

1 Monday, 22 October 2018

2 (10.01 am)

3 CHAIRMAN: Yes.

4 MR PENNICOTT: Good morning, sir, and Prof Hansford.

5 It is the lot of counsel who first stands up to
6 introduce everybody. I introduced everybody on the last
7 occasion, on 24 September, at the preliminary hearing,
8 but, on the basis that there are quite a number of new
9 faces and indeed new parties, I thought it appropriate
10 that I go through the process once more.

11 Sir, as you are aware, I appear on behalf of the
12 Commission together with Mr Calvin Cheuk and Mr Solomon
13 Lam.

14 For the government, they are represented by
15 Mr Richard Khaw SC, Mr Anthony Chow, Ms Bonnie Cheng and
16 Ms Ellen Pang. I think Mr Khaw and Mr Chow are sat
17 towards the back of the room.

18 As far as the MTRC are concerned, they are
19 represented by Mr Philip Boulding QC, Mr Jat Sew Tong
20 SC, and Mr Kaiser Leung. Mr Boulding, I think, and also
21 Mr Jat Sew Tong, are also sat at the back.

22 Sir, for Leighton, they are represented by my
23 learned friends Mr Paul Shieh SC, Mr Sean Wilken and
24 Mr Jonathan Chang. Mr Shieh and Wilken are sat to my
25 right, towards the back.

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1 Sir, for Intrafor, they are sat at the front here:

2 Mr Cohen is here, with his solicitor to his right, who
3 is not Mr Paul Barrett, I am reliably informed.

4 Sir, China Tech are here, and they are represented,
5 I think just this morning, by Mr So, and Mr To has given
6 his apologies but will be here later, I understand.

7 Sir, Fang Sheung are represented by Ms Sezen Chong,
8 who is over there, behind me; thank you very much.

9 Sir, that was how things really stood on the last
10 occasion, although Ms Chong was not in attendance at
11 that time.

12 The two additional parties are first of all Pypun.
13 They were the monitoring and verification consultants to
14 the government, and I understand that they are
15 represented here this morning by Mr Tony Li, who is over
16 there, and indeed by Ms Elizabeth Cheung; I apologise.

17 Sir, the other new party are Atkins China Ltd. They
18 are represented by Mr Vincent Connor from Pinsent
19 Masons, who is at the back there, and I think that must
20 be Mr Blackwood sat next to him, from Atkins.

21 Sir, that, as it were, completes the line-up.
22 I will say a bit more about Pypun, Leightons and Atkins
23 a little bit later.

24 Sir, before I proceed to look at the written opening
25 address that we have prepared, I would like to say a few
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1 words about some rather important general topics. The
2 first is media leaks. In recent days, there have been
3 a number of newspaper reports and articles concerning
4 this Commission of Inquiry. Indeed, this morning, in
5 the Ming Pao newspaper, there are photographs of emails
6 that can only have come from the source of this Inquiry.

7 It is unfortunate. Both the Secretariat to this
8 Commission and the Commission's legal team constantly
9 monitor the press and other media outlets for any
10 reports concerning this Inquiry. Recent reports and
11 articles strongly suggest, from the level of detail
12 contained within them, that they are based upon the
13 documentary and photographic materials that this
14 Commission of Inquiry has been gathering over the past
15 couple of months or so.

16 In an email to all the parties on Friday,
17 19 October, captioned "Unlawful disclosure of documents
18 and/or information", everybody was reminded of three
19 things. Firstly, that this Inquiry is deemed to be
20 judicial proceedings, as provided for in the Commission
21 of Inquiry Ordinance. Secondly, they were reminded of
22 paragraph 8 of the Rules of Procedure and Practice that
23 you made on 24 September this year at the preliminary
24 hearing, and that reads:

25 "All materials supplied by the Commission to any of
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1 the involved parties shall be used only for the purposes
2 of the Inquiry. Public dissemination of any such
3 materials shall not be allowed until and unless they
4 have been adduced as evidence and expressly referred to
5 in the Inquiry."

6 Thirdly, they were reminded of this, that the
7 passing of material and information to the press and
8 other third parties is a breach of paragraph 8. It is
9 unlawful and it constitutes a contempt. This is
10 a matter which, understandably, the Commission takes
11 very seriously indeed, and I would reiterate the message
12 passed to all the involved parties that have access to
13 the bundles that paragraph 8 remains in full force and
14 effect.

15 Moving on from those observations, may I also echo
16 and indeed emphasise the observations made by certain of
17 the parties in their opening submissions and statements.

18 As already mentioned, this Inquiry constitutes
19 judicial proceedings. As such, it is an independent and
20 judicial commission of inquiry. It pays no attention
21 and has no regard for any attempt at trial by media.
22 Incomplete, one-sided, twisted media reports are
23 virtually certain to be inaccurate and unreliable. They
24 are taken out of context, and are of no benefit to this
25 Inquiry. Sensationalism might help to attract people to

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1 newspapers, it might draw them to websites, but again
2 this Inquiry places no weight whatsoever on those
3 matters.

4 What this Inquiry is interested in, on a more
5 positive note, in order to make its determinations and
6 recommendations in due course is evidence; evidence
7 which has been tested, evidence that is reliable,
8 evidence that is unbiased and not partisan, evidence
9 that is independent. In short, and not wishing to sound
10 too trite, what we want to find is the truth. That,
11 I trust, with the assistance of all the legal talent in
12 this room, we will hear and we will in due course
13 achieve.

14 Can I just say this by way of completing these
15 introductory remarks: as counsel for the Commission,
16 I and my talented and incredibly hard-working team
17 comprise the legal team for the Commission. We are here
18 to do our best to serve the Commission and to serve the
19 public interest. I'm not prosecution counsel, I'm not
20 defending counsel, I'm not here to fight or support any
21 particular party's position. I'm not here to promote
22 any party's interest over anybody else. I will help,
23 I hope, in adducing the evidence and ultimately in
24 analysing that evidence.

25 Having said that, however, in an endeavour to assist
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1 the Commission, it is within my remit to make what
2 I hope will be regarded as constructive suggestions from
3 time to time to some or all of the parties, and will
4 endeavour, in making those suggestions, to help this
5 Commission run this hearing as efficiently as we can.

6 Sir, with those introductory remarks, could I then
7 turn to the written opening address.

8 Opening submissions by MR PENNICOTT

9 Sir, the opening address for the Commission is dated
10 today, but I can assure everybody that it was circulated
11 on Friday, despite being dated today.

12 Section B of the written address deals with the
13 background. That is the recent background that has
14 taken place since about May of this year and I'm not
15 proposing to read all of that out. It is there for
16 people to read if they so wish.

17 Sir, section C of the written address deals with the
18 terms of reference. The position is that since the
19 preliminary hearing of 24 September, the Commission has
20 taken steps to ascertain details pertaining to reports
21 of water seepage in the North Approach Tunnel, also
22 known as the NAT, with a view to determining whether,
23 and if so to what extent, such issues might fall within
24 the terms of reference. The Commission has received
25 representations from the government, from MTRC,

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1 Leighton, and the Commission acknowledges their
2 respective cooperation and input in this regard and
3 thanks them for it.

4 Having received that input, the Commission is
5 satisfied that on the basis of all information received,
6 the alleged water seepage issues at the NAT do not fall
7 within the ambit of the Commission's terms of reference,
8 and this will not therefore be the subject matter of any
9 evidence at this hearing.

