

IN THE COMMISSION OF INQUIRY  
 INTO THE DIAPHRAGM WALL AND PLATFORM SLAB  
 CONSTRUCTION WORKS  
 AT THE HUNG HOM STATION EXTENSION  
 UNDER THE SHATIN TO CENTRAL LINK PROJECT

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**Closing Submissions  
 for  
 China Technology Corporate Limited**

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(for hearing on 28 January 2019 at 0930 hours)

**Legend:**

[A1/A2/3]	= Paragraph 3 of Page A2, Bundle A1
[T4/5/6]	= Day 4, Page 5, Line 6 of the Transcript
[OS Leighton/§7]	= §7, Opening Submission of Leighton
IP	= Involved Party
MTRCL	= MTR Corporate Limited
Leighton	= Leighton (Asia) Construction Ltd
Chinat	= China Technology Co. Ltd
JP	= Mr Jason Poon
FS	= Fang Sheung Construction Co. Ltd
HyD	= Highways Department
BD	= Buildings Department

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## A. INTRODUCTION

1. The Commission of Inquiry is faced with a solemn and important duty to investigate the truth of the matter which troubled the general public since mid 2018. As indicated in her opening submissions<sup>1</sup>, the primary issue that concerns Chinat is the **cutting and improper installation of threaded rebars into the couplers** in the Hung Hom Station Extension (“**Hung Hom Station**”).

2. Before hearing any factual evidence, Chinat emphasised one **overt fact**:-

*“We merely wish to highlight one overt fact that we see from the evidence. Leighton agrees that eight rebars, on three occasions, at area C of EWL slab, were cut. The overt fact begs the question: why didn’t the system of supervision with MTRC are at pains to advocate ever allow this to occur? The overt fact also begs the question: where comes the instrument or machine to cut the threaded ends of the rebars?”*<sup>2</sup>

In essence, it is Chinat’s stance that there were indeed cutting of threaded ends of rebars inside Hung Hom Station. That proposition was supported by the fact that:-

2.1 Different staff members of Chinat have seen the cutting and/or screwing of cut short rebars into the couplers<sup>3</sup>.

2.2 By analogy, neither MTRCL, nor Leighton, nor FS was able to spell out who were the persons cutting the rebars, why they were cutting them, and whether those workers were removed from the works in question, what has been discovered by MTRCL/Leighton/FS must be “a tip of an iceberg”<sup>4</sup> and there would never be “only one cockroach in a kitchen”<sup>5</sup>.

3. Apparently, this stance was **not accepted** by other IPs:-

3.1. FS

*“It is considered a fraud in the industry in cutting short the threaded rebars pretending that the threaded end has been fully screwed into a coupler. **Fang***

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<sup>1</sup> [OS/Chinat/§35]. See also [T1/65/5-9] Opening Submissions of Mr Simon So for Chinat

<sup>2</sup> [T1/69/16-23], ditto

<sup>3</sup> [T1/65/16 – T1/68/10] ditto. See also: [OS/Chinat/§13]

<sup>4</sup> [T1/71/19-20], ditto

<sup>5</sup> [T1/71/21-22], ditto

**Sheung could not have operated in the industry for such a long time if it had ever engaged in such fraudulent practice**<sup>6</sup>...In terms of work efficiency, it would only take 20 to 30 seconds to completely screw a rebar into a coupler, whilst it would take at least 1.5 to 2 minutes to cut a steel bar even with a very good electric cutter being used. **Fang Sheung's workers had no reason to engage a more strenuous and time-consuming task in cutting the rebars**<sup>7</sup>... In view of the stringent system of supervision and inspection, **the three incidents must be isolated incidents.**<sup>8</sup>

(emphasis added)

### 3.2. Leighton

*“For Mr Poon to be right...**everyone else on site must be wrong**...And I ask rhetorically: **all for what? No rationale had been put forward** on Mr Poon or China Tech's evidence<sup>10</sup> ...”*

(emphasis added)

### 3.3. MTRCL

*“Now, what does the evidence say in this regard? What's the weight of the evidence? You've already been introduced to this aspect of the matter by my learned friends, in particular Mr Paul Shieh, but we would say that **the evidence MTR, Leighton, Fang Sheung and Intrafor** on the one hand should be compared with the **unsubstantiated, confused, misleading, and non-credible evidence of Chinat Technology's Jason Poon**<sup>11</sup> ...”*

(emphasis added)

4. Repeatedly, Chinat urges the Government (and indeed this Commission) to open-up the Hung Hom Station to inspect the integrity of the structure:-

#### 4.1. In the Opening Submission<sup>12</sup>:-

*“So far as China Technology is concerned, we put no higher than that, that once [the Hung Hom Station] was opened up, the truth was inside the concrete.”*

#### 4.2. In the course of the evidence of JP:-

*“All you need to do is to open up. All the photos are here. Just open up the concrete to ascertain whether the couplers have been fully screwed, I mean the rebars have been fully screwed. We don't have much time.”<sup>13</sup>*

*“...Once you open up the concrete, you will be able to see yourself. I don't need to say so much. And I think they are definitely breaking up the concrete very soon. We will all know who is actually lying.”<sup>14</sup>*

<sup>6</sup> [T1/90/20-24] Opening Submissions of Ms Sezen Chong for Fang Sheung. See also [OS/FS/§6]

<sup>7</sup> [T1/91/20 – T1/92-1], ditto. See also [OS/FS/§8]

<sup>8</sup> [T1/96/5-7], ditto. See also [OS/FS/§21]

<sup>9</sup> [T1/105/3-7] Opening Submissions of Mr Paul Shieh SC for Leighton. See also [OS/Leighton/§30]

<sup>10</sup> [T1/108/10-12], ditto

<sup>11</sup> [T2/15/19 – T2/16/1] Opening Submissions of Mr Phillip Boulding QC for MTRCL

<sup>12</sup> [T1/76/1-3] Opening Submissions of Mr Simon So for Chinat

<sup>13</sup> [T9/78/6-10] Cross-examination of JP (Chinat) by Mr Paul Shieh SC

<sup>14</sup> [T9/166/5-8] Cross-examination of JP (Chinat) by Mr Paul Shieh SC

5. On 5<sup>th</sup> December 2018, the Government accepted the holistic assessment strategy of MTRCL regarding the platform slabs and diaphragm walls in the Hung Hom Station. As of 20<sup>th</sup> January 2019:-
  - 5.1. 32 out of 93 coupler assemblies (34.3%) failed to comply with the BOSA's stipulated requirement (if includes the 6 coupler assemblies which were found un-connected to a rebar, 38 out of 99 coupler assemblies failed (38.38%);
  - 5.2. 22 out of 93 threaded rebars (23.7%) (after giving all benefit of doubt to that thread) have a total length of less than 44 mm<sup>15</sup>;
  - 5.3. 10 couplers were found simply not connecting to the rebar.
6. **Most recently (after the end of the hearing)**, the HyD wrote to the MTRCL indicating that they discovered (i) a gap between the column and the soffit of EWL slab, and (ii) a void with left-in H-pile at the soffit of the EWL slab<sup>16</sup>. These, until the day of writing, were not yet addressed by MTRCL.

**7. The facts speak for themselves<sup>17</sup>.**

8. Upon hearing evidence from various parties, it is Chinat's respectful submission that there is now a mountain of iron-proof evidence to support the complaints made by the staff members of Chinat, in particular JP. Without more, witnesses of Chinat could be (just on this point) considered credible. Chinat has accomplished her solemn duty towards this Commission and her case has been duly proven.
9. That said, to assist this Commission in her fact-finding duty and, in particular, the credibility of individual witness, it is Chinat's duty (and also her pleasure) to assist this Commission in microscopically delineate the niceties of the evidence channelled throughout the hearing.

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<sup>15</sup> See **Appendix A** of the Written Closing Submissions

<sup>16</sup> [G21/G16160 – G16163]

<sup>17</sup> [OS/Leighton/§75]

## **A1. THE RESULTS OF OPENING-UP vs THE COMPLAINTS OF CHINAT**

10. The complaints of JP could be summarized as follows:-

- 8.1. Threads were exposed outside of the couplers after the reinforcement bars were installed<sup>18</sup>;
- 8.2. Threaded sections of reinforcement bars were cut<sup>19</sup>.
- 8.3. As to the extent of the malpractice, JP's stance was there were approximately "30,000 problematic connections" to which 5% of those (or around 1000 odd rebars) were suspected to be cut<sup>20</sup>.

11. As the hearing progresses, there were issues as to whether the "planting of dowel" remedial works were appropriate. Until very recently, this has been confirmed to be an issue within the Hung Hom Station construction site<sup>21</sup>.

*Q* : *Would it be structurally anything compromising by using a T25 starter bar to substitute a T40 bar?*

*A* : *...I think if it is really the case, **there is some concern**, because the strength of T25 is less than that of T40.*

This is exactly what transpires out of the factual evidence<sup>22</sup>.

12. JP, of course, also made other allegations, *inter alia*, that Hung Hom Station was not constructed in accordance with the design. These issues, of course, would be best left to be dealt with by other IPs, in particular the Government.

## **A2. WHERE IS THE "GOALPOST"?**

13. Coupler assembly is an important feature in the Hung Hom Station extension project. The manufacturer and supplier of threaded reinforcement bars and

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<sup>18</sup> [T8/28/4-18]: "My concern all along had been that during installation, I saw a lot of threads exposed and MTRC had ignored that. That is, after installing the threads into the couplers, we still saw threads exposed outside of the couplers, and to my knowledge these threads would immediately undermined the ductility, that is the ductility of the ductile couplers, as far as the performance is concerned." Examination of JP (Chinat) by Mr Ian Pennicott QC SC. See also: [T8/37/19-T8/38/4]: "it's easy to see that there are still two or three threads not yet fully screwed into the couplers... three of those five are substandard.": Examination of JP (Chinat) by Mr Ian Pennicott QC SC.

<sup>19</sup> [T8/28/19-21]: "And the second part is they cut part of the threads": Examination of JP (Chinat) by Mr Ian Pennicott QC SC.

<sup>20</sup> [T8/44/15-23], [T3/58/25 – T3/59/8], Examination of JP (Chinat) by Mr Ian Pennicott QC SC. See also [T8/45/1-16] Questions put to JP (Chinat) by the Chairman.

<sup>21</sup> [T40/114/13-18] Cross-examination of Prof Au Tat-Kwong, Francis (Government) by Mr Simon So

<sup>22</sup> [T20/40/18 – T20/41/7]; [T20/53/1-3] Examination of Mr Andy Yip (Leighton) by Mr Ian Pennicott QC SC. See also [B16/B12537] Technical queries by HO Ho Pong (Leighton) to Mr Gary Chow (Leighton) (c.c. to Mr Chan Kit Lam (MTRCL) and Mr Derek Ma (MTRCL)), indicating that 4,000 "holes" were dealt with by T25 re-bars adjacent to T40 starter bars.

couplers is BOSA. The proper installation method (and therefore the standard of installation) stipulated by BOSA are as follows:-

### 13.1. In the QSP

*“This is to ensure **butt-to-butt connections can always be achieved...**”<sup>23</sup>*

*“After connection has been fully tightened, one should see a maximum of **TWO FULL THREADS** to ensure a proper installation”<sup>24</sup> (original emphasis)*

### 13.2. In the evidence of Paulino Lim

Professor Hansford : ...Now I know that butt-to-butt means, but I thought you were **allowed to have one or two threads exposed** after the coupler is connected.

*If the threads are exposed, how can it be butt-to-butt?*

A : ...when we are manufacturing threads, we always programme our machine to produce an extra 1 to 2 mm on the actual length of our thread. We just wanted to make sure that when the two ends abut inside, connected inside of a coupler and tighten, that they are actually butt-to-butt.

**So if in a worst case scenario we were to have both ends with a maximum tolerance** – for example the diameter 40 rebar which says tolerance of 4mm, the 4mm basically is one thread, equal to one thread, so if both ends has a maximum tolerance of one thread, **after you have connected the two ends together, you will have a chance of seeing two threads exposed.**<sup>25</sup>

...

Professor Hansford : And when **one or two threads is exposed, am I right in saying it's therefore butt-to-butt?**

A : It is assumed to be butt-to-butt, because unless of course we are saying that there is – the length is actually perfect, for example, there's no tolerance, or perfect length on that one. So yes, if there is a tolerance, once you have tightened the connection and you cannot go any further, then it will be certainly butt-to-butt.<sup>26</sup>

### 13.3. In BOSA's letter to the BD dated 7<sup>th</sup> January 2019<sup>27</sup>

*“[BOSA's] couplers...for a 40mm diameter Type 2 coupler, the threaded length is 44 mm. Please note this threaded length includes 2 mm chamfer at the tip and 2 mm exit thread at the tail, and if expressed in terms of full threads (capable of derivation of strength in design), [the] couplers will **require around 10 full threads engagement for a correct installation.** [The] **maximum positive tolerance is one thread or 4 mm.** The tolerance is **always positive**, and we wish to emphasize here that this is **an important feature of our design to ensure butt-to-butt connections** can always be achieved when*

<sup>23</sup> [H9/H4265 – H4280]

<sup>24</sup> [A1/A594]

<sup>25</sup> [T36/98/24 – T36/99/18] Examination of Mr Paulino Lim (BOSA) by Mr Ian Pennicott QC SC

<sup>26</sup> [T36/101/15-24] Examination of Mr Paulino Lim (BOSA) by Mr Ian Pennicott QC SC

<sup>27</sup> [H26/H45640]

*the rebars are spliced together inside the coupler. **[If] rebars are not spliced butt-to-butt, the coupler assembly will be loose.***

14. By “sheer coincidence”, this was the evidence of JP<sup>28</sup>:-

A : *Let me explain that to you. For T40 table, above that T40 table, it's clear, external thread tolerance is 4mm, right, and metric thread per pitch, that means for every thread, every circle of thread, the distance is 40.5 metric times 4 millimetres. That means this table already tells you – this is the table approved by BD, it's telling you that in the other paper of BOSA, to say that we could leave out two or three threads and that's already outside the tolerance limit, if the tolerance limit is just one thread or **no more than one thread**, the pitch, **crest to crest**, that is.*

15. All along, this has been the “pass mark” for one to compare against when considering whether a coupler assembly is satisfactory.

