the publication of, that order while it remains suspended; and
- (b) neither Article 15(1) nor Article 54(1) shall have effect in relation to that order while it remains suspended.

(10) Any person who practises as a solicitor on his own account, whether in partnership or otherwise, in contravention of—

- (a) any regulation for the time being in force under Article 26(2)(a); or
- (b) any order made by the Tribunal under paragraph (1)(c) or (4), or by the Lord Chief Justice or the High Court on an appeal under Article 53,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(11) If it appears to the Department of Finance and Personnel that there has been a change in the value of money since the relevant date, that Department may by order, subject to negative resolution, substitute for the sum for the time being specified in paragraph (1)(b) such other sum as appears to that Department to be justified by the change.

(12) In paragraph (11) “the relevant date” means—

- (a) in relation to the first order made under that paragraph, the date of the coming into operation of Article 19(1) of the Solicitors (Amendment) (Northern Ireland) Order 1989; and
- (b) in relation to each subsequent order, the last occasion on which the sum specified in paragraph (1)(b) was altered.

F1 1989 NI 14

F7 prosp. subst. by 2003 NI 10

Power of Tribunal to impose sanctions for inadequate professional services **N.I.**

51A.—(1) The powers conferred on the Tribunal by this Article shall be exercisable on an inquiry into—

- (a) any application or complaint made to the Tribunal under this Order by or on behalf of the Society; or
- (b) any application made to the Tribunal under Article 42(5A) by a lay observer,

and, in the case mentioned in sub#paragraph (a), shall be exercisable whether or not they make any other order on the inquiry.

(2) Where, on an inquiry into any such application or complaint with respect to a solicitor, it appears to the Tribunal that the professional services provided by the solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to paragraph (4)), the Tribunal may, if they think fit, do one or more of the following things, namely—

- (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and by order direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within paragraph (3) as appear to them to be necessary in order to give effect to their determination;
- (b) by order direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
- (c) by order direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;
- (d) by order direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.

(3) The requirements referred to in paragraph (2)(a) are—

- (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter;
- (b) a requirement to remit the whole or part of those costs;
- (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.

(4) The Tribunal shall not exercise any of their powers under this Article unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Tribunal may have regard—

- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings;
- (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.

(5) Where the Tribunal have given a direction under paragraph (2)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—

- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Tribunal's determination; and
- (b) where a bill covering those costs has not been taxed in accordance with sub#paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Tribunal's determination.

(6) Where a bill covering those costs has been taxed in accordance with paragraph (5)(a), the Tribunal's direction under paragraph (2)(a) shall, so far as relating to those costs, cease to have effect.

(7) In paragraphs (2)(d) and (4)(a) “client”, in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.

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F1 1989 NI 14

Power of Tribunal in relation to legal aid **N.I.**

51B.—(1) On an inquiry into a complaint made to the Tribunal under Article 44(1) against a solicitor the Tribunal may, whether or not they make any other order on the inquiry,—

^{F8}(a) make an order providing for the exclusion (either permanently or for a specified period) of the solicitor from legal aid work;

^{F8}(b) order that any costs—

- (i) otherwise payable under or in accordance with Part II or III of the Order of 1981; or
- (ii) otherwise chargeable as mentioned in Article 8(1) of that Order,

in connection with services provided by the solicitor shall be reduced or cancelled^{F9}.

(2) The Tribunal shall not make an order under paragraph (1) unless they determine that there is good reason for doing so arising out of—

^{F8}(a) the conduct of the solicitor in connection with the giving of advice or assistance under Part II of the Order of 1981;

^{F8}(b) the conduct of the solicitor in connection with the provision of services for any person receiving legal aid under Part II or III of the Order of 1981 (including the provision of any such services in the capacity of agent for that person's solicitor); or

(c) the professional conduct generally of the solicitor.

(3) Where the Tribunal make an order under paragraph (1)(a) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if they think fit, order that any other person who is for the time being a member of the firm^{F8} shall be excluded (either permanently or for a specified period) from legal aid work.

(4) The Tribunal shall not make an order under paragraph (3)^{F8} excluding any person from legal aid work unless an opportunity is given to him to show cause why the order should not be made.

(5) In so far as^{F8} any of Articles 7, 8, 13(1) and 36(1) of the Order of 1981 has effect in relation to any costs reduced or cancelled by an order under paragraph (1)(b), it shall so have effect subject to the provisions of that order.

^{F10}(6) In this Article—

(a) “the Order of 1981” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

(b) references to a person being excluded from legal aid work are references to his being excluded from both of the following classes of persons, namely—

- (i) those who may be selected under Article 15(3) of the Order of 1981; and
- (ii) those who may be assigned to give legal aid under Part III of that Order.

F1 1989 NI 14

F8 prosp. subst. by 2003 NI 10

F9 prosp. insertion by 2003 NI 10

F10 prosp. rep. by 2003 NI 10

Power of Tribunal to make recommendation for application of Schedule 1 to solicitor **N.I.**

51C.—(1) Where the Tribunal hold an inquiry into any application or complaint made under this Order with respect to a solicitor, they may, whether or not they make any order on the inquiry, make a recommendation to the Council that the provisions of Schedule 1 should apply in relation to that solicitor and the other persons mentioned in that Schedule.

(2) A recommendation made by the Tribunal under paragraph (1) shall contain a statement of the findings on which the Tribunal based the recommendation.]