10 The Commission, I note, on behalf of the Commission,
11 without comment, that according to the government and
12 MTRC, remedial works to address the water seepage at the
13 NAT was completed on 18 July 2018 and no further
14 problems have been subsequently observed.

15 Could I then turn to the involved parties, and I'm
16 not going to go through all of the involved parties,
17 because you are well aware of who they are, subject to
18 this, that at paragraph 19 of the opening address, we
19 say this: by an agreement dated 20 August 2012, Pypun
20 was engaged by the RDO, that's the Railway Development
21 Office, forming part of the Highways Department, on
22 behalf of the government as a monitoring and
23 verification consultant to, amongst other things,
24 monitor the performance of MTR under the entrustment
25 agreement.

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1 On 2 October 2018 -- and I'm going to make a number
2 of bundle references in a moment but there's no need for
3 those responsible for the electronic bundle to actually
4 go to them -- I am just going to put the references on
5 the transcript -- on 2 October 2018, that's at K1, Pypun
6 were asked to provide witness statements and information
7 to this Inquiry. However, on 15 October, that's a week
8 ago today, K7, they were sent Salmon letters making them
9 an involved party in this hearing.

10 On 18 October, those representing Pypun, Minter
11 Ellison, asked for an extension of time to produce their
12 witness statements, until 13 November, and, sir, as
13 I understand it, that application has been granted, but
14 nonetheless we are grateful to see Mr Li and Ms Cheung
15 here this morning.

16 Sir, likewise, so far as Atkins China Ltd is
17 concerned, I refer to their position at paragraph 21 of
18 the opening address, where we say this: pursuant to
19 a consultancy agreement dated 14 January 2010, Atkins
20 was engaged by MTRC to be MTRC's design consultant for
21 the project, and by a further and separate contract, it
22 is understood, Atkins was engaged by Leighton as its
23 temporary works design consultant. Then I say the terms
24 of this latter contract have not yet been made available
25 to the Commission.

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1 That, sir, is now not correct. We have in fact been
2 supplied with that contract, not just by one party but
3 by two parties. Atkins were very kind to supply us with
4 a copy of the contract, at J16, page 54, and
5 simultaneously with receiving it from Atkins the
6 government supplied us with the same contract, and
7 that's at G13/10747. Sir, we do have a copy of that
8 contract now.

9 Similarly with Pypun, on 22 October 2018, J1, Atkins
10 was asked to provide witness statements and information
11 to assist the Inquiry. However, again, on 15 October
12 2018, Atkins were also the recipient of a Salmon letter,
13 making them an involved party in this hearing.

14 Sir, I don't think any formal application was made
15 by Atkins for an extension of time in relation to their
16 witness statements, but in any event, as I understand
17 it, they have been granted an extension of time until
18 13 November to provide their witness statements.

19 Sir, that, I thought, was worth just mentioning so
20 that we know, and everybody else knows, what the
21 position is with regard to Pypun and Atkins, and the
22 fact that we are not going to receive any witness
23 statements from those parties until about 13 November.

24 As it happens, that's just a couple of days, three
25 days, before we have a short break and so it might be

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1 quite timely for some of us to be able to read those
2 witness statements.

3 Sir, with regard to the next section of the written
4 opening, that deals with the Rules of Procedure and
5 Practice and opening addresses. Sir, the first point --
6 and I'm not going to read all of this out -- but in
7 a nutshell, sir, the Commission having reflected on the
8 position after the preliminary hearing, and having had
9 the opportunity of reading many, many witness
10 statements, has taken the view that the reading out of
11 the witness statements is now no longer to take place.
12 Instead, in the usual way, perhaps in litigation and
13 arbitration, the factual witnesses will be asked to,
14 when they've affirmed or sworn, just confirm the
15 contents of their witness statements in the usual way,
16 and then the witness statements will be, without
17 exhibits, uploaded onto the Commission's website, as
18 I understand it.

19 Sir, so far as the opening addresses are concerned,
20 we have received, you have received, written addresses
21 from Intrafor, China Technology, Fang Sheung, Leighton,
22 MTR and the government, all of whom have made
23 applications to make oral opening addresses to you.
24 Those applications have been granted, and the sequence
25 of those oral addresses will be Intrafor, China

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1 Technology, Fang Sheung, Leighton, MTR and the
2 government, and each party will have the time that each
3 has requested, which I understand to be up to 30 minutes
4 for Intrafor, up to an hour for China Technology, half
5 an hour for Fang Sheung, 80 to 90 minutes for Leighton,
6 up to 90 minutes for MTR, and 90 minutes for the
7 government.

8 If we all keep broadly to those timings, it is
9 anticipated that the oral opening addresses will finish,
10 by my calculation, sometime tomorrow morning, after
11 which the evidence will commence.

12 CHAIRMAN: Can I interrupt first?

13 MR PENNICOTT: Of course, sir.

14 CHAIRMAN: As far as the two new parties are concerned, to
15 whom you have just made reference, I appreciate that
16 their witness statements are not coming in until later,
17 but have they been approached as to whether or not they
18 may wish to say something orally by way of an opening
19 address?

20 MR LAM: I don't think they have, sir, but I will be
21 corrected if I'm wrong. I'm pretty sure they haven't.
22 But of course they are here this morning, we are pleased
23 to see them, and I'm certainly not going to stand in the
24 way of anything they may wish to say this morning, and
25 it may be -- sir, it's a matter for you, ultimately --

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1 but it perhaps might be better if they do wish to say
2 something, they may not wish to, that they actually went
3 first, when I sit down proper. They can sit here and
4 listen to everybody else, and perhaps they want to go at
5 the end, I don't mind.

6 CHAIRMAN: I just feel that they don't have to.

7 MR PENNICOTT: No.

8 CHAIRMAN: Especially on the basis that they haven't put
9 their witness statements in yet. They are probably in
10 the position of marshalling their necessary evidential
11 matters. But I feel it should at least be open to them
12 if they wish to say something briefly.

13 MR PENNICOTT: Yes.

14 CHAIRMAN: I think perhaps rather at the end of the opening
15 statements. It's just for them, and if they do intend
16 to do so, put something in writing, and it can be given
17 to the solicitors who are supporting the work of the
18 Commission.

19 MR PENNICOTT: Yes, sir. When I sit down, perhaps it would
20 be best to invite Mr Li for Pypun and Mr Connor for
21 Atkins to see if they wish to say anything and if so
22 whether they would like to do it straightaway or whether
23 they want to sit here all day and tomorrow and say it at
24 the end. I'm entirely relaxed and I'm really in their
25 hands as to how they wish to do it.

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1 CHAIRMAN: Thank you very much.

2 MR PENNICOTT: Sir, moving on in the written address, we
3 deal with the documentation, and as you are aware it's
4 been an ongoing process. The bundle is growing all the
5 time, and I think we are up to somewhere in excess of
6 125 lever-arch files at the moment, and no doubt that
7 will be added to as we proceed.

8 So far as the witnesses are concerned, what those
9 instructing me have done is to create separate witness
10 statement and police statement files and a responsive
11 witness statement file. So all the witness statements
12 will remain in the bundles, in B and C and D and E and F
13 and G, and so forth, but they have also been taken out,
14 copied, and put into the separate witness bundle files,
15 which we thought would be helpful, certainly for those,
16 like me, who have to carry some of these files around
17 occasionally. They have also been given their own
18 index, and it is to that which I just wish to make
19 a brief reference. That is the index to the witness
20 statements which we have attached to this opening.