**16. There was, nonetheless, a twist.**

17. On 24<sup>th</sup> December 2018, MTRCL held a press conference, suggesting that engagement of “6 threads” would be adequate. That was said to be premised upon a preliminary laboratory test being collaboratively done between BOSA and CASTCO.

18. **Mysteriously**, no-one knows who initiated this test<sup>29</sup>.

19. **More mysteriously**, despite months have passed, no “Final Report” was issued<sup>30</sup>. At the end of the day, this “preliminary report” was **never** accredited by HOKLAS<sup>31</sup>.

20. To put a long story short, the “6-thread theory” hinges upon the credibility and reliability of the CASTCO test.

21. **First**, the types of tests conducted by CASTCO are not adequate. As stipulated in the QSP<sup>32</sup>, **various tests**<sup>33</sup> (but not just the “static tension test) is

<sup>28</sup> [T8/97/8-18] Examination of JP (Chinat) by Mr Ian Pennicott QC SC

<sup>29</sup> [T42/60/7 – T42/61/61] Bar/Bench dialogue between Mr Ian Pennicott QC SC, Mr Anthony Chow, and the Chairman.

<sup>30</sup> [T41/142T12-15] Examination of Prof Albert Yeung (Chinat) by Mr Ian Pennicott QC SC

<sup>31</sup> [T41/110/17 – T41/111/21] Prof Albert Yeung's (Chinat) Oral Synopsis and exchanges with Prof Hansford.

<sup>32</sup> [C1/C114] Appendix VI, QSP

<sup>33</sup> (a) permanent elongation; (b) static tension test; (c) static compression test; (d) cyclic tension and compression test

required so to be BD-compliant<sup>34</sup>. All these tests are required in order to “ascertain the full picture of the couplers”.

22. More specifically, in accordance with what BOSA, the manufacturer and supplier of the couplers, made it abundantly clear that:-

22.1. BOSA **did not** have any test data on correlating partial thread engagement of a coupler. The reason is **conducting such tests serve no useful purpose for the products**<sup>35</sup>.

22.2. BOSA **admits** that a partially engaged coupler would **unlikely** survive the permanent elongation, and cyclic tension-and-compression test, which are **required under the QSP**<sup>36</sup>.

23. Second, the sample size of the test was simply inadequate. Interesting enough, CASTCO has only tested ONE (1) sample for each percentage engagement. In order to obtain reliable results, a number of samples should be tested so that the mean value and standard deviation of the test results could be obtained<sup>37</sup>. It would be unwise, both by common sense or scientifically, to suggest that one sample performing exceptionally good or exceptionally bad could justify a change of yardstick.

24. Third, to arithmetically deduce the percentage engagement length itself violates scientific theories and logic. It is expert opinion that the distribution of stress of threaded rods inside couplers are simply not uniformly distributed<sup>38</sup>. To assume that it is, simply overstate the matter.

25. Lastly, but fatally, no one ever explained what “grade” of rebars were used to obtain the test results. Mysteriously, the grade of the rebars in the test worksheets were crossed-out and countersigned by a laboratory technician. That said, there had been no clarifications, manuscript or typed words, as to

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<sup>34</sup> [T40/102/24 – T40/104/10] Cross examination of Prof Au Tat Kwong, Francis (Government) by Mr Simon So

<sup>35</sup> [H26/H45641]

<sup>36</sup> [H26/H45641]

<sup>37</sup> [T40/43/13 – T40/44/5] Oral Synopsis of Prof Au Tat Kwong, Francis (Government). Confirmed in [T43/73/24 – T43/74/17] in Cross-examination of Mr Nicholas Southward (Leighton)

<sup>38</sup> [T41/9/2-18] Cross-examination of Prof Au Tat-Kwong, Francis (Government) by Mr Philip Boulding QC



the actual grade of rebars actually used in the tests. To say the least, the CASTCO result were “*very strange*”<sup>39</sup> and “*it is reasonable for people to cast doubt on it*”<sup>40</sup>. The mystery has to be read with further suspicion against the background that it would take quite some time to find a grade 460 rebar<sup>41</sup> (those which were supposed to be used at the time in the Hung Hom Station) nowadays in the market place<sup>42</sup>.

26. There has been challenges as to whether the requirements of “butt-to-butt” is something coming out of the blue moon. There were also suggestions (from both the Commission and the IPs) that not much weight could be placed to the BOSA letter dated 7<sup>th</sup> January 2019. With respect, BOSA has all along been consistent with the “butt-to-butt” standard. This was the stance **before** the SCL 1112 commenced and when BOSA gave live evidence (i.e. **after** the CASTCO test but **before** the letter was issued).

**27. An even further twist occurred when everyone is discussing how much threads should be installed into the couplers/whether there were any rebar-cuttings.**

28. It was suggested that purely from an engineering perspective, the bottom mat of rebar at the EWL slab and diaphragm wall surface would simply never be in tension. But for the necessity for code-compliant, there was simply no need to have re-bars inside the slab<sup>43</sup>. Even to be code-compliant, up to 50% of the coupler assembly could be defective<sup>44</sup>. Thus, all things considered, the opening-up exercise was considered to be **unnecessary, pointless, and a waste of time and resources**<sup>45</sup>. However, it was considered by the same

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<sup>39</sup> [T40/109/25]; [T40/110/9] Cross-examination of Prof Au Tat Kwong, Francis (Government) by Mr Simon So

<sup>40</sup> [T40/109/20-25] Cross Examination of Prof Au Tat Kwong, Francis (Government)

<sup>41</sup> [T41/3/23 – T41/4/10] Cross-examination of Prof Au Tat Kwong, Francis (Government) by Mr Philip Boulding QC

<sup>42</sup> [T40/45/14-22] Oral Synopsis of Prof Au Tat Kwong, Francis (Government)

<sup>43</sup> §§90-91 Expert Report by Prof Don McQuillan (Commission)

<sup>44</sup> §91 Expert Report by Prof Don McQuillan (Commission)

<sup>45</sup> §115 Expert Report by Prof Don McQuillan (Commission), agreed by Mr Nicholas Southward (Commission) and Dr Mike Glover (MTRCL)

expert that the bottom rebars were used to enhance the shear resistance of the concrete section. With respect, the expert contradicts himself<sup>46</sup>.

29. This conclusion (which is not accepted) begs a series of questions: why did MTRCL proposed those designs in the first place? Why did MTRCL's design consultant, viz., Atkins thought that to be appropriate? Why was FS required to handle the rebar fixing works? More fundamentally, why was public funds required to pay for these designs and works in the first place? Even if leaving safety, structural integrity, and code-compliance aside, these questions were simply not easy ones to be answered. The answer simply would be MTRCL and Atkins themselves (when they were designing the project) considered those rebar works to be essential and necessary when constructing the Hung Hom Station.

### **A3. BACK TO SQUARE ONE – WERE THERE ANY BARS CUT?**

30. BOSA's standard is that all threads of rebars are **44mm** long, with a **positive** one-pitch tolerance. In the case of T40 bars, this would mean the threads are in the range of **44mm – 48mm**<sup>47</sup>.

31. Up till 20<sup>th</sup> January 2019, there were 22 out of 93 threads (23.7%) found to be less than 44mm after giving all the benefit of the doubt to the thread<sup>48</sup>.

32. Merely on these factual evidence, Chinat has clearly and sufficiently proven her case. Any reasonable person and/or competent expert would have come to the conclusion that at least there is a possibility<sup>49</sup> that the rebars mentioned hereinabove have been shortened (either by way of cutting or grinding). More importantly, one should not read the results in a detached fashion. Rather, when reading the opening-up results, one would have to consider the entirety

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<sup>46</sup> In particular p.g. 71 of Prof Don McQuillan's (Commission) expert report indicated that "*the bottom rebar not included in shear capacity calculation but provides enhancement*". Yet, on the other hand, Prof Don McQuillan indicated that "*the EWL slab soffit simply does not require reinforcement bars in order to ensure the structural integrity*" and can even put "bamboo" in lieu of rebars: see [T44/184/8-22]

<sup>47</sup> [C1/C164] QSP. See also [H26/H45640] Letter of BOSA dated 7 January 2019

<sup>48</sup> See Appendix A

<sup>49</sup> [T41/128/7-10] Exchanges between Prof Albert Yeung and Prof Hansford.

of the evidence, including but not limited to (1) the photographs available, (2) the evidence of FS workers, Leighton engineers, and MTRCL supervisory staff, and (3) the proven NCR No. 157.

33. There had been (bold) suggestion from expert witness that those rebars were not cut or grind but was simply shorter than it should be when delivered on site<sup>50</sup>. With respect, that response flagrantly ignored the in-built supervisory system in place in checking threaded rebars delivered on-site. Ironically, this evidence came from the expert witness which the involved party calling him all along trumpeted about the reliability and thoroughness of the supervisory system that was in place on the construction site.
34. There were also suggestions that further opening-up simply would not be required<sup>51</sup>. With respect, the opening-up does not, as it was suggested, “*increase the nihilism of the whole process*”. Rather, without knowing where problematic connections were (and where they are concentrated), rectifications could not be properly taken, and, naturally, public confidence (which is of utmost importance in a public infrastructure) could never be restored.
35. Further, structural safety is only **one of the many issues** that this Commission has to focus upon. Whether the rebar fixing works comply with the code, whether any civil and/or criminal liabilities, and the extent of the non-compliances were clearly matters that are of public interest and concern. More importantly, without knowing the extent of the non-compliances, this Commission simply could not make any sensible recommendations to the Chief Executive-in-Council so to avoid similar incidents from occurring again in the future.

## **B. The Complaints**

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<sup>50</sup> [T43/78/8-13] Cross-examination of Mr Nicholas Southward (Leighton) by Mr Simon So

<sup>51</sup> [T43/126/2-13] Oral Synopsis of Dr Mike Glover OBE (MTRCL) “[The opening-up] is more than enough.... Opening-up more will not change the picture, to the extent that it is statistically important.

36. It has been raised in no less than one occasion, and by no less than one party that the evidence of the Chinat should be viewed under “microscope”:-

36.1. By counsel for the Commission:

*“So far as China Technology is concerned, going second for the witnesses, the position is this, that the allegations and assertions that principally the director of China Technology has made is, on one analysis, the primary reason why we are all here today and will be here potentially many weeks. In those circumstances, it’s the Commission’s legal team’s view that it is only right and proper that the China Technology evidence is put to the test and **put under the microscope first.**”<sup>52</sup>*

*“As I say, it’s a **detailed factual investigation** which will be the subject matter, I anticipate, of some perhaps lengthy and detailed cross-examination by myself, I suspect by Leightons, by perhaps MTR and perhaps the government; I don’t know about anybody else at this moment.”<sup>53</sup>*

36.2. By counsel for Leighton

*“...the primary reason why we are all here is because of [Mr Jason Poon]. And Mr Pennicott has highlighted that Mr Poon could well be put under the microscope or **his evidence would be put under the microscope,** and Mr Pennicott repeated that this morning.”<sup>54</sup>*

36.3. By counsel for MTRCL

*“...The first will come as no surprise; coupler connections. We say that you should consider the nature and extent of any non-compliant rebar couplers. This is of course raised in paragraph 35 of Mr Pennicott’s opening address. This requires, we submit, the Inquiry to identify those instances in which it can be established, having regard to the evidence placed before it, that there really was unacceptable trimming down of the threaded ends of the rebar using cutting tools, with the consequence that such rebar was **not connected into the couplers either properly or at all.** That’s your **primary concern.** That’s your **primary focus.**”<sup>55</sup>*

37. Chinat accepts and concedes that her evidence is of importance to this Commission. Yet, one should be very careful if one is to adopt a “microscopic view” of evidence before a tribunal with considerable judicial experience. Amongst other things, as this proceeding is real-time transcribed, putting too much emphasis and/or reliance on the transcripts would, indeed, yield undesirable or even wrong conclusions:-

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<sup>52</sup> [Preliminary Hearing /25/9-21], Mr Ian Pennicott QC SC’s Opening Submissions for the Commission at the Preliminary Hearing

<sup>53</sup> [T1/21/8-13], Mr Ian Pennicott QC SC’s Opening Submissions for the Commission

<sup>54</sup> [T1/104/19-23], Mr Paul Shieh’s Opening Submissions for Leighton

<sup>55</sup> [T2/15/6-18] Mr Philip Boulding’s Opening Submissions for MTRCL

- 37.1. This Commission has the benefit of seeing and hearing a witness giving live evidence. This Commission has the power to make conclusions as to the reliability of a witness. Evidence may read well in print but may be rightly discounted by the Commission, or, on the other hand, the tribunal may rightly attach importance to evidence which reads badly in print: **Benmax v Austin Motor Co Ltd**<sup>56</sup>.
- 37.2. This Commission, with a professional judge and a lay person in law but a highly respected professional in engineering, would have the experience of trying cases or practical common sense and cannot fail to realise the truth after the witness gives evidence that was tested under examination, cross-examination, and re-examination. The Commission would therefore gradually be imbibing almost instinctively, but in fact as a result of close attention and of long experience, an impression of the personality of the witness and of his trust-worthiness and of the accuracy of his observation, memory, or the reverse. Thus, a witness should not necessarily be untrustworthy because there were some inaccuracies in minor details or particularities. A witness would not be distrusted when the witness is tired, or antagonised, or confused, or perhaps impatient. The Commission should form his impression from the whole personality of the witness. Amongst other things, the Chairman of this Commission would have considerable judicial experience in trial. Thus, with his experience in court, such impression could well go against what the transcripts read whenever necessary: **Powell v Streatham Manor Nursing Home**<sup>57</sup>.
- 37.3. It would be impossible to expect a witness to give watertight evidence. Human is bound to be limited in their observations, recollections, and expressions. Coupled by the fact that witnesses are not familiar with the

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<sup>56</sup> *Benmax v Austin Motor Co Ltd* [1955] AC 370, per Lord Reid at 375.

