

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2023] NZACC 171

ACR 50/20

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	ROSALIND CROTHERS Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 16 March 2023

Heard at: Wellington / Whanganui-a-tara

Appearances: Mr Paul Crothers for appellant
S M Kinsler/M L Clarke-Parker for respondent

Judgment: 24 October 2023

RESERVED JUDGMENT OF JUDGE I C CARTER
[Weekly compensation / calculation of earnings as a self-employed person,
s 100, s 14, Schedule 1, Part 2, Cl 31,32]

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Introduction – Corporation Decision and Review Decision

[1] Mrs Crothers appeals against a Review Decision dated 10 February 2020 (the Review Decision). That review related to the calculation of Mrs Crothers' earnings in the Corporation’s decision dated 28 August 2019 for the purpose of determining her entitlement to, and abatement of, weekly compensation (the Corporation’s Decision).

[2] The Review Decision dealt with several issues relating to Mrs Crothers' earnings. On appeal, Mrs Crothers pursues only one of those issues - whether the Corporation was correct

to deduct a portion of loan interest costs from the income Mrs Crothers received from her investment described in the accounts as “the Works Bonds”.

[3] At the hearing of the appeal Mr Crothers represented Mrs Crothers as his wife and business partner in their farming partnership. Mr Crothers is a qualified and experienced accountant and prepared all the financial statements and tax returns relating to Mr and Mrs Crothers’ farming partnership income and other sources of income. Mr Crothers also received weekly compensation for a period following an accident and couple’s financial information was relevant to calculation of weekly compensation for each of them.

[4] The accounting evidence relied on by the Corporation was given by Ms Kwa, who is a chartered accountant with many years’ experience and is employed in the Technical Accounting Specialist team at the Corporation. She commented that she had generally found the financial information provided by Mr Crothers to be highly unusual and often lacked the sort of detail and independent verification that she would ordinarily expect to find in business accounts. Ms Kwa’s view was that the lack of detail in the financial statements and changes of position (for example, by re-filing tax returns) have contributed to the complexity and delay associated with resolving Mr and Mrs Crothers’ weekly compensation entitlements.

[5] On the other hand, I acknowledge in fairness to Mr Crothers that he had some success with providing additional financial information to the Corporation at various stages. He persuaded the Corporation to accept his opinion of certain aspects of Mr and Mrs Crothers’ financial position, resulting in a more favourable calculation of earnings and weekly compensation for each of them. For example, the Corporation had accepted, after considering further information provided by Mr Crothers, that the farming business generated enough income to cover expenses and that the farming income was not reduced by any interest cost.

[6] The issues raised in this appeal are essentially a battle between accountants and what is correct accounting practice. The court might have been assisted by sitting with an appropriately qualified accountant appointed as an assessor. However no one appears to have considered at the various case management stages of the appeal the potential usefulness of appointing an assessor under s 157 of the Act. Despite that, I think the appeal can be determined on a straightforward application of the law to the facts.

Agreed facts

[7] The parties agree on the relevant facts.

[8] Mrs Crothers sustained a shoulder injury in May 2014. As a result, she was incapacitated from 12 May 2014 to 22 January 2017. Because of the date of Mrs Crothers' accident in 2014, her 2013 tax year was the relevant year for determining her earnings and entitlement to weekly compensation.

[9] The Corporation calculated and paid weekly compensation based on Mrs Crothers' income for the 2013 tax year, as the most recent year ending with the balance date of the self-employed person before the commencement of the period of incapacity.¹

[10] Mr and Mrs Crothers are each self-employed and received income from a number of sources, including a farming partnership in which they are equal partners. The Corporation's accounting memorandum of 23 August 2019 prepared by Ms Kwa calculated Mrs Crothers' 2013 earnings at \$50,221.² \$3,250 of interest costs was allocated against Mrs Crothers' earnings from an investment described in the accounts as “the Works Bonds”. The rationale for the allocation of interest is set out in the Corporation's 23 August 2019 accounting memorandum. The calculation of Mrs Crothers' earnings was:

Farm income	\$34,092
Income equalisation withdrawals	\$2,340
Farm rent adjustment	\$2,873
Self employed income	\$1,869
Share trading income	\$12,347
Net income “the Works Bonds”	\$450
Interest expense “the Works Bonds”	-\$3,750
Total	\$50,221

[11] The effect of the Corporation's approach is to reduce Mrs Crothers' total earnings by deduction of the interest expense with a corresponding reduction in weekly compensation.

¹ Accident Compensation Act 2001, Schedule 1, Part 2, Cl 30(2)

² This was subsequently revised up to \$53,971 after the Corporation later took into account other factors set out in memoranda of 9 October 2020 and 26 November 2021.

The deduction of the \$3,250 interest cost against earnings from the Works Bonds is disputed.

Issues on appeal

[12] The issue on appeal is whether the Corporation has correctly calculated Mrs Crothers' entitlement to weekly compensation.

[13] This turns on whether the Corporation was correct to deduct \$3,250 of interest costs in the 2013 financial year against the income she received from her investment in Works Bonds, in calculating Mrs Crothers' earnings.

Law

Calculating earnings of a self-employed person and relevance of tax return

[14] Mr and Mrs Crothers are self-employed. Earnings for a self-employed person are determined under s 14 and Schedule 1 of the Accident Compensation Act 2001 (the Act). Section 14(2)(b) directs that only income derived in the relevant tax year³ for tax purposes “that is dependent on a person's personal exertions” is included in earnings for a self-employed person.

[15] The formula used in s 14 to define “earnings as a self-employed person” is expressed as taxable income less deductions allowed for tax purposes. But the Corporation is not bound by the net income arrived at in the relevant filed tax return.

[16] Part 2 of Schedule 1 of the Act provides for the calculation of earnings for the purpose of determining weekly compensation. Clause 31 applies where the Corporation is determining earnings for a self-employed person. Clause 31 directs that the Corporation must **take into account** [*emphasis added*] the self-employed person's income tax return:

- (a) if filed for the relevant tax year, and
- (b) the Corporation considers that the return, and any related accounts, have not been unreasonably influenced by:

³ For the statutory definition of “tax year” see the discussion at paragraphs [49] to [52] below.

- [i] the fact of the claimant's incapacity, or
- [ii] the effects or likely effects of the incapacity on the claimant's income or business activities.

[17] The phrases “take into account” and “have regard to” are commonly used in legislation and are treated as synonymous.⁴ A statutory requirement for a decision maker to “take into account” or “have regard to” something means simply that the decision-maker, when making a decision, must consider that thing and any specific criteria in the relevant statutory provision. All that is necessary is for the decision maker to have an open and receptive mind and to turn his/her mind to the thing and any relevant statutory criteria.⁵

[18] But what, if any, weight the decision-maker gives to a particular criterion in the particular case is for the decision-maker to decide. This means that failing to take into account a relevant consideration is an error of law but failing to have “sufficient regard to” or “properly take into account” relevant factors is not.⁶ A decision-maker may properly conclude that a mandatory relevant consideration is not of sufficient significance to outweigh other considerations, which it must also take into account.

“Active” / “Passive” income

[19] It is necessary to explain the terminology of “active” and “passive” income used by the Corporation in communications with Mr Crothers.

[20] As a matter of law, as discussed above, the only income that is included in assessing the earnings of a self-employed person is income “that is dependent on a person's personal exertions”.

⁴ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, [2015] NZRMA 375 at [63].