21 There is just one small point I just wanted to
22 mention so that there's no confusion. Sir, at our
23 witness statement list, at items 28 and 29, you will see
24 reference to an individual who has not provided
25 a witness statement to the Commission. He is, as
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1 I understand it, an employee of China Technology. He
2 has, however, provided two police statements. We have
3 them in the original Chinese form and in translation.
4 But, as I understand it, there is no intention on the
5 part of China Technology and there is no requirement
6 from me that the particular individual be called as
7 a witness. We've reviewed the police statements. We
8 have not asked for a formal witness statement from the
9 gentleman concerned. And so, although his statements
10 appear on this list, he will not be called as a witness,
11 just so that everybody is aware of that.

12 Sir, again you are aware of the order in which we
13 are calling the witnesses. That has been, certainly for
14 the first couple of weeks, put on the provisional
15 timetable which is uploaded onto the Commission's
16 website. The only point, perhaps, to make is that the
17 Commission itself will be calling a couple of witnesses
18 from a company called Hung Choi, but one of their
19 witnesses will come immediately after the Intrafor
20 witness, Mr Gillard, but because of non-availability the
21 second witness from Hung Choi will have to come further
22 down the order and will be called after the China
23 Technology witnesses have given their evidence. So we
24 will have one before China Technology and one after.

25 Sir, could I then turn to perhaps more interesting
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1 matters, that is the primary topics of this Inquiry, and
2 I'm going to be quite brief. Sir, as matters have
3 unfolded over the last few months, and taking matters
4 chronologically, it seems, to myself and those assisting
5 me, that the primary focus of the factual evidence will
6 centre on some questions that I have set out in written
7 address. Before I get to those questions, I just make
8 this observation, that to hopefully assist the
9 Commission we have prepared and I hope distributed -- if
10 we haven't, we will -- an A01 size drawing which shows
11 a general layout of the site and which has marked on it
12 the gridlines, the areas into which the site was
13 divided, the location of each of the diaphragm wall
14 panels -- you need quite good eyesight to see some of
15 them but you can see most of them -- and on a bay-by-bay
16 basis for each area the date of the RISC requesting
17 checking of the rebar and the pouring of the concrete
18 date.

19 Sir, we have annexed it to our opening but it will
20 also be found in the bundles at A1, page 250.

21 Sir, we hope that this will help you to orient
22 yourself, although I understand that both you, sir, and
23 Prof Hansford went on a site visit to Hung Hom
24 yesterday, and no doubt that was very enlightening.
25 I was concerned to hear that you were climbing ladders

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1 but I'm glad to see that you are both here safe and
2 sound this morning.

3 So, sir, this plan we've put together ourselves but
4 obviously taken certain information from other
5 documents, and I hope that as we go through the
6 evidence, if one needs to check a particular date, one
7 can see very quickly from this what was going on on any
8 particular date in terms of when the slab was being
9 constructed, when the rebar was being fixed or when the
10 request for the rebar checking was made, and when the
11 concrete was poured.

12 Sir, as I say, I'm not going to spend any more time
13 looking at that now, but, sir, I don't have a monopoly
14 in any sense on using documents. Indeed, if one goes --
15 obviously we can put this up on the screen -- to
16 bundle C17 -- this will test the system -- 24198. MTR
17 have given us this document. That shows in fact areas A
18 and B. If you go to the next page, you will then get
19 area C and C1, C2 and C3 and the different bays.

20 What I've done, very cleverly, of course, is I've
21 put those two together, in a long piece of paper, but
22 then I realised, when I did it, that whilst the
23 diaphragm wall panels on page 24198 are pretty easily
24 readable, unfortunately that is not the case on
25 page 24199. But, nonetheless, it's a very useful
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1 diagrammatic representation of the various areas, the
2 various bays in which the concrete slab was constructed,
3 and also contains more information than on our drawing,
4 as you can see from the various boxes at the bottom of
5 the page, if it's still on your screen.

6 So this tells us the volume of concrete for each
7 bay, a blinding cast layer date, rebar fixing commencing
8 and completion date, and we've essentially got the
9 completion date on our chart, and then the concrete pour
10 dates which I have double-checked and with one or two
11 very, very minor discrepancies, one day out here and
12 there, are the same as on the drawing at A1/250.

13 Sir, also another useful orientating plan is at
14 F34/19757. This is a plan provided to us by Intrafor,
15 and obviously we will need to get certain details
16 confirmed during the course of evidence but, as we
17 understand it, if I can see it, this shows -- and we
18 asked Intrafor to provide this for us for a number of
19 reasons -- the orangey-brown shaded area, as we
20 understand it, is the bar-cutting and threading area
21 used by BOSA for dealing with the rebar, and you can see
22 that location is well outside of the area that we're
23 actually primarily concerned with, that is the diaphragm
24 walls and the slab, and also --

25 CHAIRMAN: The diaphragm walls are the dotted emerald

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1 green --

2 MR PENNICOTT: That's right. That's entirely right. And,
3 sir, also, as we understand the Intrafor evidence, what
4 they say is that so far as the cage handling and storage
5 area, the cage fabrication and the bar-bending and
6 storage areas are concerned, in the early part of the
7 works -- and we may have to get Mr Gillard to explain
8 what he means by that -- you can see the two locations,
9 the two sort of light blue locations, just to the left
10 of the orange, and that's where the cage handling and so
11 forth fabrication took place in the early stage of the
12 work. And then at some point he tells us that the steel
13 cage and fabrication set-up, and so forth, was moved to,
14 as it were, the left here, I guess that's to the south,
15 as we can see depicted on this drawing.

16 So, again, another, if one wants to get oriented in
17 terms of geography, to see where things were going on.
18 The point here obviously is they were fabricating the
19 rebar and the cages so far as the diaphragm wall was
20 concerned and then had to transport the finished cages
21 down to the diaphragm walls where they were
22 constructing.

23 Sir, so far as the diaphragm walls are concerned,
24 and in particular the reinforcement steel in the
25 diaphragm walls, the questions appear to be, to us, as

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1 set out here. That is: what works were required by the
2 original design and specification? What works were in
3 fact installed by Intrafor, and how did they differ, if
4 at all, from the original design and specification? If
5 the as-built works differ from the original design and
6 specification, what was or were the reasons for the
7 changes made? Are there satisfactory drawings showing
8 the as-built by Intrafor situation, and if not, why not?
9 And, insofar as the as-built -- again, I emphasise by
10 Intrafor -- situation differs from the original design
11 and specification, what reporting to the government
12 ought to have taken place, if any, when and by whom?
13 And then sixthly, what reporting to the government, if
14 any, in fact took place and when, and, if no such
15 reporting took place, why not?

16 Sir, at a very high level, as we understand it --
17 of course all of this is subject to hearing and
18 analysing the evidence -- it appears that because of
19 buildability issues, essentially the methodology of
20 placement of the concrete into the diaphragm walls,
21 there was an alteration of the reinforcement arrangement
22 at the top of the diaphragm walls. And in particular,
23 it appears that certain reinforcement known as U-bars
24 was omitted, and perhaps other minor consequential
25 revisions.