<sup>57</sup> *Powell v Streatham Manor Nursing Home* [1935] AC 243, per Lord Wright at 267.

court-setting, their evidence would therefore, inevitably, be imperfect. This is derived from judicial experience, and, equally, from common sense. The real issue rests with the Commission is the degree and importance of the aforesaid discrepancies, and what were the explanations tendered by the witness. At the end of the day, the Commission may elect to place weight to part of a witness's evidence and not the other: **HKSAR v Tang Kwok Lai (transliteration)**<sup>58</sup>.

37.4. A microscopic dissection of a transcript will always uncover a discrepancy, a failure to answer a question, some inherent improbability or other, a piece of evidence not included in statements and a myriad of bits and pieces upon which to build pages of submissions. In the real world, and even with truthful witnesses, these discrepancies, improbabilities, and omissions will occur. Indeed, if they do not, then the evidence is attacked as being artificial or collusive. A realistic attitude must be encouraged, and the approach to such attacks is to ask whether there have been material and significant discrepancies, improbabilities or omissions, such as would lead or should lead a tribunal to doubt credibility on central facts: **R v Kwong Wing On**<sup>59</sup>.

### **B1. The Evidence of JP**

38. As a general note, JP has largely been subjected to vilification (in terms of evidence) by different witnesses. As a matter of evidence:-

38.1. Chinat was portrayed as a company that is lack of financial resources, with inadequate cash flow, and unable to even pay-up employees' wages unless and until she was to be brought to court<sup>60</sup>.

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<sup>58</sup> *HKSAR v Tang Kwok Lai (transliteration)*(HCMA 413/2013, unreported, 11 February 2014), *per* D. Pang J (as the learned Pang JA then was) at para 14.

<sup>59</sup> *R v Kwong Wing On* (HCMA 574/1996, unreported, 9 August 1996), *per* Stock J (as the learned Stock NPJ then was) at para 12.

<sup>60</sup> [T15/29/5-7] Cross-examination of Mr Khyle Rodgers (Leighton) by Mr Simon So. "Q: Can I suggest you that you were simply speculating...? A: Yes, that's correct."

38.2. JP was portrayed as a person with aggressive and manipulative character, and have engaged into criminal violent acts. Yet, when those evidence were properly tested, they were proven (and indeed admitted frankly by the witness himself) to be **completely false** and **devoid of substance**<sup>61</sup>.

39. Whilst Chinat (and indeed JP himself) was filing the least amount of documentary evidence before this Commission, JP was subjected to the **longest** and certainly most **extensive** cross-examinations<sup>62</sup>. JP was placed before this Commission and the Commission has the opportunity to assess both the content of his evidence and his demeanours. To say the least, JP has done all his best in trying to assist this Commission despite being repeatedly challenged and tested by acute, critical, or sometimes (although not often) even radical<sup>63</sup> cross-examinations.

#### **(i) Sign-in/Sign-out Record of Leighton**

40. One of the first lines of cross-examination that JP is subjected to is the veracity of the photographs allegedly taken by them. On the face of it, the photographs which were taken by JP were all on 22<sup>nd</sup> September 2015. On record, JP was found to be absent on that day. The logic therefore flows as the record did not show JP to be there, therefore the photographs could not possibly be taken by him as he was not there.

41. JP insisted the record is wrong. At one juncture, there were these criticisms<sup>64</sup>:-

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<sup>61</sup> [T15/30/20 – T15/31/21] Cross-examination of Mr Khyle Rodgers (Leighton) by Mr Simon So

<sup>62</sup> JP's evidence lasted from Day 6 to Day 11 of the hearing, giving evidence of approximately 4 ¾ days of hearing, mostly subjected to cross-examinations

<sup>63</sup> See, for example, [T9/166/9 – T9/177/24] Cross-examination by Mr Paul Shieh SC (interjected by the Chairman at [T9/166/18] and [T9/177/16-18]) over the topic of JP attempting to pave way to “undermine the integrity and authority of the Commission” and “Hong Kong People romanticised about David against Goliath”; [T10/110/10-17] Cross-examination by Mr Philip Boulding QC (interjected by the Chairman at [T10/110/17-18]) over the topic as to whether JP is “fastidious about words”. See also, indirectly, [T33/13-22] Cross-examination of Prof Frederick Ma (MTRCL) by Dr Christopher To, interjected by Mr Paul Shieh SC (“*Mr Chairman, you will no doubt notice who is seated behind Christopher To today. That could give the clue as to why this line of questions is put...*”). [T41/176/6-16] Cross-examination of Prof Albert Yeung (Chinat) by Mr Paul Shieh SC as to whether JP aimed for “sound-bites”.

<sup>64</sup> [T7/43/6-16] Examination of JP (Chinat) by Mr Ian Pennicott QC SC

A : ...you did not consider the credibility of these documents and the reliability of these documents.

Q : All right. Mr Poon, you'll appreciate that, as one of the counsel to the Commission, I can only work with the documents that we've been given by all the parties. At the moment, **until somebody tells me otherwise, I'm prepared to, as it were, accept the reliability and accuracy of those record.** But you are now telling me, are you, that there's something wrong with the Leighton time-in/time-out records – sign-in/sign-out records?

42. In a line of cross-examination which JP was ridiculed by counsel for Leighton<sup>65</sup>:-

Q : So what you are saying, Mr Poon, is that when the in/out records show you are not in, you could be in, yes?

A : That's right.

Q : When the in/out record shows that you had left at a particular hour, you could have left earlier, correct – about the midnight thing, you say you rarely left at midnight, so when it says you left at midnight, you say you must have left earlier. Is that what you say?

A : For that day, about midnight, I definitely would not leave until midnight -

Q : I know. So that is exactly what I --

A : Please, let me explain... So, simply put, I just don't believe this record.

Q : Thank you. So to answer me, when it says you left at midnight, you are saying that you were not there at midnight; you have left sometime before midnight already?...So what it says about not being there is unreliable; correct?

43. Mr Poon further elaborated why he considered his comments to be justified:-

A : Well, in fact I think that's a different vision, different viewpoint. **Nobody respected Leighton's [sign-in/sign-out] system.** Leighton, on itself, thought it was a reliable system, but even within Leighton, things were in a mess with the staff. In fact the Commission seems to be relying too much on the information provided by Leighton.

[T7/46/2-8]

Q : That's why I asked you whether you are confident and sure that you were at the site, taking these photographs, as you say you did, on 22 September. Are you able to explain why you didn't check in and check out on 22 September?

A : Let me reiterate: I don't always sign in or out. For the Leighton card, if you need to clock in, you need to first of all produce the Leighton staff card, you need to tap that card at the turnstile for electronic verification before you have the palm print.

...

A : Let me say this again. I don't trust these Leighton records, which can be altered...

[T7/109/15-20; T7/112/10-12]

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<sup>65</sup> [T8/129/17 – T8/130/20] Cross-examination of JP (Chinat) by Mr Paul Shieh SC



44. This had become much more noticeable when FS took the witness box:-

44.1. Mr Pun Wai-Shan<sup>66</sup>

*Q : ...The other rather strange thing is this, that Leighton have given us their sign-in/sign-out record for Fang Sheung for the entire period of your sub-contract works, and we can't find you anywhere in those records. Mr Pun. Can you explain why that is?*

*A : I am sorry. I didn't sign in or out. How should I put it? I went in as a visitor. I signed as a visitor. I signed the slip every day as a visitor to get in. This is regrettable.*

*Q : **It's fine. As long as there's an explanation, Mr Pun, I'm not too concerned.***

44.2. Mr Joe Cheung (Cheung Chiu-Fung)<sup>67</sup>

*Q : Now I wish to bring you to ...the December sign-in/sign-out record<sup>68</sup>. **We cannot find your name on this sign-in/sign-out record.***

...  
*Q : ...This situation similarly occurred...[for the] November sign-in/sign-out record<sup>69</sup>.*

*A : I don't remember. **Perhaps by that time I already had a vehicle and I just drove in and out of the site.***

*Q : But we can be sure that you were on the construction site in November and December; is that correct?*

*A : **I definitely was on the site.***

45. The sign-in/sign-out record was further proved to be completely useless after the evidence of Ms Emily Cho (Leighton) and Mr Alex Ngai (Chinat) were heard. Apparently, project managers or more senior members on the construction site are not required to use the sign-in/sign-out electronic system<sup>70</sup>. There were also clearly possibilities to enter the construction site via means other than going through the gate<sup>71</sup>. Out of the three gates available to enter into the construction site, only two of those contain an electronic system to record entry<sup>72</sup>.

46. As noted in Mr Steve Rowsell's (Commission) expert report<sup>73</sup>, uncontrolled access for vehicle access and management staff did not have to use the

<sup>66</sup> [T12/9/1-11] Cross-examination of Mr Pun Wai Shan (FS) by Mr Ian Pennicott QC SC

<sup>67</sup> [T15/64/17 – T15/65-5] Cross-examination of Mr Cheung Chiu-Fung Joe (FS) by Mr Simon So

<sup>68</sup> [C9/C6360] December Sign-in/Sign-out Record of FS

<sup>69</sup> [C9/C6372] November Sign-in/Sign-out Record of FS

<sup>70</sup> [T17/40/12-21] Examination of Ms Emily Cho (Leighton) by Mr Ian Pennicott QC SC

<sup>71</sup> [T17/42/3-6] Question by Prof Hansford towards Ms Emily Cho (Leighton)

<sup>72</sup> [T17/48/11 – T17/49/15] Examination of Ms Emily Cho (Leighton) by Mr Ian Pennicott QC SC. Confirmed in [T17/68/7 – T17/70/14] Examination of Mr Alex Ngai (Chinat) by Mr Ian Pennicott QC SC.

<sup>73</sup> §70

electronic entry system was simply unacceptable. Yet, this was exactly what happened in the Hung Hom Station.

**(ii) The in-built bias towards JP**

47. Upon making complaints to Leighton (which subsequently brought to MTRCL's attention), several investigations were conducted. Unfortunately, the presumptive bias in-built by various IPs had led to the unfortunate event that the misconducts have never been revealed /or rectified at an early stage:-

47.1. In or about January 2017, Leighton (in response to JP's email on the 6<sup>th</sup> January 2017) asked Mr Stephen Lumb to lead an investigation. This eventually resulted into a 369-page report ("**Lumb's Report**")<sup>74</sup>.

47.2. In or about January/February 2017, MTRCL (in response to JP's email on the 6<sup>th</sup> January 2017) instructed Mr Carl Wu to undertake a "review" of alleged rebar cutting incident<sup>75</sup>. This eventually resulted into a 5-page report ("**Wu's Report**")<sup>76</sup>.

47.3. On 13<sup>th</sup> June 2018, MTRCL (in response to HyD's demand) prepared a report in which JP was invited to attend and provide information. That MTRCL subsequently published the MTRCL report but, at the same time, also a separate schedule (which was not released to the public) to the Government. That separate schedule stated the gist of the interview between JP and other MTRCL staff members.

48. Unfortunately, both the Lumb's Report and the Wu's Report were of a complete failure:-

48.1. Firstly, the person leading the investigation was never given JP's email so to know how the investigation/review is to be taken. Insofar as Mr Lumb is concerned, the accused, Mr Khyle Rodgers, was simply

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<sup>74</sup> [C27/20242+]. An earlier 123-page draft of the report [C27/20117+] was also prepared

<sup>75</sup> [T31/55/4-9] Examination of Mr Carl Wu (MTRCL) by Mr Ian Pennicott QC SC

<sup>76</sup> [B7/B4516]

not interviewed. Mr Zervaas never showed the email to Mr Lumb<sup>77</sup>. Similar situation happened on Mr Wu<sup>78</sup>.

- 48.2. Secondly, knowing the nature of the complaint is related to rebar fixing, FS being the one-and-only-one subcontractor on site responsible for re-bar fixing, nonetheless was never interviewed: the owner, foremen, gangers, and/or workers of FS were never contacted.
- 48.3. Thirdly, Mr Khyle Rodgers, being a front-line superintendent of the construction site, was not interviewed to ask for first-hand information<sup>79</sup>. Not only so, no on-site superintendent or general superintendent, who were potential eye-witnesses, were interviewed<sup>80</sup>. The reason provided was because Leighton wanted “*to make sure the investigation was independent*”<sup>81</sup>.
- 48.4. Fourthly, after knowing NCR No. 157 (which by nature matches with the accusations made by JP), and after realizing that Mr Ian Rawsthorne is the person signing for the NCR No. 157, there was no attempt to interview Mr Rawsthorne to ascertain the situation<sup>82</sup>.
- 48.5. Fifthly, despite knowing the fact that the investigation arises out of an allegation made by JP, JP was, mysteriously, never interviewed to get more information or particulars of the complaint<sup>83</sup>. The sole reason provided was because “*it was an internal review*”<sup>84</sup>.
- 48.6. Sixthly, (yet most importantly), the Lumb’s Report was never shown to JP<sup>85</sup>. Characteristically, the reason for doing so was “[*not*] to give Jason any more air time on the [*false*] allegation that he made”<sup>86</sup>.