⁵ *New Zealand Fishing Industry Association v Minister of Agriculture and Fisheries* [1988] 1 NZLR 544, 552, 566; *New Zealand Co-operative Dairy Company Limited v Commerce Commission* [1992] 1 NZLR 601 (HC) at [612] to [613], [1991] NZAR 433; *Greenpeace New Zealand Inc v Minister of Fisheries* HC Wellington CP492/93, 27 November 1995 at [25] to [26]; *Te Runanga O Raukawa Inc v Treaty of Waitangi Fisheries Commission* CA178/97, 14 October 1997 at [8]; *Singh v Chief Executive, Ministry of Business, Innovation and Employment* [2015] NZCA 592, [2016] NZAR 93 at [17], [43] to [46]; *Ishak v Thowfeek* [1968] 1 WLR 1718, (P.C.).

⁶ *Haldane Ltd v Disputes Tribunal* [2017] NZHC 1526 at [27].

[21] The shorthand term “active income” is used in the Corporation’s accounting communications to denote “income ... that is dependent on a person's personal exertions”. The shorthand term “passive income” is used by the Corporation to refer to income that is *not* dependent on a person’s personal exertions.

[22] In the 2012 tax year, Mrs Crothers had invested \$50,000 in “the Works Bonds”. Income produced from an investment in bonds would not ordinarily be seen as income produced from a person’s personal exertions. No doubt for that reason, the Corporation initially classified the income received by Mrs Crothers as “passive income”. As a result, neither the income from this investment, nor the borrowing costs associated with it, were included in calculating earnings for weekly compensation purposes.

[23] However, Mr Crothers argued that income from the works bonds should be classified as “active income”, presumably as a way to maximise Mrs Crothers’ assessed earnings and calculation of weekly compensation. The Corporation accepted Mr Crothers’ argument with the result that the income from the Works Bonds was categorised as “active income” and earnings for the purposes of assessing Mrs Crothers’ weekly compensation. However, the Corporation also took the view that any borrowing costs associated with the Works Bonds was relevant to assessing “active income”.

Partnership banking and borrowing arrangements

[24] It is clear on the evidence that the 2013 partnership tax return records the total interest charge for the 2013 tax year as \$24,385. The partnership operated a single bank account with a revolving credit overdraft facility. All interest was charged to that single account and all expenditure came out of it. The \$24,385 interest was a combination of interest arising from the overdraft account and loans. The interest charges were not all able to be clearly allocated to one activity or another, as a single bank account with a revolving credit facility was used for a range of activities.

[25] It is in the nature of a revolving credit facility that debt levels fluctuate over time, depending on what commitments continue to be funded. As debt levels and investments fluctuated over time, the partnership had to borrow in order to cover all the financial commitments that the partners, Mr and Mrs Crothers, entered into. It was necessary for the Corporation to determine how much interest incurred by the partners should be allocated to the “active income” derived from the Works Bonds.

[26] A feature of this case is that over an extended period of time, Mr Crothers provided the Corporation with a substantial volume of additional financial information in addition to the information in Mrs Crothers' 2013 tax return. There was extensive correspondence between Mr Crothers and the Corporation. Over time, the Corporation sought to obtain the bank statements for the Crothers' partnership overdraft facilities and loans for the 2013 tax year. However, the Corporation was supplied only with partial bank statements and did not receive completed information of what went in and out of the partnership account.

Appellant's submissions

[27] Mr Crothers, argues that the Corporation was incorrect in law under s 14 of the Act to deduct from Mrs Crothers' earnings the \$3,250 interest attributed to a loan to purchase the Works Bonds. He argued this was incorrect essentially on the following grounds:

- (a) Mrs Crothers did not receive a \$50,000 loan from the partnership to fund the purchase of the Works Bonds. Rather, she received a capital advance of equity from the partnership which was sourced from the partnership's capital, not borrowings. As there was an advance on capital, the partnership did not charge Mrs Crothers interest.
- (b) In the alternative, all interest charges relate to the partnership's passive income from investments as distinct from Mrs Crothers' active income. On Mr Crothers' calculation, the interest costs totalled \$15,032 for the tax year ended 31 March 2023.⁷ On Mr Crothers' analysis, this total interest as calculated by Mr Crothers was entirely attributable to partnership borrowings to fund investments which produced only passive income. On Mr Crothers' argument, there is no partnership interest incurred that is in any way related to Mrs Crothers' investment in the Works Bonds.
- (c) The Corporation used the wrong tax year, as that ended 30 June 2013 and the correct tax year was the year ended 30 March 2013.