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1 It appears -- I put it no higher than that -- that
2 the BD may not have been advised and consulted about
3 those changes.

4 In any event, as-built submissions were made in
5 a series of what were known as batches, that's six
6 batches, batches 1 to 6, from January 2015 to January
7 2016, and it was in the course of those submissions that
8 the Buildings Department picked up the differences, as
9 we understand it, between the original agreed drawings
10 and the submitted as-built drawings.

11 As a consequence, a general review, it appears, took
12 place by Leighton and Intrafor, and ultimately, as-built
13 drawings were submitted to and accepted by the Buildings
14 Department. Again, subject to considering drawings in
15 due course, it would appear that with that submittal and
16 acceptance by the Buildings Department there is
17 a reliable set of records at the end of the day of what
18 was actually constructed by Intrafor.

19 It appears -- again, we need to look at this,
20 perhaps -- that some of the U-bars, having been taken
21 out, were in fact reinstated on certain panels. This is
22 the effect of certain of Mr Gillard's evidence and we
23 may need to talk to him about that.

24 Sir, that is the diaphragm walls.

25 I then move on to the question of the reinforcement

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1 steel for the slabs. That's the EWL and NSL slabs. We
2 are going to be involved, it would appear, in a detailed
3 factual investigation into allegations that rebar was
4 cut, and/or that the threads of rebar were cut. And,
5 consequential upon those allegations that have been
6 made, it is suggested that certain connections between
7 the slab and the diaphragm wall are not safe.

8 As I say, it's a detailed factual investigation
9 which will be the subject matter, I anticipate, of some
10 perhaps lengthy and detailed cross-examination by
11 myself, I suspect by Leightons, by perhaps MTR and
12 perhaps the government; I don't know about anybody else
13 at this moment.

14 Sir, the issues that seem to us to arise are these:
15 were any of the threads to steel bars cut? If so, by
16 whom, when, in which areas, in what number, and why were
17 they cut? Were any of the threaded bars not connected,
18 alternatively not properly connected, to the couplers?
19 If so, by whom, when, in which areas, in what number,
20 and why were they not so connected or properly
21 connected? As I say, we will need to look at the
22 allegations that are being made. We will need, no
23 doubt, to look through primarily the China Technology
24 witnesses' evidence. We will no doubt need to look at
25 lots of photographs -- well, some photographs -- and as
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1 I say, you, at the end of the day, are going to have to
2 decide, on the factual evidence, about all those
3 allegations and make factual findings in relation to
4 those matters.

5 Sir, I then turn next to the connection between the
6 east diaphragm wall and the EWL slab, and in particular
7 the reinforcement steel arrangement in respect of that
8 connection. And, as we see it -- and we've tried to be
9 comprehensive here, although I'll make an observation in
10 a moment which perhaps will clarify -- separately in
11 relation to areas A, HKC, B, C1, C2 and C3, what works
12 were required by the original design/specification?
13 What works were in fact installed and how did they
14 differ, if at all, from the original
15 design/specification? If the as-built works differ from
16 the original design/specification, what was or were the
17 reasons for the changes made? Are there satisfactory
18 drawings showing the as-built situation? If not, why
19 not? Insofar as the as-built situation differs from the
20 original design/specification, what reporting to the
21 government ought to have been place, if any, when and by
22 whom? Then sixthly, what reporting to government, if
23 any, in fact took place and when, and, if no such
24 reporting took place, why not? Then lastly, without
25 derogating from the questions I have just read out,

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1 whether the whole process of connecting the east
2 diaphragm wall and the EWL slab complied with the
3 instrument of exemption and/or BD's statutory
4 requirements?

5 Sir, can I just say a few words about that
6 particular topic? Again, it's a very high level and
7 it's all subject obviously to the detailed evidence that
8 we will be looking at in due course. But the position,
9 so far as one can tell at the moment, is that probably
10 in or around April or May 2015, possibly a little later,
11 Leighton proposed to alter, specifically in areas B and
12 C, certain connection details. As I understand it --
13 again, we will need to get confirmation of this in due
14 course -- we are, in this respect at least, exclusively
15 focusing on areas B and C. It does not appear that we
16 have a concern with area A or area HKC, but obviously we
17 will need to make sure that that is the position. It
18 does seem very much that the focus is on areas B and C.

19 I say that so far as areas A and HKC are concerned
20 that they, at the basis of on the designs, appear to
21 have a very different type of detail at the top of the
22 diaphragm wall and didn't give rise to the issues that
23 arose in areas B and C. One can see the contrasting
24 detail on the drawings.

25 In any event, so far as areas B and C in particular
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1 are concerned, what appears to have happened is that
2 Leightons demolished approximately half a metre,
3 slightly less perhaps, of concrete at the top of the
4 diaphragm wall that had previously been placed by
5 Intrafor, and instead of using threaded rebar into
6 couplers, the rebar was taken right across from the
7 connection from the slab all the way through to the OTE
8 wall on the far side. So the use of couplers was taken
9 out of the equation and through-bars, as they are
10 called, were installed instead.

11 Sir, just by way of slight deviation, at F17/11201
12 is a very useful -- if you can get it up the right way,
13 and blow it up a bit, please -- document that we invited
14 Intrafor to provide for us, and if you could scroll
15 down, please, and keep going -- stop there, thank you --
16 so what we have here are, on a panel-by-panel basis,
17 each of the individual diaphragm walls. We are looking
18 at the east diaphragm wall at the moment.

19 Could you go down a bit further, please, to -- now,
20 just for your information, area B starts at EH40. So
21 right down the bottom of that page there, you can see
22 EH40, the first panel in area B.

23 Then, reading across the page, one has the start of
24 excavation date -- I'm afraid you will get this from the
25 top of the page rather than down there -- the completion
26

1 of excavation date of the diaphragm walls, the
2 concreting date. And then, perhaps of more interest and
3 relevance to one or two points we need to look at, you
4 get the cut-off level and that's identified there, and
5 you then get the concrete level as-built. It's that
6 concrete level as-built that was reduced in the process
7 of the change or revision of connection at the top of
8 the diaphragm wall.

9 CHAIRMAN: Help me a second. Cut-off level as-built?

10 MR PENNICOTT: Yes. That's the top of the diaphragm wall.

11 CHAIRMAN: Good. Thank you. That's where the concreting
12 stopped?

13 MR PENNICOTT: No. The concreting is slightly above that.
14 Because these are all plus figures -- behind them you
15 see a minus -- they are slightly above the cut-off
16 level.

17 Sir, if we could scroll down and find -- on the next
18 page, please, keep going down, please -- EH104 is a good
19 example. Do you see that, sir?

20 CHAIRMAN: Yes, EH104.

21 MR PENNICOTT: You will see the cut-off level there is 1,
22 and the concrete level is 2.1, and you will see there
23 are a few down there -- 105 is similar, 106 and 108.

24 CHAIRMAN: Yes.

25 MR PENNICOTT: And we will be hearing some evidence from
26

1 Mr Gillard that in relation to those four or five panels
2 there, Intrafor were instructed not to place the
3 concrete to the level that they had done on most of the
4 other panels, but to reduce -- not place the concrete to
5 such a high level. We infer but we don't know --
6 Mr Gillard says he doesn't know why he was asked to do
7 that -- that that may have something to do with
8 a decision in any event to reduce the concrete and
9 therefore that's why these particular ones, which came
10 right at the end of Intrafor's job, weren't constructed
11 to such a high level. I may be wrong about that but
12 that's the inference that we draw.