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<sup>77</sup> [T24/130/6-19] Examination of Mr Stephen Lumb (Leighton) by Mr Ian Pennicott QC SC

<sup>78</sup> [T31/56/15 – T31/57/5] Examination of Mr Carl Wu (MTRCL) by Mr Ian Pennicott QC SC

<sup>79</sup> [T15/12/23 – T15/13/2] Examination of Mr Khyle Rodgers (Leighton) by Mr Ian Pennicott QC SC

<sup>80</sup> [T24/180/9-24] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So

<sup>81</sup> [T17/102/11-12] Examination of Mr Anthony Zervaas (Leighton) by Mr Ian Pennicott QC SC. “*Q: ...you don’t think it is necessary to speak to [Mr Khyle Rodgers]? A: As I said, I felt it is necessary to make sure the investigation was independent.*”

<sup>82</sup> [T24/178/9 – T24/179/12] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So

<sup>83</sup> [T24/169/20 – T24/170/15] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So

<sup>84</sup> [T24/172/9-10] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So

<sup>85</sup> [T28/50/2-9] Cross-examination of Mr Aidan Rooney (MTRCL) by Mr Simon So

<sup>86</sup> [T17/113/18-19] Examination of Mr Anthony Zervaas (Leighton) by Mr Ian Pennicott QC SC. See also [T17/118/12-18], ditto.

From Leighton's perspective, all these allegations were only made by JP "to get commercial gain from raising the issues"<sup>87</sup>.

49. The Chairman's most correct and witting observation pointed out exactly why the situation was important and, indeed, ridiculous<sup>88</sup>:-

*"Sorry, if I could just ask here a couple of questions. We have looked at the report prepared by Leighton, and I only wish to talk briefly about that. What **puzzled...me**...is firstly, there was the issue of if this was by that stage purely historical, a week should have been imposed as a time limit. Secondly, it was **seemingly a purely internal investigation**, which was taken as meaning effectively and practically that there would be **no interviewing of or discussions with people outside of presumably Leighton or MTR**. So **Jason Poon himself was not interviewed**, even though he was the one who had laid the complaint.*

*His photograph,... "appear", a worker cutting the threads off a reinforcing bar quite openly, and then joining, perhaps, other workers to put that bar into a diaphragm wall. **No mention is made in the report of that at all**, even though that was the dynamite, if I can call it that, that came with the allegation in other words something to back up the allegation.*

*It seems that nobody spoke either to anybody among the subcontractors, especially the bar fixers, as to what had happened, and it wasn't known for example, in that report, that apart from the NCR which was identified, there had been two earlier instances of rebar cutting which the people who prepared this report didn't get to, because **they didn't interviewed people**."*

50. After the Lumb/Wu Report, NCR No. 157 would surely have come into light. Yet, the issue of cutting rebars never ring any bells to MTRCL/Leighton. JP, who was not privy to NCR No. 157, was capable of raising complaints/allegations and substantiate the complaints with 2 photographs AND coincidentally matched with the non-conformance recorded in NCR No. 157. Yet, JP was still in their mind someone making false allegations, dishonest, using each and every means to exert pressures in order to extract commercial gains. All these coincidences simply **did not surprise** them<sup>89</sup>.

51. That in-built untrustworthiness towards JP did not stop there. When in 2018 MTRCL is required to provide a report to HyD, all evidence of Chinat was not included in the report. Rather, JP's evidence was only summarised in the form of a schedule and appended the same to the HyD. The explanation, as

<sup>87</sup> [T17/113/25 – T17/114/3] Examination of Mr Anthony Zervaas (Leighton) by Mr Ian Pennicott QC SC

<sup>88</sup> [T28/47/7 – T28/48/21] Cross-examination of Mr Aidan Rooney (MTRCL) by Mr Simon So

<sup>89</sup> [T28/100/12 – T28/102/3] Cross-examination of Mr Aidan Rooney (MTRCL) by Mr Simon So

given by Dr Philco Wong in his letter, was because “[Chinat] made [evidence] that contradict assurance given to us by Leighton and raise potentially serious allegations against Leighton and members of its staff”. Yet, one would then have to ask:-

51.1. Firstly, as rightly put by Dr Wong, JP/Chinat’s evidence contradicts with Leighton’s. Then why Leighton’s evidence was chosen to be incorporated? And why JP/Chinat’s evidence was chosen to be omitted?

51.2. Secondly, like JP/Chinat, FS’s evidence (which says cutting of the threaded rebars were **directed** by staff of Leighton) was included there. Why did MTRCL have no difficulty then to include those evidence into the MTRCL public report?

51.3. Thirdly, even MTRCL’s internal staff recalled incidents of cutting rebars, which was **exactly** and **coincidentally** the subject matter that JP was complaining in the MTRCL interview. Again, the evidence of MTRCL internal staff was included, but not JP’s/Chinat’s.

52. In his letter to HyD<sup>90</sup>, Dr Wong/MTRCL explained the purported reasons for not including them in the final report. In his oral evidence, Dr Wong further supplemented a justification: “because a Commission was set up”<sup>91</sup>. With respect, all these descriptions were applicable to FS. Yet, MTRCL feels FS’s evidence could be included in the MTRCL public report, but not JP’s evidence.

53. Most unbelievably – each and every interviewee got his dialogue with the MTRCL staff recorded save and except JP. It is now MTRCL’s evidence that JP did not want the evidence to be recorded.

54. One common thread could be drawn from all the three incidents – JP’s allegations are in essence where these investigations stem from<sup>92</sup>. Yet, another common thread could be observed – the length was always no more than 2

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<sup>90</sup> [B5/B3083 – B3091]

<sup>91</sup> [T32/85/24 – T32/86/6] Cross-examination of Dr Philco Wong (MTRCL) by Mr Simon So

<sup>92</sup> [T24/170/13-15] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So

pages of ordinary A4 paper<sup>93</sup> - despite the report might last for tens or even hundreds of pages.

55. Rather, both Leighton and MTRCL are more than willing to jump to the conclusion (either at the time being or, for the sake of muddling up the water, in the present hearing) despite the fact that no one even bothered to clarify this matter with JP<sup>94</sup>. Both Leighton and MTRCL feel comfortable to happily accept what JP raised was just simply false and used as a tactic to put commercial pressure<sup>95</sup>. More so, MTRCL (through Mr Rooney) even “*in fairly firmly worded*” asked Leighton (through Mr Zervaas) to close out the sub-contract with Chinat<sup>96</sup>.

### **(iii) The Confidentiality Agreement**

56. The Commission is faced with two drastically different factual synopses provided by Chinat and Leighton:-

56.1. Insofar as Chinat/JP is concerned, the Confidentiality Agreement was entered into after Leighton representatives discovered JP was in possession of some photographs and videos relating to the cutting of the threaded ends of the rebars.

56.2. Insofar as Leighton/Mr Karl Speed/Mr Anthony Zervaas is concerned, the Confidentiality Agreement was signed because:-

(a) This was merely a standard document that Leighton would have entered into with other “tendering/designers/consultants”<sup>97</sup>.

(b) JP was making “false allegations and lies”. The Confidentiality Agreement (in other words) is to gag him<sup>98</sup>.

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<sup>93</sup> [T24/181/7-11] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So

<sup>94</sup> [T28/117/3-13] and [T28/118/9-13] Cross-examination of Mr Aidan Rooney (MTRCL) by Mr Simon So

<sup>95</sup> [B10/B7493 – B7495] Email by Mr Aidan Rooney (MTRCL) to Mr TM Lee (MTRCL). Mr Rooney confirms that the only reason why believed that to be the case is because he learned it from Mr Zervaas and they had good working relationship.

<sup>96</sup> [T28/59/16 – T28/60/20] Examination of Mr Aidan Rooney by Mr Ian Pennicott QC SC

<sup>97</sup> [T16/110/6-8] Examination of Mr Karl Speed (Leighton) by Mr Ian Pennicott QC SC

<sup>98</sup> [T16/110/8-13] [T16/111/9-12] Examination of Mr Karl Speed (Leighton) by Mr Ian Pennicott QC SC. See also [T17/115/14-25] Examination of MR Anthony Zervaas (Leighton) by Mr Ian Pennicott QC SC.

(c) As a matter of general practice, Leighton has many contracts with suppliers and sub-contractors in Hong Kong and did not want other subcontractors to know about the terms of the final accounts and the Confidentiality Agreement<sup>99</sup>.

57. The two confidentiality clauses says these respectively:-

57.1. Sub-contract<sup>100</sup>

*“...Sub-Contractor shall not disclose to any person or use...any information relating to the Sub-Contract...”*

57.2. Confidentiality Agreement (without bearing a date but signed in September 2017)<sup>101</sup>

*“At any time upon demanded by LCAL, the Subcontractor must promptly deliver up to LCAL or destroy...all copies of any Confidential Information...”*

58. In essence, the Commission is faced with a typical one-to-one cut-throat accusation against one another. In order to resolve this matter, the sensible way to do so would be to consider the circumstantial evidence objectively and macroscopically:-

58.1. **There is no dispute** that Leighton did not enter into separate confidentiality agreements with Intrafor, FS, or any other subcontractors<sup>102</sup>.

58.2. Even more so, **there is not dispute** that throughout the many years of working relationship with Leighton, Leighton had never entered into a Confidential Agreement with FS<sup>103</sup>.

58.3. Appropriately construe the two “confidentiality clauses”, the only additional obligation born by Chinat/JP would be “[Chinat] must promptly deliver up to [Leighton] or **destroy**...all copies of Confidential information”<sup>104</sup>. Yet, despite this additional obligation that,

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<sup>99</sup> [C12/C8093] §12 of the 2<sup>nd</sup> Witness Statement of Mr Karl Speed (Leighton). Confronted in [T16/115/2-15] during the Examination by Mr Ian Pennicott QC SC

<sup>100</sup> [D1/D281]

<sup>101</sup> [C12/C8104]

<sup>102</sup> [T16/112/2-15] Examination of Mr Karl Speed by Mr Ian Pennicott QC SC

<sup>103</sup> [T16/117/22 – T16/118-5] Cross-examination of Mr Karl Speed (Leighton) by Mr Simon So

<sup>104</sup> Clause 3.5

clearly, Leighton wishes to impose on Chinat/JP, it is their evidence that JP was never required to delete anything<sup>105</sup>.

58.4. Interesting enough, Leighton’s legal team gave a “conditional waiver” to JP before he attended the MTRCL interview on 13<sup>th</sup> June 2018 – which was a meeting concerning malpractice in the construction works and clearly nothing to do with the final accounts between Leighton and Chinat<sup>106</sup>.

59. The conclusion would be apparent. The only irresistible inference is that JP was indeed telling the truth – some photographs and videos were *indeed* deleted, at the demand and request of Leighton.

## **B2. The Evidence of Chinat Staff Members**

60. Besides JP, different staff members of Chinat gave evidence before this Commission. Their evidence was straightforward, unshaken, and clear.

61. As reiterated hereinabove, giving evidence is certainly not a memory test exercise. This is in particular so in the instant case as Chinat staff members are asked to give factual account on minute details of what happened years ago. With respect, even if there had been discrepancies, those discrepancies (in Chinat’s submission) were immaterial. The overall theme of the evidence of Chinat staff members was that there was occurrence of the cutting of the threads in the Hung Hom Station construction site.

### **(i) Mr But Ho Yin, Ian**

62. There was a juncture which Mr But’s evidence was, (with all due respect), misunderstood by the Commission and all other involved parties.

63. In his 1<sup>st</sup> witness statement<sup>107</sup>, Mr But gave the following evidence:-

<u>Para</u>	<u>Time</u>	<u>Position</u>	<u>Descriptions as to cuttings</u>
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<sup>105</sup> [T16/116/20-22] Examination of Mr Karl Speed (Leighton) by Mr Ian Pennicott QC SC

<sup>106</sup> [D1/D252–D253] and [T16/122/7 – T16/124-12] Cross-examination of Mr Karl Speed (Leighton) by Mr Simon So

<sup>107</sup> [D1/909-916] 1<sup>st</sup> W/S of Mr But Ho-Yin, Ian (Chinat)



- |    |                |     |  |
|----|----------------|-----|--|
| 9  | September 2015 | C1  | <p>2 to 3 workers wearing Leighton safety vests.</p> <p>Approximately 10 threaded rebars being cut.</p> <p><b><u>Threaded rebars were screwed into the couplers.</u></b></p> |
| 24 | February 2016  | C3  | <p>On two separate days, workers wearing Leighton uniforms.</p> <p>Workers cut 2 to 3 rimes on each of those 2 days.</p>   |
| 25 |                |     | <p>On one occasion, a worker approaching C1 where 20 threaded rebars lying on the floor.</p>   |
| 28 | April 2016     | HKC | <p>About 30 rebars with only 2cm of threaded ends remaining on each lying on the floor.</p>  |

64. Approaching the end of the evidence of Mr But, the Commission raised concerns as to the credibility of Mr But:-

*“I may have misunderstood you yesterday, but my very firm impression yesterday was that according to you, in your evidence, you did not see anybody actually screwing these cut rebars into the couplers...I have a very clear impression of you distancing yourself, that is not being prepared to say that you actually saw these shortened rebars, with the thread cut away, being screwed into couplers. What is your memory of what you saw at the time? Did you actually see it happen or not?”<sup>108</sup>*

*“My understanding of your evidence is that you cannot now recall any occasion when you saw workers cutting the screws off rebars and then putting them – and then inserting the rebars into couplers. Is that in fact the case?”<sup>109</sup>*

65. To be fair to Mr But, Mr But’s evidence as to ***screwing of threads into the couplers*** was this:-

65.1. When cross-examined by Mr Pennicott QC SC:-

(a) No cross-examination was touched upon for **September 2015;**

<sup>108</sup> [T3/35/24 – T3/36/10] Questioning by the Chairman in the course of the cross-examination of Mr Philip Boulding QC

<sup>109</sup> [T4/67/3-7] Questioning by the Commissioners of Mr But Ho-yin Ian (Chinat)

(b) In **February 2016**, Mr But emphasised that “[the rebars] were *not installed*”. The same question was asked **TWO** more times by counsel for the Commission, and **ONCE** by the Chairman. Mr But’s irrevocable answer was that he **DID NOT SEE** installation of the threads into the couplers<sup>110</sup>;

65.2. When cross-examined by Mr Boulding QC, the learned Chairman indicated that he noticed in **September 2015** that Mr But saw the screwing of the cut rebars into the couplers. Mr But made it clear that “*Yes [I did see that]*”<sup>111</sup>. This was, unfortunately, being associated with the questioning the day before by Mr Pennicott QC SC which focused on the cutting in **February 2016** which Mr But said he could *not* see installation of the cut rebars<sup>112</sup>.