⁷ The Corporation considered that the correct tax year is that ending 30 June 2013 as that is the partnership financial year. A further ground of appeal raised by Mr Crothers is whether the Corporation used the wrong tax year.

- (d) The Corporation did not properly take into account Mrs Crothers' tax return.
- (e) If the Corporation was correct to quantify the interest at \$3,250, there should not be a 100 per cent deduction from Mrs Crothers' earnings as an equal partner in the farming partnership. Rather 50 per cent (\$1,625) should have been deducted from Mrs Crothers' earnings and 50 per cent from Mr Crothers' earnings.

Respondent's submissions

[28] The Corporation argues that the Corporation's decision and the Review Decision are correct because:

- (a) Mr and Mrs Crothers' financial records have required the Corporation to make a judgment call about some aspects of their earnings.
- (b) This included the allocation of interest costs that they have incurred.
- (c) A loan to acquire the Works Bonds was one of many factors resulting in Mr and Mrs Crothers' partnership to incur interest.
- (d) Some of that interest was properly attributed to the income that Mrs Crothers received from the Works Bonds in calculating Mrs Crothers' earnings to determine her weekly compensation entitlement.

Analysis

[29] I address below the grounds of appeal argued by Mr Crothers.

Capital/equity advance not a loan and no interest incurred

[30] Mr Crothers says the loan funding the acquisition of the Works Bonds was provided by the partnership to Mrs Crothers without charging interest. Mr Crothers relied on a document he had created headed "PS & RJ CROTHERS PARTNERSHIP MOVEMENTS AND CAPITAL FOR YEAR ENDED 30 JUNE 2013". The relevant part was set out as follows:

“PS & RJ CROTHERS PARTNERSHIP
MOVEMENTS AND CAPITAL
FOR YEAR ENDED 30 JUNE 2013”

LOANS TO PARTNERS		
RJC [MRS CROTHERS] SHARE & BOND LOAN	-50,000	
PSC REAL ESTATE LOAN	-127,661.86	
PARTNERS SOUNDS EQUITY LOAN	-30,500	-208,161.86

[31] This does not in any way persuade me that the reference to \$50,000, which is accepted as referring to the money used to purchase the Works Bonds, is not a loan. It appears immediately under the heading “Loans to Partners”. It has the word “loan” immediately after the words “RJC share & bond loan”. The third figure is expressly and specifically referred to as “equity loan”, but the entry for \$50,000, in contrast, contains no such reference to “equity” or “capital”. It is plainly intended that the \$50,000 referred to was a loan to Mrs Crothers.

[32] When I asked Mr Crothers about this at the hearing, he responded that the terminology of “loan” was “unfortunate” and that when he generated the document no one thought that the partnership accounts would be scrutinised by anyone except the bank or the Inland Revenue Department.

[33] I see no reason to depart from the ordinary meaning of the word “loan” in its ordinary meaning, without adding an after-the-event qualification by Mr Crothers that it was intended to be a capital advance or return of equity. Mr Crothers used the word “loan” when creating the document because it was a loan. Loans generally incur interest, especially loan funds provided by a bank through a revolving credit facility.

[34] On the basis of information supplied by Mr Crothers to the Corporation, the purpose of the \$50,000 loan was to fund the Bonds. The \$50,000 remained unpaid in Mrs Crothers’ tax year ending 30 June 2013 and would reasonably be expected to incur interest. The Corporation was correct to attribute an interest cost to the Works Bonds income.