13 Anyway, this is a useful schedule, prepared by
14 Intrafor, that shows you, on a few sheets of paper, the
15 cut-off levels and the concrete levels as they were
16 constructed by Intrafor.

17 Sir, returning to the connection detail, it was
18 really -- whether it was April, May, it perhaps doesn't
19 matter too much, but certainly by July of 2015, after
20 the construction or attempted construction of the slab
21 at or around the area of EM98, it was really then that
22 the change of detail was underway and instigated.

23 Sir, what you will have to think about and focus on
24 as one issue is this, that -- you will recall
25 I mentioned a moment ago that it was between January
26

1 2015 and January 2016 that submissions were being made
2 to the Buildings Department of the as-built drawings for
3 Intrafor, and it was during the course of that period,
4 that is right in the middle of it, in April/May/July
5 2015, that these alterations/revisions to the top of the
6 diaphragm wall were being made.

7 So there's a slight curiosity about the situation,
8 I'm not saying anything is particularly wrong, but it's
9 slightly odd, it appears, as to why on the one hand
10 as-built drawings are being submitted and approval being
11 sought, in exactly the same time as these revisions
12 appear to be taking place. But there it is.

13 Sir, perhaps more importantly than all of this, and
14 of primary concern to this Inquiry, is this question:
15 what is the as-built situation at the top of the
16 diaphragm wall, at the connection with the slab, in
17 areas B and C; that is, from panel EH40 to panel EH115?
18 There are 75 panels in that stretch.

19 Whilst it might have been relatively clear as to
20 what was there when Intrafor departed the site, what is
21 not quite so clear, it appears, certainly not to me, is
22 what is there now, because it is unfortunate, it seems,
23 that we do not have any as-built drawings of what is
24 there now. They are, we are told, in the course of
25 preparation, and we may get them soon, but at the moment

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1 we do not know what is there.

2 Sir, I mentioned earlier that it was perhaps part of
3 my remit to make suggestions, which I hoped would be
4 perceived to be constructive suggestions, and it would
5 be desperately helpful to this Commission, in my
6 respectful submission, if the MTRC and Leighton could
7 agree amongst themselves what is at the top of this
8 diaphragm wall and provide you with the as-built
9 information.

10 It appears, from the evidence that I have seen so
11 far, that the MTRC has instructed at least two different
12 independent experts, and as we will see when my learned
13 friend Mr Boulding makes his opening address later, with
14 his PowerPoint slides, there is a recognition, it
15 appears, from the MTRC that the change at the top of the
16 diaphragm wall was not uniform; that yes, revisions took
17 place, but they did not necessarily take place right
18 along the stretch of those 75 panels.

19 There were certain panels -- query whether they have
20 actually been identified yet -- that were not subject to
21 that revision and that did have the original design
22 installed, that is with couplers. It may be that the
23 most significant area, the majority, the vast majority,
24 perhaps area, or length, was subject to this revision,
25 but there were certainly, clearly, on the MTR's

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1 understanding, and my understanding of their position,
2 areas that were not subject to that revision.

3 But we ask ourselves where are the exceptions
4 precisely? It would be helpful to know.

5 Equally, Leightons have factual evidence as to the
6 position, and have also engaged at least two experts,
7 they are not expert reports that have been formally
8 submitted to this Commission. They happen to be
9 attached to police statements -- one is attached to
10 a police statement, one is attached to a letter to the
11 government, two different experts -- and they have
12 analysed the situation and there seems to us to be, both
13 in the Leighton factual evidence and in the expert
14 evidence, such as it is, a lack of recognition that
15 there may be areas along that 75-panel stretch that are
16 not subject to revision, ie the Leighton position
17 appears to be, but I will be corrected if I am wrong,
18 that there was 100 per cent revision all along, and if
19 one reads, and we will see my learned friend Mr Shieh
20 and Mr Wilken say in their opening address shortly, no
21 doubt, but the opening appears to proceed on the basis
22 that it was 100 per cent, and it seems to be me
23 therefore a difference between MTRC and Leighton,
24 possibly, is that whilst there's a recognition by MTR
25 that there was not a 100 per cent revision, there were
26

1 exceptions, that does not at the moment appear to be
2 Leighton's position.

3 But for your purposes, this Commission's purposes,
4 it would undoubtedly -- I'm repeating myself, I know --
5 be helpful if some form of agreement could be reached
6 whereby you have a much better understanding of what the
7 proposition is on a panel-by-panel basis.

8 Of course one very fundamentally important reason
9 that this Commission needs to know what is there is
10 because we've got to determine whether it is safe. In
11 order to determine whether it is safe, we need to do
12 some testing, we need to do some investigation. And the
13 two possibilities that have arisen so far are load
14 testing and opening up.

15 It does seem to me that in order to determine the
16 way forward in terms of load testing, opening up, where
17 does one do the opening up if that's the route one goes
18 down, one needs to have a pretty good, reliable
19 understanding of what is there. There's no point
20 opening up if you haven't got a reasonably good
21 understanding of what's there, because you won't know
22 where to open up.

23 So, sir, that is a very short overview of the
24 position. I do mention, at the end of the written
25 address, a number of other matters: honeycombing of
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1 concrete, water seepage, and placement of lightweight
2 concrete. These are other matters that have been
3 brought into the evidence before this Commission and
4 will need to be looked at, insofar as they can be.

5 There is, frankly, very little evidence about most
6 of these things, but we will obviously have to do our
7 best as things move forward on those particular topics.

8 So, sir, that really is all I wanted to say.
9 I anticipated and projected that I would be one hour,
10 and I have been one hour precisely.

11 Thank you very much.

12 CHAIRMAN: Mr Cohen, you had estimated a time period of ...?

13 MR COHEN: About half an hour, sir.

14 CHAIRMAN: What we might do then is hear your opening
15 address and then break for some tea. All right?

16 MR COHEN: Sir, I'm grateful.

17 CHAIRMAN: Thank you.

18 Opening submissions by MR COHEN

19 MR COHEN: Sir, these opening submissions are made to the
20 Commission of Inquiry on behalf of Intrafor Hong Kong
21 Ltd. Intrafor specialises in ground engineering and
22 foundation construction works that are technically
23 challenging. It is recognised as an industry leader in
24 these fields. It has been involved in numerous
25 high-profile and complex projects in Hong Kong.

26

1 Intrafor has always and will continue to cooperate
2 and assist the Commission. It has every confidence that
3 the Commission will carry out a professional and
4 independent inquiry, and Intrafor wholly endorses the
5 comments of my learned friend for the Commission in
6 relation to trial by media. Intrafor will not be
7 responding to media or other speculation unless invited
8 to do so by the Commission.

9 My opening submissions will follow the structure set
10 out in paragraph 4 of my written opening, and they will
11 cover broadly three areas: part A, Intrafor's limited
12 involvement with the project; part B, the diaphragm
13 walls in overview; and part C, that Intrafor completed
14 the diaphragm walls properly and as instructed.

15 Turning first to part A, Intrafor's role was for
16 construction only for the diaphragm walls and associated
17 works. It was engaged as a sub-contractor by Leighton,
18 and a copy of the sub-contract is in exhibit 11 to
19 Mr Gillard's first witness statement. A general
20 overview of the scope of Intrafor's sub-contract works
21 can be found in part B of the second schedule of that
22 sub-contract, and the footnote has the page references.