66. After re-examination, Mr But was examined by the Commissioners:-

66.1. The learned Chairman had this observation:-

*“Sorry, I just want to clear something up now, because with the greatest of respect it has muddied things a little bit in my mind. My understanding of your evidence is that you cannot now recall any occasion when you saw workers cutting the screws off rebars and then putting them – and then inserting the rebars into the couplers. Is that in fact the case?”*<sup>113</sup>

To pause at this juncture, with the greatest respect, the evidence of the witness was all along clear, coherent, and consistent.

66.2. Upon **further** examination by the Commissioners, Mr But gave the following answers<sup>114</sup>:-

*Q : And when did you see [the installation of the rebars]? Was this September, when you were fresh on the site, or was it at a later stage?*

*- A : It was September. It was September – I shouldn’t say reported – I echoed that.*

*Q : You didn’t see – you saw it in September but at no later time?*

*A : Yes. In February, I didn’t see them unscrewing the bars. In February, they disappeared.*

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<sup>110</sup> [T3/131/8 – T3/132/20] Examination of Mr But Ho-Yin, Ian (Chinat) by Mr Ian Pennicott QC SC

<sup>111</sup> [T4/35/23] Cross-examination of Mr But Ho-Yin, Ian (Chinat) by Mr Ian Pennicott QC SC

<sup>112</sup> [T4/36/3-12] Cross-examination of Mr But Ho-Yin, Ian (Chinat) by Mr Ian Pennicott QC SC

<sup>113</sup> [T4/68/6 – 14] Questioning by the Commissioners

<sup>114</sup> [T4/68/4-14] Questioning by the Commissioners

67. Mr But, despite being subjected to some very vigorous cross-examinations by both counsel for the IPs and indeed from the Commission herself, Mr But all along gave consistent and coherent responses.

68. This is not the only instance. Mr But was being doubted by various counsel as to why he did not report the matter of cutting threaded rebars to his superior, JP:-

68.1. In the cross-examination of Mr Wilken QC<sup>115</sup>:-

*Q : You were learning on the job. In September, you see people, you say, cutting rebar. You stand there for ten minutes, it's loud, and you say nothing; correct?*

*A : Subsequently, in our regular meetings, we had ten or eight colleagues sitting in the meetings, and I had echoed the observations and I had mentioned that there were such occurrences.*

*Q : Where is that in your statement? The simple answer is: it is not. If you were being an honest witness to this Commission, that is what you would say, wouldn't you?*

68.2. In the cross-examination of Mr Boulding QC<sup>116</sup>:-

*Q : So your evidence now is that you knew about it and by the phrase "echoing it" you are saying, are you, that you told Mr Poon about these two incidents in the lunchtime meetings in September? Is that your evidence now?*

*A : Yes, I said I knew about it. I echoed what he said. It's not me who raised it.*

68.3. In the questioning by the Commissioners<sup>117</sup>:-

*Q : You said, Mr But, that you would have your lunchbox meetings...Did you have time to report to him about what you had seen at one or more of those meetings or not?...Did you report, at the lunchtime meetings, what you had seen?*

*A : I did not raise them. It's only when **Mr Poon raised it, I echoed that I saw it.***

69. Unfortunately, contradictory to what was being suggested by the learned leading counsel, Mr But actually **did** mention in his police statement that he "echoed" with Mr Poon in lunchbox meetings<sup>118</sup>. Mr But even cared to be

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<sup>115</sup> [T4/10/14-23]

<sup>116</sup> [T4/42/2-8] Cross-examination of Mr But Ho-Yin (Chinat), Ian by Mr Philip Boulding QC

<sup>117</sup> [T4/50/10-23]

<sup>118</sup> [D2/D920] (Chinese Original) [D2/D921.4] (English Translation) of Mr But Ho-Yin Ian's Police Witness Statement at paragraph 13: "At a lunch meeting in around late September 2015...**Mr Poon mentioned seeing Leighton's workers cutting threaded sections of rebars...myself, Ah Kam and Man Kwan respectively mentioned having witnessed the same situations**".

extremely careful in his choice of word – he did not on his own initiative raise it, he only *echoed* what Mr Poon said.

**(ii) Mr Li Run-Chao**

70. Based on the records of pouring of concrete, there have been serious and vigorous doubts that Mr Li was making every things up in both his witness statement and his oral testimony.

71. Mr Li then proceeded in giving details as to what he saw on the site:-

71.1. The place where he saw people cutting the rebars was a “welding area”<sup>119</sup>;

71.2. I-beam could be found<sup>120</sup>;

71.3. There were some descending steps<sup>121</sup>.

72. Photographs were later exhibited. All descriptions mentioned by Mr Li was matched.

73. With respect, Mr Li might have erred in recalling some particulars of the incident namely the date or the venue. Yet, Mr Li has an accurate and correct recollection of what he saw and where it took place. Mr Li simply bears all hallmarks that a credible and honest witness should have.

**(iii) Summary**

74. With no slightest intention to be disrespectful to Mr But and Mr Li (or indeed other staff who come forward to give evidence), they are not persons who are experienced to court proceedings, giving statements to police<sup>122</sup>. Rather, they are persons who are simple, unsophisticated, and with relatively low educational attainment. That said, they all are capable to give evidence of

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<sup>119</sup> [T5/6/13-16]; [T5/8/4-11] Examination of Mr Li Run-Chao (Chinat) by Mr Ian Pennicott QC SC

<sup>120</sup> [T5/8/12-25] Examination of Mr Li Run-Chao (Chinat) by Mr Ian Pennicott QC SC

<sup>121</sup> [T5/39/6-11] Cross-examination of Mr Li Run-Chao (Chinat) by Mr Sean Wilken QC

<sup>122</sup> [T4/54/22-24] Cross-Examination by Mr Richard Khaw SC of Mr But Ho-Yin Ian (Chinat); [T4/66/20-22] Re-examination by Mr Simon So of Mr But Ho-Yin Ian (Chinat)

largely coherent evidence despite under rather extensive cross-examination by highly skilled leading counsel.

### **C. WHERE THE TRUTH LIES: NCR No. 157 AND THE EVIDENCE OF FS**

75. The evidence of FS clearly falls squarely into the heart of the Terms of Reference that the Commission would wish to inquire upon. FS is the only subcontractor engaged at the SCL 1112 Project for rebar fixing of the EWL and NSL slab. It is FS's evidence that they never further sub-contracted their works to other sub-sub-contractors<sup>123</sup>. Thus, unless FS is suggesting there are a bunch of "ghost workers" out of nowhere, the subcontractor under scrutiny for suspected substandard/defective rebar connections would be FS.

76. Unfortunately, FS's evidence was (to say the very least) far from attractive.

#### **CI. The Boss – Mr Pun Wai-Shan**

77. Prior to giving viva voce evidence to this Commission, **Mr Pun** has given evidence in **three different occasions**. Insofar as "cutting of rebars" generally, these are his responses:-

##### **77.1. MTRCL Interview on 13<sup>th</sup> June 2018<sup>124</sup>**

*Q : You said just now that it was the first time you found out about the cutting bars was from the media. But we know that in December 2015 there should be an NCR from Leighton to Fang Sheung, and in there, there should have been mention of the bar cutting incident. So if it was the first time that you knew, then it shouldn't have come from the media; right?*

*A : Yes, you could put it that way, but in the photo I don't see the workers are holding the bars for cutting... There we immediately told MTRCL and Leighton the reasons that led to that, so there was immediate correction or rectification.*

*Q : **But on that occasion what was the reason?***

*A : **This is because the rebars were squeezed too tight and the coupler was deformed or bent.***

*Q : **And so?***

*A : **Because too tight.***

<sup>123</sup> See [T16/10/6-12] Cross-Examination by Mr Richard Khaw SC of Mr Cheung Chiu-Fung Joe (FS)

<sup>124</sup> [B5/B3082.6-B3082.7] (Chinese Original) [T13/20/14 – T13/23/8] (Translated by the interpreter in the course of the hearing)

...

Q : Are they [type] A or B?

A : Type A

Q : Type A, but they were cut short?

A : Yes, or they...

Q : The reason is because they were too congested, therefore they cut them short?

A : Yes. Basically, the steel rods were too congested. You could not even put in a wrench...

Q : Therefore, they would rather cut short the rebars, and took a risk, they hoped nobody would see it or pretend that they didn't see it, or it appeared that they screwed into the coupler, so that they would not be found so?

A : I think it should be MTRCL that discovered. We may have done so.

77.2. Witness Statement to the Commission dated 27<sup>th</sup> August 2018<sup>125</sup>

*“7....However, I did not hear anything about the staff of Fang Sheung cutting short the screw heads of the steel bars due to fraud or reporting such fraud.”*

77.3. Police Statement dated 3<sup>rd</sup> September 2018<sup>126</sup>

*“Q11: When you were inspecting Hung Hom Station, have you ever seen or heard anyone using machinery to cut short the threaded rebars in order to pretend that the rebars have been screwed into the couplers?*

*A11: ... Regarding cutting short the threaded rebars...I only came to know from watching the news...In reality, sometimes there were not enough rebars with Type A threads, and there was a chance that workers would replace them with rebars of Type B threads, so that even when the rebars were completely screwed into the couplers, part of the threads would still remain exposed...It is also possible that the workers were afraid that Leighton's and MTRC's engineers would misunderstand that the rebars were not completely screwed into the couplers, and hence they would cut short the Type B threads, change it into Type A threads, then screw them into the couplers.”*

78. Pausing at this juncture, it is Mr Pun's evidence that he came to have seen the actual NCR No. 157 document on 13<sup>th</sup> June 2018 (immediately before the MTRCL interview)<sup>127</sup>. That is **before** Mr Pun gave his witness statement to the Commission, **before** Mr Pun giving his police statement, and, certainly, **before** Mr Pun stepped into the witness box and gave evidence. That said, there was **no mention whatsoever** in the witness statement to the Commission and **no mention whatsoever** in his police statement about NCR No. 157 or any other cutting/suspected-cutting activities.

<sup>125</sup> [E1/E26-E29] (Chinese Original) [E1/E29.1-E29.4] (English Translation) Mr Pun Wai-Shan's Witness Statement to the Commission

<sup>126</sup> [E6/E1585-E1595] (Chinese Original) [E6/E1595.1 – E1595.10] (English Translation) Mr Pun Wai-Shan's Police Statement

<sup>127</sup> [T12/38/7-18] Examination of Mr Pun Wai-Shan by Mr Ian Pennicott QC SC

79. Insofar as the NCR 157, Mr Pun had this to say:-

79.1. He only came to see the NCR No. 157 on 13<sup>th</sup> June 2018, immediately before the MTRCL interview<sup>128</sup>.

79.2. Yet, he did know about that there was a non-conformance report issued to him much earlier in 2015 – *yet*, he did not know the detail of what non-conformance Leighton was referring to. That said, Mr Pun proceeded to tell the workers “*this should not be done*”<sup>129</sup>. What “this” Mr Pun is referring to – no one knows (not even Mr Pun knows).

79.3. In essence, what Mr Pun was trying to say was that he gave a reprimand to his workers and “*not to let that happen again*”. As to what not to happen, Mr Pun’s evidence is that – “no NCR again”<sup>130</sup>.

80. Remarkably, in Mr Pun’s mindset, thread-cutting is an “insult” to the industry.

## **C2. The Foreman – Mr Joe Cheung Chiu-Fung**

81. Prior to giving viva voce evidence to this Commission, Mr Cheung has given evidence in three different occasions. Insofar as “cutting of rebars” generally, these are his responses:-

### 81.1. MTRCL Interview on 13<sup>th</sup> June 2018

*Q : Okay. Long and short threads have actually to be done, right? They have to be cut, right?*

*A : Depends on what needs to be done. Long and short threads.*

*Q : For example, if there wasn’t enough short threads and only long threads were around, then **we would cut the long threads** so that they could be screwed into the couplers. Was it necessary?*

*A : **Yes**. When there weren’t enough rebars, that would be done. But -*

*Q : So, therefore that had been done?*

*A : Yes, yes, would inform us.<sup>131</sup>*

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*Q : In...your recollection, roughly how much would be needed of each slab?*

*A : Very minimal. [Why would I say] very minimal? Because when you were working, you could not have A threads in time and you were in hurry, so*

<sup>128</sup> [T12/38/7-18] Examination of Mr Pun Wai-Shan by Mr Ian Pennicott QC SC

<sup>129</sup> [T12/39/3-7] Examination of Mr Pun Wai-Shan (FS) by Mr Ian Pennicott QC SC. At [T12/39/5-7] Prof Hansford **rightly** asked the question “I don’t know what should not be done”. See also,

<sup>130</sup> [T13/46/10-14] Cross-examination of Mr Pun Wai-Shan (FS) by Mr Richard Khaw SC

<sup>131</sup> [T15/103/19 – T15/104/6] Translated by Interpreter. See also [T15/105/4-9] which was translated by the Interpreter immediately after this passage was translated.

you had to use type B threads. But that was not common, that was not commonly seen.

Q : In your impression – take, for example, the number of threaded bars – what is the largest number? For instance, out of 100, how many of them would it be?

A : Well, the figure was very minimal.