[35] Further, I accept the Corporation’s rationale, as articulated by Ms Kwa, that the issue is not whether the partnership charged Mrs Crothers interest for the loan, but that the partnership

itself incurred interest charges because of the loan. As a partnership is not a separate legal entity, those interest charges are passed on to the relevant partner.

All interest incurred is accounted for as related to borrowing for specific passive partnership assets in the 2013 tax year

[36] Mr Crothers argued that all interest charges relate to the partnership's passive income from investments and no interest could relate to Mrs Crothers' active investment in the Works Bonds.

[37] Given that there was a single bank account incurring interest charges, it was reasonable for the Corporation to consider and determine what part of those interest charges was attributable to the Works Bonds. I agree with Ms Kwa's analysis that not all interest charges related to passive income investments. In particular, given that at times Mrs Crothers' total borrowings exceeded total investments, all investments were contributing to borrowing and therefore incurring interest.

[38] Mr and Mrs Crothers' earnings are based on their net earnings from a number of revenue streams. In calculating their 2013 earnings, it is necessary to have regard not only to revenue, but also costs. Costs are deducted from revenue in calculating the net earnings. In the case of Mr and Mrs Crothers' farming partnership, one overdraft facility was used for several purposes. Not all expenditure from that account (and the corresponding interest charges that the expenditure incurred) related to active income. The Corporation therefore had to determine the extent to which interest relates to activities generating "active income".

[39] Ms Kwa carried out an analysis of the balance of total borrowings and total investments for the Crothers' partnership as at the end of each month in the 2013 and 2014 financial years. Borrowings and investments fluctuated from month to month. In some months, total borrowings were greater than total investments and in others, total investments were greater. Throughout this period however, the loan of \$50,000 to Mrs Crothers remained constant. The fact that total borrowings at times exceeded total investments meant that Mrs Crothers must have been incurring interest on the loan she used to purchase the Works Bonds. All investments were effectively causing the partnership to incur interest.

[40] Mr Crothers argued that the partnership did not charge Mrs Crothers' interest for the loan. However a partnership is not a separate legal entity and its income and expenses are allocated to the partners. The partnership was incurring interest costs with its bank for the Works Bonds investment that belonged to Mrs Crothers.

[41] In Mr Crothers' letter to the Corporation of February 2015, he stated that for the 2013 financial year each partner incurred \$12,192.50 interest for funding investments. The Works Bonds were not specifically identified, but neither was any other investment identified in that letter. As the Works Bonds were part of the investment portfolio, it would have incurred interest when funds were drawn down from the bank. The partnership was incurring borrowing costs. The same February 2015 letter indicates that the interest costs for the partnership were shared equally and claimed by each partner in order to reduce their income tax bill. In all these circumstances it is reasonable to attribute an interest cost to the particular Works Bonds investment.

[42] Mr Crothers argued that whether an investment is funded by borrowing (and therefore incurs interest) can only be determined by investigating whether borrowings were raised at the time to fund the acquisition of the investment. However, with a revolving credit facility, with constant buying and selling of investments, the position changes from day to day. It would be artificial to only look at the position at the time of acquiring the investment.

[43] Interest was not over-allocated. The interest claimed by the partnership totalled \$24,385 and each partner claimed a tax deduction for \$12,192.50. Of the total \$24,385 in interest, the Corporation allocated interest costs only for share trading (\$6,000), the Works Bonds (\$3,250), and other Bonds to the partnership (\$1,300). No interest charges were attributed to the farming operations.

[44] Out of the \$24,385 interest that the partnership incurred and claimed in 2013 as deductions in each partner's tax returns, only \$10,550 was treated by the Corporation as relating to "active income". In other words, there was approximately \$14,000 in interest, which was claimed as a deduction in the partners' tax returns, which was not allocated to "active income" by the Corporation.