23 Intrafor's sub-contract works were limited to
24 "construction only" of the diaphragm walls, barrettes
25 which are in effect stand-alone panels, and associated
26

1 works. This is specialist work that Intrafor has
2 substantial experience of and expertise in.

3 The contractually agreed division of
4 responsibilities between Leighton and Intrafor in
5 relation to the diaphragm walls, barrettes and
6 associated works can be seen from the "scope matrix"
7 that forms a part of the sub-contract. A copy is in
8 exhibit 11 to Mr Gillard's first witness statement, and
9 can be found -- there is no need to take you to it -- at
10 F1211 to 1217.

11 Intrafor constructed the diaphragm walls, barrettes
12 and associated works in accordance with the design and
13 instructions given to it.

14 Intrafor had no responsibility or liability for
15 matters such as the design or engineering of the
16 diaphragm walls or for any other aspect of the permanent
17 works. It does not have liability or responsibility for
18 the supply or quality of the couplers or threaded rebar
19 that were procured by others for installation by
20 Intrafor in the diaphragm walls, and nor does it have
21 a responsibility for obtaining BD approvals or consents,
22 although it does have some degree of involvement with
23 the BD process, having given undertakings at various
24 times to ensure that the instrument of exemption was
25 complied with.

26

1 Intrafor was not involved with the platform or track
2 slabs, "the slabs".

3 As I have already mentioned, Intrafor's scope of
4 work was limited to the construction of the diaphragm
5 walls, barrettes and associated items.

6 The construction of the diaphragm walls precedes the
7 work on the slabs, and the work on the slabs, including
8 their connection to the walls, was carried out by others
9 after Intrafor completed its work on the walls
10 themselves.

11 Intrafor was not involved with the construction of
12 or any work to the slabs.

13 Intrafor also did not connect the slabs to the
14 diaphragm walls themselves. That connection was carried
15 out by others after Intrafor had completed the walls.

16 Intrafor's only requirement was to install, inside
17 the diaphragm walls, a number of starter bars with
18 a coupler on each or one end. These starter bars
19 enabled others subsequently to connect the platform
20 slabs to the diaphragm walls.

21 Intrafor was not involved in the process of carrying
22 out the connections. That process involved, or ought to
23 have involved, others in exposing the relevant couplers
24 by breaking out some of the concrete on the face of the
25 diaphragm wall and removing the box-out. The box-out

26

1 is, in effect, a piece of wood, plywood, that is placed
2 in the concrete, to ensure that a void or space is left.

3 The connection would also have required those
4 following on to remove the protective caps from the
5 couplers and make sure the couplers were clear of
6 foreign material. Those following on would then screw
7 the threaded rebars of the slabs into the couplers
8 provided in the diaphragm wall.

9 Turning to part B, the diaphragm walls in overview.
10 The diaphragm walls that Intrafor were required to
11 construct were two, the East Wall and the West Wall.
12 The diaphragm walls range from approximately 20 metres
13 to 60 metres in height, and are over 430 metres long.
14 They are very large.

15 They comprise primary and secondary panels that are
16 constructed individually and jointed by using preformed
17 stop-ends. At each joint of the diaphragm wall,
18 a waterstop is cast in. There are 253 channels in
19 total.

20 In very general terms, the construction sequence for
21 a diaphragm wall involves the following steps. The
22 ground is excavated to the required depth and
23 dimensions. And the stability of the excavation trench
24 is achieved by excavating in a bentonite slurry, which
25 is a mud-like compound that provides temporary stability
26

1 to the excavated area. Steel reinforcement cages, some
2 of which were prefabricated in the steelyard that was
3 some way away from the face of the wall itself, and some
4 were built in situ at the wall itself. These are
5 installed in the excavated area.

6 There was full-time supervision and checking of this
7 process, and of the connections of the couplers, by
8 Intrafor. There were also inspections by Leighton and
9 MTR; these are "witness points".

10 The completed and connected reinforcement cages are
11 then inspected. This is a "hold point" that must be
12 released before Intrafor can proceed to the next stage.
13 Intrafor cannot proceed to the next stage, which is the
14 concreting, unless that hold point has been released.

15 Once the hold point has been released, concrete is
16 poured through a so-called tremie pipe, and that is used
17 to fill the excavated area with concrete from the bottom
18 up. The concrete displaces the bentonite, which is then
19 recycled or disposed of.

20 It may be convenient there to just pick up a point
21 that arose during my learned friend's opening, which is
22 cut-off levels. In effect, what the cut-off level goes
23 to is this. There is always the risk, using the
24 bentonite tremie pipe method, that the concrete may
25 become contaminated at the top with bentonite. That is

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1 visibly clear if it's happened; you should be able to
2 see it. But as a precaution to ensure that the quality
3 of concrete is good up to the required level, you
4 actually cast higher than you need, normally about
5 750 millimetres, but in this case, in this project, up
6 to a metre.

7 That top metre of the wall, if you like, is the
8 overcast and is sacrificial; it is not part of the wall.
9 So that is why one does get a difference between the top
10 of the wall, as cast, and the top of the concrete, that
11 is the cut-off level.

12 That process is then repeated for each panel. Once
13 all of the diaphragm wall panels have been completed,
14 the construction of the diaphragm walls is complete.
15 Intrafor then has to carry out various proof testing and
16 perform pumping tests to draw down the groundwater level
17 to permit excavation without flooding by others. The
18 successful completion of those pumping tests marks the
19 completion of Intrafor's works.

20 It may be helpful to turn back to the installation
21 of the steel reinforcement cages. This is, of course,
22 an area of consideration for the Commission.

23 At tender stage, Intrafor recognised that the
24 installation of the reinforcement cages for the
25 diaphragm walls would be challenging from a construction
26

1 perspective, this was because of a number of factors.
2 The height of the diaphragm walls, between 20 to
3 60 metres, required multiple reinforcement cages to be
4 assembled and connected together vertically; there was
5 limited headroom at the work site, in particular under
6 the slab at the Coliseum. That would impact upon the
7 lifting options for lifting the reinforcement cages into
8 position during assembly. It would limit the height of
9 the reinforcement cages themselves, requiring a larger
10 number of shorter cages, rather than a smaller number of
11 taller cages, to be used in some locations. The
12 reinforcement design that Intrafor was instructed to
13 construct involved different types of reinforcement
14 cages, and this is something that is important when one
15 goes on to look at the rather misleading video and
16 photographs that have appeared in the media in relation
17 to the diaphragm wall. There are essentially three
18 types of cages using 50 millimetre diameter vertical
19 rebar. Some cages just have one single layer of rebar.
20 Others are double-layer, and others are triple-layer,
21 and it is the triple-layer to which I will return when
22 we come to look at and consider the video.

23 CHAIRMAN: Just to state the obvious probably for everybody
24 here but it helps me, Intrafor received the drawings as
25 to how they were to construct these, and that would

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1 include double-layers and triple-layers, et cetera?

2 MR COHEN: Sir, absolutely, yes.

3 CHAIRMAN: So they just followed that; it was on the plan.

4 MR COHEN: That was on the plan. We just built it in
5 accordance with that design.

6 There is no suggestion, I think, that that design of
7 the double or triple layers had anything wrong with it,
8 but it was challenging to build. And in particular,
9 those double or triple layers made access for workers
10 difficult and also made the rebar cages very heavy,
11 particularly in the triple; you've got three levels or
12 three layers of rebar.