Q : A few? Ten-plus?

A : In my recollection, there were some ten-plus involved [out of 100], ten-plus bars involved.<sup>132</sup>

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Q : In one bay there would at most be a dozen or so?

A : Yes. In my recollection, it would be a dozen or so.

Q : That is, it had to be converted **that way** in order to complete the case?

A : Yes. A dozen or so.<sup>133</sup>

(Note: this quote is a complete and integral passage. The line merely indicates that they were translated by the simultaneous interpreter at different parts of the hearing)

## 81.2. Witness Statement to the Commission dated 27<sup>th</sup> August 2018<sup>134</sup>

“7(C). I know all bar-workers of Fang Sheung **had never seen or heard of anyone cutting short the steel bars due to fraud.**

8(j). The head of the steel bar screws for threaded steel bars **were not cut short**....

8(k) The screws for threaded steel bars **were not cut short.** Such condition is uncommon in the industry, and also **unacceptable.**”

## 81.3. Police Statement dated 3<sup>rd</sup> September 2018<sup>135</sup>

“Q4: When Fang Sheung was carrying out the works for SCL Hung Hom Station, did you witness or hear of anyone cutting short the threaded sections of rebars with machinery, in order to pretend that the rebars were already screwed into couplers?

A4: I have not witnessed or heard of it. **But in reality, sometimes there were not enough rebars of Type A threads.** Workers might then use rebars with Type threads as substitute. Perhaps workers were afraid that MTRC’s and Leighton’s engineers would misunderstand that the rebars were not fully screwed into the couplers, and hence they would **first cut short the rebars with Type B threads** before screwing those rebars. **But I have never seen this happen before.**

...

Q8: Have MTRC and Leighton ever suggested to Fang Sheung that they found bar-fixing works which did not conform to the required standards?

A8: My impression is that in around 2016 (cannot recall the exact date), Leighton suggested to us that there were rebars at the D-Wall (exact position forgotten) which **were not screwed tightly into 5 couplers,** such that threads

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<sup>132</sup> [T15/107/21 – T15/108-11] Additionally transcribed after the afternoon adjournment as per the request of Mr Philip Boulding QC at [T15/105/14-20]

<sup>133</sup> [T15/105/4-9] Transcribed earlier by the Interpreter before the afternoon adjournment.

<sup>134</sup> [E5/E875 – E879] (Chinese Original) [E5/E879.1-E879.5] (English Translation) Mr Joe Cheung Chiu-Fung’s Witness Statement to the Commission

<sup>135</sup> [E6/E1575 – E1584] (Chinese Original) [E6/E1584.1 – E1584.10] (English Translation) Mr Joe Cheung Chiu-Fung’s Police Statement



*were exposed. Leighton's foreman (I forgot who) told our (Fang Sheung) workers, who rectified it immediately and told me afterwards.*

### **C3. DISCUSSION**

82. To put it in the mildest fashion it could possibly be, FS witnesses were evasive. On a fair assessment – Mr Pun and Mr Cheung simply (in Chinat's submissions) lied in their witness statements to the Commission, to the Police, and (to nobody's surprise) when they were in the witness box.

83. Firstly, there was never any suggestions to the Commission (either by way of witness statement, in the examination by counsel of the commission, or even in the advent of the cross-examination by Chinat) that there were any cutting of the threaded rebars in the Hung Hom Station construction site throughout SCL 1112. It was only until both Mr Pun and/or Mr Cheung were confronted with transcripts of the MTRCL interview and/or Police statements then they reluctantly accepted that there were those occurrences.

84. Secondly, in an attempt to explain why “cutting” incidents were spoken about to the MTRCL (during the MTRCL interview) or to the Police (when making the statements), the witnesses gave awestruck explanations:-

#### 84.1. Mr Pun Wai-Shan

*“That was my imagination. It doesn't mean it had happened”<sup>136</sup>*

*“Because at that time the police asked about somebody alleging that there were cutting of the threaded rebars at our site, and then I was asked **under what circumstances would this be done.**”<sup>137</sup>*

*“...[When I said] “This situation was very rare” ...It wasn't about actual knowledge of the couplers being cut.”<sup>138</sup>*

#### 84.2. Mr Joe Cheung Chiu-Fung

In the MTRCL interview, Mr Cheung was capable of **clear particulars** as to how “B threads could be cut to become A threads”<sup>139</sup>.

*Q : For example, if there wasn't enough short threads and only long threads were around, then **we would cut the long threads** so that they could be screwed into the couplers. Was it necessary?*

<sup>136</sup> [T12/43/1-2] Examination of Mr Pun Wai-Shan by Mr Ian Pennicott QC SC

<sup>137</sup> [T12/46/3-6] Examination of Mr Pun Wai-Shan by Mr Ian Pennicott QC SC

<sup>138</sup> [T12/48/20-22] Examination of Mr Pun Wai-Shan by Mr Ian Pennicott QC SC

<sup>139</sup> [T15/103/19 – T15/104/6] Translated by Interpreter. See also [T15/105/4-9] which was translated by the Interpreter immediately after this passage was translated.

A : Yes. When there weren't enough rebars, that would be done. But -

Q : So, therefore that had been done?

A : Yes, yes, would inform us.

On **first attempt**, when asked by Mr Ian Pennicott QC SC, Mr Cheung's position was that "cutting B threads to make it become A threads" were completely **imaginative** and **hypothetical**<sup>140</sup>.

Q : Why, in those circumstances, would there be any need to cut the thread, or to cut the bar at all?

A : Because I feel that if the hole is vacant or is empty, then a bar should be inserted into it, to make it look prettier, because if there is a hole there without a bar, it is unsightly and hard to accept.

Q : ...What needs cutting?

A : Because - - this is my personal view - - that the hole, Leighton might not be able to drill another hole and they might have to do it above and then insert another dowel. So it's possible that if they approve it and if they allow that remedial procedure, and if it was feasible, then Leighton could instruct our workers to.

...

A : Because - - it's my personal opinion. We would want to prevent misunderstanding that it was just left there and the rebar was not installed. That's what I meant. But I have never seen that.

Yet, interesting enough, when Mr Pennicott QC SC further inquired into the matter, Mr Cheung was capable of telling the **frequency** of the happening<sup>141</sup>.

Q : Well, you've just said [in the MTRC interview] the threaded bars might be cut a little bit. Do you mean the thread of the threaded bars might be cut a little bit, or do you mean something else?

...

A : Well, I think, if this - - I think that this situation did occur.

Q : "From time to time", I think the Chairman asked you, Mr Cheung. It did occur from time to time?

A : Very infrequently. Very, very infrequently.

But then, very, very shortly thereafter, Mr Cheung changed his stance yet again<sup>142</sup>.

Professor Hansford : Sorry, I still don't understand, because - - I don't understand why it needs to be cosmetically acceptable...

A : Because the question I was asked was under what circumstances would we cut the coupler and install a coupler, and my description was what I thought would happen, would occur.

...

<sup>140</sup> [T14/106/11 – T14/107/13] Examination of Mr Cheung Chiu-Fung, Joe by Mr Ian Pennicott QC SC

<sup>141</sup> [T14/109/2 – T14/109/18] Examination of Mr Cheung Chiu-Fung, Joe by Mr Ian Pennicott QC SC

<sup>142</sup> [T14/111/19/ - T14/112/23] Examination of Mr Cheung Chiu-Fung, Joe by Mr Ian Pennicott QC SC

- Professor Hansford : Sorry to labour my point, but the explaining would be there is a dowel there, replacing the coupler. Is that not an easy explanation?
- A : My description was there **might be such a procedure.**
- Q : But **if at all that happened,** Mr Cheung, Leighton would know about it anyway...
- A : **If we did that,** I would have to know about it; I would have to be notified.

This “theoretical” and “imaginative” explanation was made most clear near the end of Mr Ian Pennicott QC SC’s examination<sup>143</sup>.

- Q : Mr Cheung, you have, in answer to my questions, to the Chairman’s questions and to Prof Hansford’s questions, accepted that on - - basically, your evidence - - **a few occasions** the threaded rebar was cut for the purposes of putting the rebar up against or slightly into damaged couplers...
- A : **All along, what I meant was the Commission asked me under what circumstances would the rebars be cut.** What I meant was, **if** remedial measures were necessary, Leighton could ask our workers to cut short the rebar for installation into damaged coupler, because if there are still some threads left in the coupler, and then if we can screw into it, why not?...

The position of “theoretical” and “imaginative” explanation was maintained all along in the cross-examination of Chinat.

Yet, all of a sudden, in the course of cross examination by counsel for Chinat and Mr Khaw SC (Government), Mr Cheung even proposed the **underlying reasons for cutting the rebars**<sup>144</sup>.

- Q : Am I right in saying that as a result of your investigations, you knew that one of the reasons why the workers had to cut the threaded rebars was that they wanted to catch up with the schedule of the project? Is that what you understood to be the case?
- A : ...I think, for some reason, they could not screw the couplers and they didn’t contact myself or the foreman, because if that could be done, perhaps the couplers were damaged and they should be replaced and if there was something wrong with the rebars, they could tell the company and replace the rebars. I believe the reasons for the workers to ... make the decision to do it on their own and for the sake of convenience.
- Chairman : But were the workers not aware, from time to time, that there was pressure on them getting the work done? ...

<sup>143</sup> [T14/120/9-25] Examination of Mr Chueng Chiu-Fung, Joe by Mr Ian Pennicott QC SC

<sup>144</sup> [T16/18/8 – T16/20/2] Cross-examination by Mr Khaw SC

A : They might want to help the company to complete the works faster...  
 ...  
 Chairman : Sorry, but everyone knew, to use your own words, the operation was in a rush?  
 A : Yes  
 Chairman : In other words, there was some pressure to get the work done?  
 A : Correct

85. When being unable to answer questions that were put to him, Mr Pun elected to lose his temper and, at the same time, gave answers seemingly logical praying that he may be unnoticed by others:-

Q : Mr Pun, can you tell this Commission, were there any type B threads ever cut in the course of this SCL 1112?

A : I can tell you, on this issue, yes, yes (N.B. So there is?)  
 There is this possibility (N.B. So, is it yes? Or is it a possibility?)  
 ...I have never seen it myself, but I would **think** at least one or two could have been cut, but not more than that. **This is my guess**; I have not seen any of the workers cutting the threaded section myself, no.

[T12/113/17-25] (Cross-examination of Mr Pun Wai-Shan (FS) by Mr Simon So)

Q : So where comes your guess of one or two?

A : **As I said earlier, it's possible...There is the chance...**

[T12/114/5-7] (Cross-examination of Mr Pun Wai-Shan (FS) by Mr Simon So)

Q : Just read question 11 [of the Police statement]. It reads: ...  
 You agree the police were asking you what you actually [saw] and actually heard, isn't it?

A : **The police asked the question of whether I have seen, whether I have seen. It's not that the police asked me if I saw. They asked whether I have seen. It's not that they asked that I saw.**<sup>145</sup>

[T12/115/16-21] (Cross-examination of Mr Pun Wai-Shan (FS) by Mr Simon So)

When it comes to the turn of Mr Cheung, he couch his lie by saying the reason for him giving “untruthful” and “dishonest” answers is because he “felt guilt; embarrassed, and trying to avoid the issues”<sup>146</sup>.

86. Thirdly, as rebar-fixers, FS knew perfectly well that cutting-threads is a very serious allegation. Yet, despite being confronted with this very serious allegation, they *deliberately* elected to play down the significance of it:-

<sup>145</sup> In the Chinese transcript “警方，而家佢問我嘅問題都係「你有無見到？」「你有無見到？」唔係警方問我係見到，你問我——佢係問我有無見到”

<sup>146</sup> [T16/11/23 – T16/12/9] Cross-examination of Mr Cheung Chiu-Fung Joe (FS) by Mr Richard Khaw SC

86.1. Mr Pun Wai-Shan<sup>147</sup>

*Professor* : *Mr Pun, you are saying that this cutting is a case of poor Hansford workmanship; is that what you're telling me?*

*A* : **Yes**

*Q* : **Mr Pun, how could you relate this deliberate cutting to mere workmanship? I just cannot follow.**

86.2. Mr Cheung Chiu-Fung, Joe

*Q* : *So, insofar as the first incident is concerned, you only knew that the threaded rebars were not properly or fully screwed into the couplers?*

*A* : *As far as I know, that was the case.*

*Q* : **And compared to cutting threaded rebars, this is definitely a less serious matter?**

*A* : **Yes.**

[T15/77/5-11] (Cross-examination by Mr Simon So)

*Q* : *Mr Cheung, whilst couplers not being screwed tightly is a workmanship problem (A: Yes), would you accept that cutting threads is an integrity problem? ...*

*A* : *It is a personal behaviour issue. The workers rely on their hands, and each person, each workman, they might not be able to attain 100 per cent, and the project itself might only be able to reach a 95 per cent level. That would still be a pass rate.*

*Q* : *Mr Cheung, we are not talking about completely screwing rebars into couplers. We are talking about someone going forward and taking steps to cut the threaded section of the rebar. This is an integrity problem, is it not?*

*A* : **I cannot make a difference...**

[T15/97/10-25] (Cross-examination by Mr Simon So)

87. Throughout the course of the hearing, there were **no** evidence whatsoever that suggest there was any tenable reasons why threaded section of a rebar would have to be cut: certainly **not** from FS, **not** from Leighton, **not** from MTRC, and certainly **not** from other persons experienced in the field. Yet, one would recall counsel for FS had this to say in her opening submissions:-

*“The mere fact that the threaded rebars were cut does not necessarily implicate fraud. The issue is whether the rebars were cut for fraudulent purpose”*<sup>148</sup>

With all due respect, this proposition was completely overthrown by the weight of the evidence.