[45] I accept as correct the approach taken by Ms Kwa that internal partnership accounting arrangements resulting in the partnership not charging interest on a loan to Mrs Crothers are not relevant. A portion of the \$24,385 interest incurred related to the Works Bonds loan and was properly taken into account when calculating Mrs Crothers' earnings. This is reasonable in the context of Mr and Mrs Crothers' financial arrangements because:

- (a) The partnership was incurring interest charges for its investments (and partners' tax returns were submitted on the basis that interest charges had been incurred);
- (b) The partnership loaned Mrs Crothers funds for the Works Bonds;
- (c) Mrs Crothers' earnings include her "active income" from the Works Bonds; and
- (d) Interest charged to the partnership should be offset against the income from Works Bonds to determine Ms Crothers' net income.

Whether the correct tax year was used

[46] The Corporation used the tax year ended 30 June 2013 for calculating Mrs Crothers' income from Works Bonds and the interest expense offset against those earnings.

[47] Mr Crothers' argued that the correct tax year which should have been used was the year ended 31 March 2013. This seems to be suggested to support another of Mr Crothers' arguments that the correct interest cost for the 2013 year was \$15,031, not the \$24,385 claimed as deductible in the partners' tax returns. Mr Crothers' \$15,301 calculation seems to have been done on the basis that the tax year was the year ended 31 March 2013.

[48] The Crothers' partnership financial year was the year ended 30 June 2013. The Corporation calculated both the interest and the income from the Works Bonds based on the financial year ended 30 June 2013.

[49] The phrase "tax year" is defined in the interpretation section of the Act, s 6 –

tax year, in relation to any person, has the same meaning as in section YA 1 of the Income Tax Act 2007 for the purposes of furnishing a return of income under the Tax Administration Act 1994.

[50] The same definition is used in Clause 30, Schedule 1.

[51] The Income Tax Act 2007, s YA 1 defines “tax year” –

tax year—

- (a) means a period starting on 1 April and ending on 31 March:
- (b) is defined in section IW 1(6) (Shortfall penalties) for the purposes of that section

[52] Section 38 of the Tax Administration Act 1994 allows a taxpayer, with the consent of the Commissioner, instead of filing a tax return for an income year ending 31 March, to elect to file a return for an income year that ends on the date of the annual balance of the taxpayer’s accounts. The definition of “tax year” in s 6 of the Act is expressly linked to the obligations to file tax returns in the Tax Administration Act 1994, which may be modified with the Commissioner’s consent to allow the filing of returns for a one-year period corresponding to a taxpayer’s financial year. The statutory intention allows for a “tax year” to be either a period starting on 1 April and ending on 31 March or some other one-year period corresponding to a taxpayer’s financial year.

[53] I infer from the evidence that Mr and Mrs Crothers plainly elected to file, with the Commissioner’s consent, tax returns for the period ending 30 June corresponding with their partnership’s financial year ending 30 June.

[54] The Corporation was correct to use the tax year ending 30 June 2013 because that corresponds with the partnership’s financial year ending 30 June 2013 and is “the most recent tax year ... last ended”⁸ before the commencement of Mrs Crothers’ incapacity.

[55] In any event, whether the tax year was the year ending 31 March or 30 June makes no difference in this case. The \$50,000 loan amount did not fluctuate and remained outstanding for the entirety of both periods combined. It remained at \$50,000 and the interest incurred would have been the same using either tax year.

⁸ Accident Compensation Act 2001, Cl 30(1), Schedule 1, Part 2.

Did the Corporation properly “take into account” Mrs Crothers’ 2013 tax return

[56] Mr Crothers argued that the Corporation did not properly take into account Mrs Crothers' 2013 tax return. Mrs Crothers did not claim a deduction for the Works Bonds interest in that tax return. Implicit in Mr Crothers’ argument is that if Mrs Crothers did not claim a tax deduction for interest, she should not have her earnings reduced by an interest figure when calculating earnings for accident compensation purposes.