13 Having recognised before contract during the tender
14 stage those construction, Intrafor provided, in their
15 proposals and ultimately in the approved method
16 statements, for various alternative methods for the
17 assembly and installation of the reinforcement cages.

18 In general terms, the overall intended approach was
19 to build reinforcement cages that had a triple layer of
20 rebar in situ at the work face, whilst the single- or
21 double-layered cages were to be built or prefabricated
22 in the separate steelyard. They were prefabricated on
23 a designed-for-purpose L-frame workbench that was set up
24 in the steelyard that was separate and some distance
25 from the work face itself.

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1 That method was used for all cages, except the very
2 first cage, EM98. As I will return to, EM98, the very
3 first cage, was assembled entirely prefabricated in the
4 steelyard as part of a trial to see whether the
5 construction process could be speeded up and made more
6 efficient by pre-assembling everything in the steelyard.
7 I will return to that.

8 When it comes to the prefabrication stage, it is
9 perhaps relevant to understand that the cages are
10 prefabricated on the L-shaped bench in the yard. The
11 rebar is put in place, and metal tie wires, wires going
12 around, are placed to ensure, of course, that the rebar
13 stay in position and don't fall apart when moved.

14 On the L-framed bench, they are arranged, the cages
15 are arranged, horizontally, and not, as they will be in
16 the final works, vertically. That is again a matter of
17 some significance when we come to looking at the video
18 and the photographs.

19 So what one does is one builds the cages and you
20 join them up in their horizontal state, to make sure
21 that everything is aligned. The idea being that the
22 most difficult part of the installation process is
23 ensuring that all of the steelwork actually aligns up so
24 that everything can be screwed down and properly
25 connected, and it can take some effort and time to get
26

1 everything aligned.

2 The hope was that if you prefabricated everything
3 and connected it in the steelyard, when you came to site
4 it would still be pretty much in its aligned state, so
5 hopefully you could take the cages, move them to site,
6 put them into position, everything would align up
7 without too much work, and you could just screw the
8 couplers down.

9 Where that's not possible because things have got
10 out of alignment, it is not a difficult job and nor is
11 it in any way problematic. One just has to get the
12 rebar to line up again, by adjusting it. There is not
13 a problem with that. You just have to make sure it is
14 done.

15 So you prefabricate the cages, you connect them up
16 in the L-framed bed, and then you disconnect the cages
17 before moving them to the work face. It is simply not
18 possible to move all the cages connected together to the
19 work face and drop them in. They have to be connected
20 and then disconnected, another matter to which I will
21 return.

22 The cages, having been disconnected, are
23 transported. They are then re-connected, one at a time,
24 and they are lowered into the excavation trench, having
25 first been inspected.

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1 So that is the method for prefabrication. For
2 in situ, what happens is that the rebar is installed
3 in situ at the work face and the cage built that way.

4 In July 2013, the very first panel, EM98, was
5 prefabricated in its entirety in the yard. The hope was
6 that that would speed up the construction process at
7 site by ensuring that all of the cages, the singles, the
8 doubles and the triples, had been properly aligned in
9 the yard.

10 However, what turned out to be the case was that the
11 triple-layered cages were not particularly well-suited
12 for prefabrication. That is because you've got three
13 layers of rebar, and the cages are of course designed to
14 take the weight or the loads from that in a vertical
15 state. They are not designed to take that weight
16 horizontally, when the cages are lying on their side.

17 What was discovered, when that mock-up or attempt
18 was tried, was that the weight of the three layers of
19 steel at the top pushed down and caused issues with
20 alignment of the steel bars. That made it difficult to
21 connect and screw up the couplers, but even more so it
22 made it difficult to unscrew and disconnect the couplers
23 before you transported the cages to site. No permanent
24 damage was done to the rebar. It was just a question of
25 then making sure that it properly aligned up when it

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1 went back to site, and that was done; it took some time.
2 EM98 started to be installed at site on 26 July, and was
3 completed in terms of steelwork on the 29th, and then
4 the concrete was poured from 1 August.

5 The other issue with the triple layer in
6 prefabrication was that it was difficult for the workers
7 in the yard to actually use hand tools with the three
8 layers to do the connections, and again that problem was
9 solved by building it in situ so that you didn't have to
10 do it that way.

11 That method, as I said, was only used for EM98.
12 Everything else proceeded on the basis of single- and
13 double-layer cages being built in the yard,
14 prefabricated, but all the triple-layer cages in situ.

15 It's perhaps also useful to talk about the
16 connection of the vertical cages on site. Because of
17 the limited headroom at site, the vertical rebar in the
18 cages for the diaphragm walls were generally connected
19 using mechanical couplers rather than the more
20 traditional method of lapping. Connecting the vertical
21 rebar by way of a mechanical coupler is
22 a straightforward process. It does not require
23 specialist equipment. A female coupler, with a thread
24 inside, and male threaded rebar are screwed together
25 until they are properly and fully connected. The

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1 tightening process must be completed with an ordinary
2 wrench and not just by hand, but there is no specific
3 torque required. It is important but it is not
4 complicated and nor is it rocket science. It is just
5 a question of screwing a female and male part together
6 tightly.

7 There are two types of connections or splices that
8 were used in relation to the diaphragm wall rebar
9 connections: type A, the standard splice; and type B,
10 the position splice.

11 When connecting a type A coupler splice, what you do
12 is simply to screw the male threaded rebar into the
13 female coupler; you turn the rebar and screw it in.
14 When the connection is properly made, there should be no
15 or virtually no thread on either of the male connected
16 rebars visible.

17 Type B is different, and it was type B that was
18 generally used for the connections between vertical
19 cages. When connecting a type B coupler, it requires
20 the coupler already attached to the rebar to be wound
21 down, turned, onto the male threaded rebar to be
22 connected. When the connection is properly made, there
23 should be approximately half of the total length of
24 thread still visible on the threaded rebar to which the
25 female coupler is attached.

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1 So that means that where there is a type B coupler,
2 there will be half of the thread still visible, if the
3 connection is made properly.

4 The diaphragm wall vertical bars generally use
5 a position splice, the type B type, for connecting the
6 cages. That is because rebars within the prefabricated
7 upper cage are rigidly fixed and cannot be turned or
8 screwed into the coupler on the lower adjoining cage.
9 Accordingly, the rebar of the prefabricated upper cage
10 generally has a position splice, type B, coupler
11 attached that can be wound down onto the threaded rebar
12 already installed in the lower cage.

13 Checking that the couplers were properly connected
14 primarily involves checking that they are fully
15 tightened, and checking the amount of thread visible
16 either by tape measure or visually or both.

17 One then proceeds to an inspection and a hold point.
18 Only after that hold point has been released is Intrafor
19 permitted to proceed to the next stage, which is to use
20 the tremie pipe to pour the concrete.

21 Part C, Intrafor completed the diaphragm walls
22 properly and as instructed.

23 Intrafor has, as I have previously said, no design
24 responsibility for the permanent diaphragm wall works.
25 Intrafor constructed the walls in accordance with the
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1 design and the instructions that it was given by others.

2 Intrafor was not involved in the alleged demolition
3 of any parts of the East Wall, or indeed any other wall.
4 If any such demolition took place, it was after Intrafor
5 had completed and handed over the diaphragm walls.