<sup>147</sup> [T13/42/2-7] Cross Examination of Mr Cheung Chiu-Fung Joe (FS) by Mr Richard Khaw SC

<sup>148</sup> [OS of FS/§20], see also [T1/95/16-19] Opening Submissions of Ms Seezen Chong

88. The Commission had concerns over why Chinat had spent a considerable amount of time in cross-examining Mr Cheung. With respect, despite indication of Commission and objection from involved parties that “*it is not quite acceptable to say ‘I will reserve my position until the closing’*”<sup>149</sup>, it is Chinat’s position, and indeed this position was exactly the same position adopted by the Government in the course of their cross-examination<sup>150</sup>, that the *constant changing of position* is a **matter**, and more importantly, a **matter of significance**. If the credibility of Mr Poon (and other staff members of Chinat) is a serious matter and therefore their evidence have to be scrutinized under the microscope<sup>151</sup>, there is no reason why the rebuttal’s evidence from the witnesses of FS should not be treated in the same manner.

89. Quite the opposite, it is FS’s witnesses’ **constantly wavering stance** that makes their evidence incredible. The **change of evidence**<sup>152</sup> (to which no credible and probable explanations were ever given) was simply a show that those evidence could not be placed any weight.

90. If one elects to believe what staff of FS said in MTRC interview was really on a pure “imaginative” and “theoretical” possibility on a construction site, and *indeed* MTRCL interview staff had got it wrongly. One would have to ask an obvious question: why FS made no attempt **whatsoever** to correct MTRCL’s report, bearing in mind that the MTRCL report certainly had arisen public concerns.

91. It is Chinat’s respectful submissions that FS’s evidence given in the course of the **MTRCL Interview** was the truth of the matter: “On some occasions **and as requested by Leighton**, they would carry out cutting of threaded steel bars to meet the required threaded length. On other occasions **and as**

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<sup>149</sup> [T15/125/24 – T15/125/3]; [T15/126/19-22] Objections by Mr Paul Shieh SC

<sup>150</sup> [T16/41/9 – T16/42-16] Bar-Bench Dialogue between Mr Ian Pennicott QC SC, Mr Richard Khaw SC, and the learned Chairman

<sup>151</sup> See, for instance, [T4/28/24–T4/29/1] Cross-examination of Mr But Ho-Yin, Ian (Chinat) by Mr Philip Boulding QC: “*Just one or two more instances, because credibility is an important matter in this Inquiry*”.

<sup>152</sup> [T15/124/4-7]; [T15/124/11-14]

**requested by Leighton**, the threaded steel bars could be cut and screwed into the couplers with the understanding that rectification measures would be carried out by Leighton.”

92. In short, Leighton **has knowledge** of the cutting of the threaded rebars. More so, Leighton **requested** FS to cut the threaded rebars.

93. This matches with JP’s complaint. More importantly, this is Leighton’s legal representatives’ view after learning all these matters immediately after the MTRCL interview took place: “*We do not believe there are any matters to address from the meeting with [FS]*”<sup>153</sup>.

#### **C4. THE NCR No. 157**

94. Disappointingly, staff of Leighton internally seems to (with all due respect) suffer collective amnesia:-

94.1. Mr Malcolm Plummer, being the project director at the time, simply was not sure his role of participation in whether to issue NCR No. 157<sup>154</sup>.

94.2. Mr Ian Rawsthorne, being the project manager at the time being and the person actually signing on the NCR No. 157, simply can recall **absolutely nothing** about NCR No. 157. Despite (also) holding a senior position in the establishment, he was, yet again, not informed about the cutting of the rebars nor consulted as to whether this NCR No. 157 should be issued<sup>155</sup>.

94.3. Mr Khyle Rodgers, being the superintendent on site, was not made aware of NCR No. 157<sup>156</sup>.

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<sup>153</sup> [B5/B3090]

<sup>154</sup> [T14/27/1-25] Cross-examination of Mr Malcolm Plummer (Leighton) by Mr Richard Khaw SC

<sup>155</sup> [T18/52/6-14]; [T18/53/6-8]; [T18/54/14-17]; [T18/55/8-10]; [T18/57/4-5] Examination of Mr Ian Rawsthorne (Leighton) by Mr Pennicott QC  
SC. [T18/63/23 – T18/65/3]; [T18/67/8-12] Cross-examination by Mr Simon So

<sup>156</sup> [T15/47/8 – T15/48-6] Cross-examination of Mr Khyle Rodgers (Leighton) by Mr Richard Khaw SC

94.4. Mr Anthony Zervaas, being the project director of Leighton, never head of NCR No. 157<sup>157</sup>.

95. NCR 157 was signed off by Mr Rawsthorne, dated 18<sup>th</sup> December 2015. That version was sent to FS without the details of the manuscript rectification<sup>158</sup>. Yet, the rectification was said to be rectified **immediately** by **“LCAL direct labour”**<sup>159</sup>. Those rectifications were dated 15<sup>th</sup> December 2015. Till the end of the hearing, there seems, still, no explanation whatsoever why this was so done<sup>160</sup>.

96. Sensible enough, in order to properly record the type of non-conformance, staff of Leighton was asked to take photographs in order to give flesh to what the NCR was actually referring to. Yet, whilst looking at the photographs again in the course of the hearing, no staff from Leighton was able to identify which five bars were the actual problematic bars that NCR No. 157 was referring to<sup>161</sup>. More importantly, there was never any attempt by staff of Leighton trying to look for which five rebars were actually cut in the NCR No. 157 incident.

#### **D. THE “SUPERVISORY” SYSTEM**

97. In rebutting the allegations put forward by JP, the unanimous views of FS, Leighton, and MTRCL were that the allegations were completely unfounded on the following basis:-

97.1. There has been very good supervision and inspection by both Leighton and MTRCL on site;

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<sup>157</sup> [T18/51/23 – T18/52/5] Examination of Mr Anthony Zervaas (Leighton) by Mr Ian Pennicott QC SC

<sup>158</sup> [C1/C43+]

<sup>159</sup> [B6/B4121+]

<sup>160</sup> In particular, note Mr Pennicott QC SC’s comments at [T18/68/8+] “I think, with respect, Mr Wilken needs to be a bit careful, because I’m aware of this point but I didn’t think that it was appropriate to put that point to Mr Rawsthorne. It’s quite clear – and Mr So is right – that from the documents we’ve seen so far, the... when the document was issued to Fang Sheung and when the document was forwarded to MTR those words were not there. That’s clear from what we’ve seen.... **Mr So can rest assured that this will pursued with other witness.**”

<sup>161</sup> [T20/58/25 – T20/59/16] Cross-examination of Mr Andy Yip (Leighton) by Mr Simon So [T24/176/25 – T24/177/15] Cross-examination of Mr Stephen Lumb (Leighton) by Mr Simon So



97.2. There was limited opportunity for staff of Chinat to observe what was being done with the threads.

97.3. That there was no rationale for cutting the threaded section of a rebar as it would take longer and drag out FS's work.

The unanimous view of the involved parties was that "*for Mr Poon to be right, everyone has to be wrong*"<sup>162</sup>

98. With respect, this allegedly "working" supervisory system simply does not work.

99. **To start with**, there was simply no checking of the rebars in place. Most starkly, the "supervisory system" in place would allow this:-

*"If the worker pre-planned it, of course it could be done, but I believe that the time available for taking that action would be little, As I mentioned previously, I carried out routine inspection and there were routine inspections by the MTR. There were also those by our frontline officers. ON top of that, if there were a person not exactly standing right next to the worker but from a distance watching, it would look rather strange, because when they work on every layer they would start off with the coupler connection. If, while doing that, they went away to use a tool to cut the end, it would look rather strange."*<sup>163</sup>

100. Insofar as the subcontractor level is concerned, FS had this to say:-

100.1. In his witness statement to the Commission, Mr Joe Cheung said the staff of Leighton were "*on site on a daily basis until the work procedures were completed*"<sup>164</sup>. These includes "*Andy Ip, Simon Lo, Wood, Ho, Mini Lo, Patrick Chan, Mr Ip, Ming, Keung, and Wah*"<sup>165</sup>.

100.2. Yet, when they were asked why didn't he go to these staff which work "*on site on a daily basis*", this was what Mr Joe Cheung said<sup>166</sup>:-

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<sup>162</sup> [OS of Leighton/§§11-14] [OS of MTRC/§26]

<sup>163</sup> [T21/44/23 – T21/45/9] Examination of Mr Edward Mok (Leighton) by Mr Ian Pennicott QC SC

<sup>164</sup> [E5/E878] (Chinese Original) [E879.4] (English Translation), Paragraph 9(b) of Mr Cheung Chiu-Fung Joe's Witness Statement to the Commission

<sup>165</sup> Ditto, Paragraph 9(c)(ii)

<sup>166</sup> [T15/87-15 – T15/88/12] Cross-examination of Mr Cheung Chiu-Fung Joe (FS) by Mr Simon So

Q : They were there every day and you told us you were eager to find out who actually cut the rebars. Why didn't you go and ask them and see if there is any clue?

A : Their engineers and site supervisors were at different locations, and whom could I ask?

...

Q : So, your evidence is that you do not know who actually cut it, and there was also no one from Leighton and MTR reporting to you that they saw someone cutting it; correct?

A : Correct

[T15/87-15 – T15/88/12] (Cross-examination by Mr Simon So)

Chairman : So that I understand it, are you saying that from what you were able to witness, every single insertion of a rebar into a coupler was witnessed by a supervisor from Leighton or MTR?

A : Yes

Q : But that couldn't have been the case, could it, because there's the one report made, the NCR report, the non-conformance report, which shows that they weren't properly inserted., and in fact had been cut?

...

A : They wouldn't be watching it piece by piece. They wouldn't be observing it individually.

Chairman : But it still happens once in a while? (NB: Actually, it is in about a quarter of those in the sample now, and almost half if compared against the standard of acceptance stipulated by BOSA)

[T16/52/10 – T16/53/17] (Questions by the Chairman)

100.3. And indeed, Chinat, who is also a sub-contractor like FS, experienced the same thing:-

Chairman : ...But the point I'm trying to make is...they are not achieving anything? The only way they can be achieving anything is if they are so incompetent in screwing them into couplers, they don't know how to do it, so the order is just to cut them?

A : They are getting benefits on inspection. MTR is not always on site supervising the works or rebar fixing. They are not. And they will only inspect until the 3 metre thick slab completed. I observed, and I experienced, the practice of inspection is going to visually inspect the rebar fixing works on the top of a rebar cage 3 metres deep. So what they can only see is if the screw still appears on the exterior area of the couplers

[T7/84/1-9] Questions by the Chairman in the course of Examination by Mr Ian Pennicott QC SC

*Q : ...I asked you whether your evidence on oath to the learned Commissioners was that there were no Leighton supervisors on site in August 2015. Is that your evidence?*

*A : They did not supervise the carrying out of the works. There were people there but they would not watch the works. They would just sit in their own foremen's office; they would go out for tea. And other than when the MTRCL came, they wouldn't show up.*

*Q : It sounds a bit like a holiday camp, Mr Poon, if you are right....so far as you're concerned, they might not have doing their job properly?*

*A : (In English) Yes.*

[T10/65/21 – T10/66/9] Cross-examination by Mr Boulding QC

101. This was actually admitted by MTRCL<sup>167</sup>:-

*Q : You are certainly familiar with the QSP; correct?...So did it not shock you that, albeit there was so-called full-time continuous supervision, no one from Leighton actually witnessed the cutting of the threaded rebars by Fang Sheung workers? Did it not shock you?*

*A : It didn't shock me. When we say – in the industry...full-time continuous supervision, the normal interpretation of that type of terminology is that both the contractor and MTR will have people full-time on site, but they wouldn't necessarily be full – there wouldn't necessarily be somebody full-time at every location, throughout the whole working day.*

102. In Mr Rowsell's report<sup>168</sup>, this is what he opined:-

*“In my opinion, the obligation requires a supervisor to be present at the site of work activity rather than for example, being present elsewhere on site or in the site office carrying out other tasks. The General Specification requires that the Works shall be arranged so that the Works are supervised at a minimum ratio of 1 supervisor to no more than 10 workers.”*

103. **Stepping backward**, even for the cage-to-cage inspection for the diaphragm wall *also* does not seem to work.

104. The evidence of Intrafor is that she is the responsible body to pass documents to the BD<sup>169</sup>. This is because Intrafor is a specialist contractor on foundation work, a position that even Leighton (being the main contractor of the project) does not enjoy<sup>170</sup>. Before hearing *viva voce* evidence, one would reasonably expect that the supervisory system, if

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<sup>167</sup> [T28/107/9 – T28/108/3] Cross-examination of Mr Aidan Rooney (MTRCL) by Mr Simon So

<sup>168</sup> §78

<sup>169</sup> [T3/55/19]

<sup>170</sup> [T3/69/13-19]

validly executed, would have avoided any possible errors in the course of the construction.

105. That said, the reality is far from satisfactory. Undisputable evidence is that the panel records were not properly signed by all the parties (namely Intrafor, Leighton, and MTRCL). This was, unfortunately, not a single incident. Rather, the majority of the panel records were actually **not** signed by all the parties. Almost half of the panel records were only with the signature of Intrafor<sup>171</sup>. The explanation given by Intrafor was that those were only “a cover/summary sheet” and the “*key point and key message to the Commission*” is “*the contemporaneous records behind the panel record*”<sup>172</sup>. “[The] key for the Commission to look at is whether the actual records behind inspection...whether people did sign what they were supposed to sign”<sup>173</sup>.

106. With respect, this is not a tenable explanation. As a specialized subcontractor, it is her very duty to ensure that each panel has to be properly inspected before the concreting up.