[57] The Corporation appears to have taken the view that Mrs Crothers 2013 tax return and related accounts was not unreasonably influenced by her incapacity and its effects on her income or business activities.⁹ The Corporation must, as required by Clause 31, therefore “take into account Mrs Crothers’ 2013 tax return.

[58] Failing to properly or sufficiently take into account Mrs Crothers’ 2013 tax return is really an attack on the weight given to that factor by the Corporation. But what, if any, weight the Corporation gives to that factor is entirely a matter for the Corporation to decide. There is no error of law for not properly taking Mrs Crothers’ 2013 tax return into account.

[59] The statutory requirement for the Corporation to “take into account” Mrs Crothers’ 2013 tax return was for the Corporation to consider it with an open and receptive mind. The evidence establishes that the Corporation did just that. Given the Corporation’s extensive communications and analysis of all the financial information provided by Mr Crothers, Mrs Crothers' 2013 tax return was clearly taken into account by the Corporation with an open and receptive mind.

[60] The Corporation was lawfully entitled to conclude that Mrs Crothers’ 2013 tax return was not of sufficient significance to outweigh other considerations arising from the substantial amount of other information provided by Mr Crothers, which it also clearly took into account. Mr Crothers provided a significant volume of further information and submissions to the Corporation over an extended period to supplement information in the tax return. All of this additional information was considered and taken into account by the Corporation.

⁹ Accident Compensation Act 2001, Cl 31(b), Schedule 1, Part 2.

[61] I am satisfied by a wide margin that the Corporation took into account Mrs Crothers' 2013 tax return.

Allocated interest charge should be \$1,625 not \$3,250

[62] The interest rate used by the Corporation in calculating the \$3,250 interest figure was 6.5 per cent - \$50,000 @ 6.5% = \$3,250. In a revolving credit facility, the actual interest rate fluctuated throughout the year. The Corporation appropriately calculated an approximate average interest rate of 6.5 per cent over the year.

[63] Mr Crothers' argument is that the interest expense allocated to Mrs Crothers should be half of the total interest expense. That would be on the basis that the other half would be allocated against Mr Crothers' income. The argument is flawed because it assumes that Mr and Mrs Crothers each had an equal interest in the Works Bonds. That is not the case.

[64] The \$3,250 interest cost was correctly charged against Mrs Crothers' earnings only, rather than being split between both partners, because the Works Bonds were not jointly owned. Only Mrs Crothers owned the Works Bonds and only she earned income from them.

Conclusion

[65] The Corporation appropriately took into account interest costs associated with the Works Bonds that corresponded with income associated with the Works Bonds, to determine Mrs Crothers' net earnings. There is no error in the Corporation's decision nor in the Review Decision.

[66] The Corporation's Decision and the Review Decision are correct.

Result

[67] The Corporation's Decision and the Review Decision are correct in their treatment of interest treated as an expense related to Mrs Crothers' income from the Works Bonds investment and correctly calculated Mrs Crothers' earnings for the purposes of determining her weekly compensation.

[68] The appeal is dismissed.

Costs

[69] The Corporation has been successful. The default position is that the successful party is ordinarily entitled to a reasonable contribution to legal costs as calculated under the District Court Rules.2014. Ability to pay is not an issue given Mrs Crothers' asset and income position evident from the financial information advanced on appeal.

[70] The Corporation may seek to apply for costs against Mrs Crothers. If calculated on a category 2B basis,¹⁰ allowing for one judicial conference appearance, half a day for the appeal hearing and one counsel, the costs would be \$6,303 plus disbursements. If the Corporation's counsel and Mr Crothers are unable to agree on costs, memoranda on costs are to be filed by Friday 3 November 2023.



I C Carter
District Court Judge

Solicitors/Representatives: Mr Paul Crothers for appellant
Meredith Connell, Wellington for respondent

¹⁰ District Court Rules 2014, Schedule 4, Schedule 5.