F1 1989 NI 14

Effect, notice and recording of orders of Disciplinary Committee **N.I.**

52.—(1) [F11An order made by the Tribunal on an inquiry] shall contain a statement of their findings and shall be signed by at least two of their members and filed with the registrar but the Committee may in any case in which it appears to them to be desirable so to do, make an order not prefaced by a statement of the findings relative to the facts of the case, and in such case a statement of their findings shall be signed by the chairman or secretary of the Committee and shall, if the order is one required to be lodged with the Registrar of the^{F12} Supreme Court under paragraph (2) or paragraph (3) be lodged with such Registrar together with the order.

(2) [F11Where the Tribunal make an order—

- (a) under Article 51(1)(b) imposing a fine on a solicitor;
- (b) under Article 51(1)(j), (k) or (l);
- (c) under Article 51(3); or
- (d) under Article 51A(2),]

, the registrar, if so required in writing by the Society or by any other party in whose favour the order was so made, shall lodge a duly authenticated copy of the order with the Registrar of the^{F12} Supreme Court, who shall forthwith cause such copy to be filed; and thereupon the order shall be of the like effect as a judgment of the High Court and enforceable accordingly.

(3) Where the[F11 Tribunal] make an order suspending a solicitor from practice or removing from or striking off the roll the name of a solicitor, the registrar shall forthwith—

- (a) lodge a duly authenticated copy of the order with the Registrar of the^{F12} Supreme Court; and
- (b) cause to be published in the Belfast Gazette, and in such other manner as the[F11 Tribunal] may direct, a notice stating the effect of the order,^{F11}

(4) The registrar shall maintain separate files on which all orders made by the[F11 Tribunal] shall be entered in the following manner—

- (a) on a file to be termed File A, there shall be entered, in alphabetical order against the names of the solicitors concerned, each order directing that the name of a solicitor is to be removed from or struck off the roll, or that a solicitor is to be suspended from practice;
- (b) on a file to be termed File B, there shall be entered, in chronological order, all other orders.

(5) Where an order of the[F11 Tribunal] includes provision for any of the matters mentioned in[F11 Article 51(1)(c) or (e) or (4)], the registrar shall enter a note of the effect of that order on the roll against the name of the solicitor with respect to whom the application or complaint was made.

(6) On receipt under[F11 Article 53(5)] of a copy of an order the registrar shall enter the order as if it were an order of the[F11 Tribunal].

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(7) The registrar shall, on payment of such fee (if any) as may be prescribed, furnish a copy of an entry on File A or File B to a person who applies in writing for such a copy.

(8) Notwithstanding the provisions contained in paragraph (7), where—

(a) application is made for a copy of an entry on File B, being an entry under a date which is earlier than two years before the date of such application; or

(b) application is made for a copy of an entry on File A or File B as respects which the^{F11} Tribunal] have directed the insertion of a note that the furnishing of a copy thereof might cause injustice;

a copy of the entry shall be furnished only—

(i) by permission in writing of the Society; or

(ii) in compliance with an order of a court.

F11 1989 NI 14

F12 prosp. subst. by 2005 c.4

^{F13} Appeals against orders of the Tribunal **N.I.**

53.—(1) A person aggrieved by—

(a) an order of the Tribunal dismissing an application made by him under Article 44(1)(a), (b) or (c); or

(b) an order of the Tribunal under Article 51(4) restricting him from practising on his own account, whether in partnership or otherwise,

may appeal to the Lord Chief Justice who may—

(i) affirm the order of the Tribunal; or

(ii) make any order which could have been made by the Tribunal on its inquiry.

(2) An appeal against any other order made by the Tribunal (except an order under Article 51(3)) shall lie to the High Court—

(a) at the instance of the solicitor or the Society or any person directed by the order to make any restitution or satisfaction;

(b) by leave of the High Court, at the instance of any other person appearing to the High Court to be affected by the order.

(3) An appeal shall also lie to the High Court against the refusal of the Tribunal to suspend the operation of an order under Article 51(8).

(4) The Society shall be entitled to appear and to be heard on the hearing of an appeal under this Article.

(5) A copy of every order made on an appeal under paragraph (2) or (3) shall be sent to the registrar by the Master (Queen's Bench and Appeals).

(6) An appeal under this Article shall be brought within 21 days from the date of the making of the order or refusal appealed against.]

F13 1989 NI 14

Publication, etc., of orders **N.I.**

54.—(1) ^{F14}A copy of every order made—

- (a) by the Lord Chief Justice under Article 20(1) or 27(1);
- (b) by the Tribunal;
- (c) on an appeal under Article 53;
- (d) in the exercise of the jurisdiction referred to in Article 81(a),]

shall be filed with the secretary of the Society, and the Society shall be entitled to publish any such order wholly or partly, or a synopsis thereof, in any publication of the Society and by sending a copy of any such order or any part or synopsis thereof to every solicitor in Northern Ireland, or otherwise to publish the order in any other manner approved of by the Society.

(2) The making of any order or the publishing under this Article of any order (whether wholly or partly) or of any synopsis thereof shall be deemed to be absolutely privileged.

(3) Any document purporting to be certified by the registrar as a copy of an order made by the^{F14} Tribunal] or of an entry made pursuant to Article 52 shall in any proceedings be received as evidence of the existence and content of that order or entry as the case may be.

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