107. Assume (which is not accepted) Intrafor’s evidence is to be accepted, one would then expect the contemporaneous records would be properly inspected. Unfortunately, this is, yet again, not the case. The truth of the matter is, regrettably, the complete opposite<sup>174</sup>:-

*Q : Actually this situation happens not just sometimes but quite often...a lot of cage-to-cage inspection forms were not signed by all parties; would you accept that?*

*A : Yes.*

108. But why? Why did this happen? Mr Gillard gave these explanations:-

*“Probably they missed a signature? ...Sometimes people were forgetting to put the signatory in front of everything.”*<sup>175</sup>

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<sup>171</sup> See Appendix I

<sup>172</sup> [T3/50/6-25], [T3/58-59]

<sup>173</sup> [T3/60/17-20]

<sup>174</sup> [T3/67/6-10] Cross-examination of Mr Jean-Christophe Jacques-Oliver Gillard (Intrafor) by Mr Simon So

<sup>175</sup> [T3/62/3-12] Cross-examination of Mr Jean-Christophe Jacques-Oliver Gillard (Intrafor) by Mr Simon So

“...sometimes people say, ‘I am going to sign’, they are called and they go for another inspection, and just forget to come back and sign the paper”<sup>176</sup>

“...It’s not unusual to have some missing signature, and I would go further by saying I am quite pleased to see that sometimes signatures are missing because to me this is an evidence that those records are done on the spot and not just done after, back in the container, in the site office, two or three days after”<sup>177</sup>

109. There was this stark exchange between myself and Mr Gillard in the course of the cross-examination when taking the inspection of one particular connection between the cages for illustration purposes<sup>178</sup>:-

*Q : ...On the inspection where this cage-to-cage inspection form was produced, would you accept the representatives of MTR were simply not present...on 3 January 2014 at 1730 hours, when cage 2 to cage 3 inspection took place...?*

*A : No, I don’t accept that.*

In effect, Mr Gillard’s evidence is that a representative of Leighton/MTRCL *was indeed present* but *deliberately (for some reasons unknown) omitted to sign* on the cage-to-cage inspection form. **This is, with respect, simply ludicrous and ridiculous evidence.**

110. Not only no explanations were offered by Intrafor, both Leighton and MTRCL made no attempt to clarify why these happened and occurred. In fact, this question was never revisited by any parties after the end of the evidence of Intrafor.

111. The evidence from Leighton is that the only inspection for coupler inspection is merely “*visual inspection*”<sup>179</sup>. Worse still, inspections were only made by a fleeting glance where engineers would not even bother to “*squat down [but just] to look at it whilst [the engineer] would stand and look at the coupler*”. To see whether the coupler connections have been properly done by the rebar fixing workers<sup>180</sup>. Witnesses from Leighton have been most forthcoming in admitting that what “continuous full-time supervision” meant in practical terms would be someone “*on and off walk*

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<sup>176</sup> [T3/63/11-14] Cross-examination of Mr Jean-Christopher Jacques-Oliver Gillard (Intrafor) by Mr Simon So

<sup>177</sup> [T3/65/5-11] Cross-examination of Mr Jean-Christopher Jacques-Oliver Gillard (Intrafor) by Mr Simon So

<sup>178</sup> [T3/66/23 – T3/67/5] Cross-examination of Mr Jean-Christopher Jacques-Oliver Gillard by Mr Simon So

<sup>179</sup> [T21/17/15-23], Examination by Counsel for the Commission of Edward Mok (Leighton)

<sup>180</sup> [T21/18/7-17], Questioning by Prof Hansford of Edward Mok (Leighton)

*past [a particular location] but there [would be] no one assigned to station at [a particular location] to watch every one being connected”<sup>181</sup>.*

112. Most significantly, it is the evidence of frontline staff that “*if the worker pre-planned [cutting the threadings of a rebar], of course it could be done*”<sup>182</sup> To do fairness to the evidence of the frontline staff, he did put a caveat on his evidence: “*it would look rather strange*” if someone walked away to cut a rebar.

113. But, unfortunately but most overtly, there **were** indeed cuttings of the threaded rebars occurring on the site. Most shockingly, this did not occur only once, not only twice, but three or five times to which neither FS, Leighton, and/or MTRC could now give a specific number of incidents, at where, and the exact number of rebars that were involved.

114. One of shining examples would be how the “overt facts” were dealt with. When considering these pre-NCR 157 rebars-cutting incidents, Mr Edward Mok (Leighton) gave the following evidence<sup>183</sup>:-

*Q : ... I assume you’re looking from above and you’re looking down, you are standing on the top layer of rebar – spot a problem, a connection problem, a connection defect, on the second or third layer down, does that pose difficulties in terms of rectification works?*

*A : Yes, there would be difficulties, but it could be done.*

*Q : Right. Did it ever happen?*

*A : Yes, there were one or two occasions, but it may not necessarily be what you are all very concerned about that is, the cutting of threaded bars. There could be other incidents, for example some missing cast-in items. For every bay, there were cast-in items that needed to be reserved, maybe some were left out, therefore we need to remove those areas and leave in the case-in items and we had to replace some of the bars, and so and so. This did happen.*

115. From those exchanges, the following observations can easily be deduced:-

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<sup>181</sup> [T21/30/10-13], Questioning by Chairman of Edward Mok (Leighton)

<sup>182</sup> [T21/44/23-25], Questioning by Chairman of Edward Mok (Leighton)

<sup>183</sup> [T21/33/5-21]

- 115.1. Firstly, no one made any inspections or formal checking when the rebars at the lower layers (of a mat) has been fixed but before the upper layers were to be installed.
- 115.2. Secondly, should there be an inspection (if any at all), the inspections simply failed to spot these substandard installations, at least not until the upper layer of the rebars were being fixed.
- 115.3. Thirdly, no one made any written records whatsoever **even after** the substandard installation works have been made. Thus, up till this point of time, no one whatsoever is able to tell (not Leighton, not MTRCL) how many exact times these substandard installations were found, or how many exact rebars were involved.
- 115.4. Fourthly, even these substandard installations have been unearthed, no reports have been made (moving up the hierarchy) to senior managements of the contractor, *viz.*, Leighton, or the employer, *viz.*, MTRCL, or (moving down the hierarchy), to the frontline superintendents of the site or the foremen/gangers of the subcontractor responsible for re-bar fixing, *viz.*, FS.
- 115.5. Fifthly, no one whatsoever considered it would be necessary whatsoever to investigate into the issue in order to ferret out the particular rebar fixer(s) doing the substandard works.

**E. QUESTION FOR THE COMMISSION: WHY IT WAS CUT IN THE FIRST PLACE?**

116. Thus, it is Chinat's respectful submissions that cutting of the threaded end of the rebar did in fact occur and it was due to a combination of the following reasons:-

**(a) Issues arising from the diaphragm wall**

The construction of the diaphragm wall was not inspected. On occasions, the couplers on the diaphragm wall was simply misplaced. As such, it

would simply be difficult for the rebars to be screwed onto the diaphragm wall.

When concrete was being poured, the couplers tilted in orientation, leading to the difficulty of rebars being screwed into the diaphragm wall. The oral evidence and demonstrations by various different witnesses indicated that screwing a threaded rebar into the couplers of the diaphragm wall is not something as simple as one would have first imagined. One of the prerequisites is that **the threaded ends of a rebar should be reasonably aligned with the couplers because the threads have very limited tolerance**<sup>184</sup>.

(b) Quality of the couplers

Prior to the pouring of concrete, the protective cap was not removed by Intrafor, nor checked beforehand<sup>185</sup>. As a result thereof, one could not be sure whether the threads of the coupler were of satisfactory quality. The force of this argument was particularly strong given that Intrafor realized that the quality of the threads (also supplied by BOSA) was of substandard at the beginning of the construction works<sup>186</sup>. That being the case, debris of concrete might sip into the couplers. This either lead the rebar fixing work more difficult or entirely impossible.

(c) Hydrodemolition

As could be seen from evidence, it is an essential process in the course of the construction works that concrete would have to be broke-open so that couplers could be exposed. Yet, in the cause of such, the hydrodemolition machine at the site might lead to damages of some threads due to debris. In those cases, someone would have to be on site so that the couplers could be replaced<sup>187</sup>.

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<sup>184</sup> [T3/44/17 – T3/45/25] Cross-examination of Mr Jean-Christophe Jacques-Oliver Gillard (Intrafor) by Mr Simon So

<sup>185</sup> [T3/48/18 – T3/49/12], ditto

<sup>186</sup> [T3/47/1-15], ditto

<sup>187</sup> [T22/39/11-17] Cross-examination of Mr Man Sze Ho (Leighton) by Mr Richard Khaw SC



(d) Derogated integrity and misconduct of rebar-fixers

Both owners of FS gave inherently conflicting, contradictory, and implausible evidence. In June 2018 when being interviewed by the MTRCL, the unequivocal evidence was that there were occurrence (although it would be fair to say only to a limited extent) of the cutting of the threaded section of a rebar on the construction site.

The position shifted (for the first time) in August 2018 when they were giving evidence by way of witness statements to this Commission, where they categorically deny any occurrence of the cutting of the threaded section of the rebar.

The position *further* shifted (for the second time) in September 2018 when they were giving the police statements.

The position *even further* shifted (for the third time) when they were giving evidence, on oath, when being examined by the counsel of the Commission.

The position *yet even further* shifted (for the fourth time) when they were being cross-examined by counsel for Chinat and leading counsel for the Government.

(e) The tight time schedule and Costs Issues

Without doubt, there was tight time pressure to finish the SCL 1112 project. The Commission may take judicial notice that the SCL 1112 experienced both cost-overrun and delay. As frankly admitted by Mr Joe Cheung (either intentionally or by slip of tongue), workers well understood that there was time pressure in completing the project<sup>188</sup>. This properly explained why Leighton/MTRCL would not want all the troubles to be caused even if FS workers asked the responsible personnel to fix the couplers when they encountered difficulties in their works. Naturally, with more time incurred,

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<sup>188</sup> [T16/18/8 – T16/20/2] Cross-examination of Mr Cheung Chiu-Fung, Joe (FS) by Mr Richard Khaw SC

costs incurred would also increase. This also provided an economic incentive why workers actually perform works by cutting corners.

(f) Supervisory System

With respect, the supervisory system in-place was simply not functioning in the proper way that it should be. As encountered by different subcontractors on site (both Chinat and FS), MTRCL staff and/or Leighton staff were always not capable to be contacted. It was also described hereinabove that (as admitted by staff of Leighton), if a worker wishes to bring in a machine and cut the threaded rebars, this would actually be possible.

## **F. CONCLUSION**

117. Chinat accepts (and indeed understands) that the Commission has to inspect the evidence of Chinat with care. Given the complaint made by Mr. Poon is serious in nature, the Commission has to, with all fairness, consider the evidence of JP with care.
118. That said, one would easily fall into the fallacy of losing sight of the wood for the trees whilst embarking on trivial and peripheral inconsistencies but not appreciating the entirely consistent theme of the major and substantial portion of an evidence.
119. As a matter of law, there was generally no onus of proof of any IP. Yet, the basic principle of “he who alleges shall prove” shall always be the guiding principles. When Chinat is the person raising the allegations, Chinat accepts that she shall prove to this Commission that what she alleges is “more likely than not”, depending, of course, the gravity of the facts to be established: **HKSAR v Lee Mign Tee & Securities and Futures Commission (Intervener)**<sup>189</sup>.

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<sup>189</sup> *HKSAR v Lee Ming Tee & Securities and Futures Commission (Intervener)* (2003) 6 HKCFAR 336 at 361-362

120. In the commencement of the hearing, counsel of different IPs tried to suggest that “*for Chinat to be right, everyone on site must be wrong*”. By the same token, for Chinat to be wrong, this Commission has to come to the conclusion that all staff members of Chinat were acting in concert to defraud this Commission and indeed the general public in Hong Kong for the occurrence of those incidents, were acting in concert to commit perjury and give false evidence under oath, and were acting with ill-intent to cause all the troubles in voicing out the malpractice that they have eye-witnessed. To establish that, all IPs are themselves voluntarily assuming a huge and tremendous burden of proof: *Re H and others (minors) (sexual abuse: standard of proof)*<sup>190</sup>; *A Solicitor (24/07) v Law Society of Hong Kong*<sup>191</sup>.
121. The complaints of JP and other Chinat staff members themselves perhaps were not sufficient to prove herself to be credibility. But with all other evidence considered, one would see witnesses of Chinat was, indeed, telling the truth: *R v Exall*<sup>192</sup>.
122. Lastly, it remains for China Technology to thank this Commission for the efforts in investigating matters and counsel of other IPs in their assistance to the Commission.

Respectfully Submitted.

Dated this the 22<sup>nd</sup> day of January 2019

**SIMON S Y SO**  
**CHRISTOPHER TO**  
Counsel for Chinat

**Messrs Lim & Lok**  
Solicitors for Chinat

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<sup>190</sup> *Re H and others (minors) (sexual abuse: standard of proof)* [1996] AC 563

<sup>191</sup> *A Solicitor (24/07) v Law Society of Hong Kong* (2008) 11 HKCFAR 117

<sup>192</sup> *R v Exall* (1866) 4 F&F 922 at 929

IN THE COMMISSION OF INQUIRY  
INTO THE DIAPHRAGM WALL AND PLATFORM  
SLAB  
CONSTRUCTION WORKS  
AT THE HUNG HOM STATION EXTENSION  
UNDER THE SHATIN TO CENTRAL LINK PROJECT

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**Closing Submissions**  
**for**  
**China Technology Corporate Limited**  
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*(for hearing on 28 January 2019 at 0930 hours)*

Dated this the 22<sup>nd</sup> day of January 2019  
Filed this the 22<sup>nd</sup> day of January 2019

Messrs Lim & Lok  
Solicitors  
Room 702  
7<sup>th</sup> Floor, Ka Wah Bank Centre  
232 Des Voeux Road Central  
Hong Kong  
Tel: 2152 1811  
Fax: 2152 1810  
Ref: SW/L/13727/18/BL/BL