

**RULES COMMITTEE CONSULTATION PAPER**  
**PROPOSED REVISION OF DEFAULT JUDGMENT AND**  
**FORMAL PROOF RULES**

**The existing rules**

1. The existing rules relating to judgment by default are set out at rr 15.3–15.14. The rules assume no statement of defence has been filed. There must be an affidavit of service (r 15.14).
2. A distinction is made between liquidated demands and unliquidated demands (rr 15.7-15.10), but liquidated demand is not defined.
3. In relation to a liquidated sum, a judgment may be sealed and costs and disbursements fixed by the Registrar without reference to a Judge. There are specific rules dealing with claims for the recovery of land and claims for the recovery of chattels (rr 15.8–15.9).
4. Under r 15.11 for assessment of damages for claims in relation to recovery of land or chattels a defendant cannot adduce evidence without leave except in mitigation of damages, but unless the proceeding is required to be tried by a jury the plaintiff may adduce evidence for the plaintiff's damages by affidavits.
5. In proceedings other than liquidated and unliquidated claims, and claims for the recovery of land or chattels, and where under r 15.12(1) a plaintiff has applied on notice for judgment, judgment may be given. The Court may dispense with notice in certain circumstances (r 15.2) and instead of applying on notice for judgment a plaintiff may apply for a hearing date. The Court may then give judgment if the relief to which the plaintiff is entitled on the facts set out in the statement of claim (r 15.12(3)). Any judgment may be set aside or varied if there has been a miscarriage of justice (r 15.13). There is a specific provision for overseas service cases (r 15.14).

## **Discussion**

6. There appears to be little problem in practice in the way in which claims for liquidated sums are dealt with. However, there is no definition of liquidated and unliquidated demands in the rules and the distinction on occasions can be elusive.
7. There appear to be variances in what happens when the demand is for an unliquidated amount. There is no single rule which sets out clearly what should happen when judgment is sought for an unliquidated amount. The present rules are confusing and can be seen as unnecessarily prolix. It is hard to see why there should be particular provisions for demands for the recovery of land and chattels.
8. As a matter of practice in the Auckland Registry at least, claims for formal proof for unliquidated amounts tend to be set down in the Duty Judge list. An affidavit is filed in support and counsel appears before the Judge. The Judge will consider whether the claim both in respect of liability and damages is on its face made out, and if it is will give judgment. The Judge may on occasion wish to query aspects of the fact or law relied upon. Anecdotal evidence indicates on occasions when Judges are not satisfied that there is a basis for claim, they will refuse to enter judgment.

## **The proposed changes**

9. The Rules Committee invites comment on the proposed redraft of the rules relating to default judgments. The idea behind the changes is to implement simplified rules which reflect the current practice, and which define the difference between liquidated and unliquidated demands.
10. The proposed draft rules are much shorter than the predecessor rules and do not make any particular provision for claims for the recovery of land or chattels, or for “other proceedings”.

11. Under the proposed draft there are just two different types of demands and procedures, liquidated and unliquidated. The requirement for an affidavit of service and the ability to proceed on a single cause of action and against a single defendant remain. So does the procedure under r 15.7 relating to a liquidated demand.
12. The real changes are from r 15.8 onwards in relation to formal proof for other claims. A single process is set out for all unliquidated claims. The old distinctions are abolished.
13. Affidavit evidence must be filed establishing the claim and the Judge must be satisfied as to the cause of action relied on and the damages sought. Deponents of the affidavits must attend the formal proof hearing in case a matter requires clarification or addition.
14. Once a proceeding is listed for formal proof no defendant may proceed to defend unless there will, or may be, a miscarriage of justice. This is the same test that applies to setting aside or varying a default judgment.
15. There is a full discussion of the rules in other jurisdictions to be seen on the Rules Committee website. These changes would make our default judgment procedures similar to those in the Federal Courts of Canada and some Canadian provinces. We have noted that in Australia, England, Wales, Alberta and Ontario there are still special provisions for claims for the recovery in relation to land or chattels. The existing rules are still similar to those on which they were based, which still apply in England and Wales and Australia.
16. Please return submissions or comments both on matters of substance or drafting to the Clerk to the Rules Committee by **30 January 2012**. Submissions received may be posted on the Rules Committee's website.