6 Intrafor built the whole of the East Wall to its
7 original design height, save for five panels: EH104,
8 105, 106, 108 and 109, to which my learned friend has
9 already referred in his opening. Those five panels were
10 cast in April and May to June 2015.

11 When it comes to those five panels, Intrafor built
12 and installed the reinforcement cages to their full
13 height. So the cages were installed to the full height.
14 Intrafor was, however, instructed, after the issue of
15 the shop drawings, to pour the concrete only to a lower
16 level of around 2mPD for those panels. In other words,
17 the cages are full height, the concrete was only poured
18 part of the way up. Intrafor did that, leaving the
19 rebar cage intact and at its full height.

20 The instructions to pour the concrete to the reduced
21 heights were not given by way of a formal site
22 instruction or similar. They were, however, evidenced
23 in writing by way of emails and, in the case of EH104,
24 by a manuscript note on the concrete pour record.
25 I should say that we have not yet found the emails

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1 dealing with each and every one of those five panels,
2 but we certainly have the emails for a number of them
3 and the reasons -- and they were all instructed in
4 a short period of time.

5 Intrafor does not know the full background or
6 rationale for the instruction to pour the concrete to
7 the reduced height whilst leaving the relevant
8 reinforcement cages at their full height. Intrafor at
9 the time was told that this had to do with anchorages
10 for the slabs. It would appear, although Intrafor was
11 not deeply involved in this, that this had to do with
12 a buildability issue that had been resolved in 2013. In
13 effect, what happened in 2013 was that there were
14 concerns about how easy it would be to build the top of
15 the wall, because of the amount of steelwork involved,
16 and in particular issues about whether the amount of
17 steelwork would impede the flow of concrete. Aligned to
18 that there was also a buildability issue in relation to
19 the tremie pipe. In effect, the initial design for the
20 top of the wall was such that there was no space for the
21 tremie pipe to be installed.

22 Those issues were referred to those with design
23 responsibility and were solved, and Intrafor was
24 instructed to build the works in that manner, which
25 effectively involved a number of changes. One change
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1 was the removal, as my learned friend has said, of some
2 U-bars at the top of the wall. Another change was to
3 re-allocate the rebar at the very top of the wall.
4 Originally, there were two rows of rebar that went
5 across the whole face. That was redistributed into
6 three rows, with a gap in the middle of those rows to
7 allow the tremie pipe.

8 Those solutions were instructed to Intrafor.
9 Intrafor of course discussed them and took part in the
10 process of identifying what the issues were, but the
11 solutions were for others.

12 It would appear that in early 2015, other parties
13 concluded that there may or may not be some design
14 ramifications from the changes that Intrafor had been
15 instructed to follow, and in particular there was
16 a suggestion at some point in 2015 that it might be
17 necessary to install anchorages for the slab into the
18 top of the wall. That was a matter which was not for
19 Intrafor. Intrafor was not ultimately instructed to
20 make any changes or to install anchorages, and nor was
21 it for Intrafor to look at the design or engineering
22 issues. Intrafor was a "build only" contractor.

23 And it would appear, although Intrafor has a limited
24 knowledge and, to a certain extent -- and I am now in my
25 opening drawing upon material that is becoming visible
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1 through the process of this Commission -- the simple
2 reality is that, at the time, Intrafor were instructed
3 to pour these five panels to a lower level.

4 For completeness, I should add that Intrafor was
5 never instructed to do any further work on those five
6 panels. Intrafor completed its construction of the
7 diaphragm walls by leaving the full height of the
8 reinforcement cages for those five in place and the
9 concrete at a lower level. Intrafor did not then do any
10 further work and was not part of anything that happened
11 thereafter.

12 Intrafor commenced work at site in May 2013, and as
13 I've said it installed the first panel on 26 July 2013.
14 The final panel of the diaphragm wall, EH78, was
15 completed on 27 June 2015, and following the completion
16 of the final panel, Intrafor carried out pumping tests
17 to draw down the groundwater, and those tests took place
18 between the end of June 2015 and 14 January 2016. This
19 marked the completion of Intrafor's works.

20 Buildings Department have reviewed all of the
21 as-built information and records submitted to it by MTR
22 in relation to the diaphragm wall work, including that
23 work carried out by Intrafor, and the diaphragm wall
24 package was recognised by BD as complete on 5 May 2017.

25 It is important, perhaps, in light of my learned
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1 friend's opening, to say this: that Intrafor, of course,
2 provided as-built information for the process that went
3 to BD. Ultimately, it was MTR who has the competent
4 person or provided the competent person who had to put
5 together that package and who presented it to MTR. It
6 was, however, something to which we contributed but were
7 not wholly responsible for.

8 There were, as my learned friend has said, six
9 batches of information. Those were dealt with by
10 a lengthy process that started in January 2015 and
11 concluded in 2016. That was a meticulous process and,
12 certainly as far as Intrafor is aware, represented the
13 as-built conditions of the wall that they built and
14 left. It is not, however, possible for Intrafor to
15 comment on whether that represents the current as-built
16 status of the walls.

17 Finally, if I may, can I turn to some erroneous and
18 wholly unfounded allegations that have appeared in
19 various media outlets and which formed the basis of the
20 first round of questions from the Commission to
21 Intrafor. There is a video that Mr Gillard will be
22 shown tomorrow and will be giving evidence on. That
23 video shows two workers, one with a wrench, and it is
24 not, as has been portrayed in the media, a video of the
25 diaphragm wall cages in their final form. Indeed, it is

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1 not even a video of the rebar cages at the diaphragm
2 wall work face itself. That video, which we are told
3 was taken in July 2013, shows clearly reinforcement
4 cages arranged horizontally and in the L-framed
5 platform. That platform is located in the steelyard.
6 The video does not show cages arranged vertically, as
7 they are in the diaphragm wall itself. The horizontal
8 arrangement is very clearly visible, as is the L-frame
9 platform, as is a tell-tale yellow beam which is
10 visible. That beam is a beam that runs around the
11 steelyard and was used prior to Intrafor's involvement
12 for some sort of lifting equipment. That beam is not
13 found at the work face.

14 In short, the video was not and does not show
15 Intrafor's work at the diaphragm wall.

16 If -- and we do not know -- but if the video was
17 taken in July 2013, what it does show is the trial
18 assembly of the single-, double- and triple-layer cages
19 that I have previously referred to. That process, as
20 I said, was not adopted for the triple-layer cages after
21 July 2013 because of the problems in connecting and most
22 particularly disconnecting the cages. Indeed, it is
23 thought that the video most probably shows cages being
24 disconnected, not actually connected but disconnected,
25 because of the direction in which the worker is turning

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1 the wrench.

2 In any event, even if the video did show the
3 connection of cages in the steelyard, it does not show
4 the cages in their installed state. The cages would
5 still have to be disconnected, transported to the work
6 face, and re-connected in their vertical arrangement.
7 That was done, over the course of several days. It was
8 the first panel. Everyone was paying particular
9 attention to it. There are full sets of records signed
10 off showing inspection by Intrafor, Leighton and MTR,
11 and that all of those connections were properly made and
12 checked before cages were lowered down.

13 There are two photographs circulating in the media
14 and which formed part of the Commission's questions,
15 which show cages in their vertical state. So these are
16 photographs of cages at the work face, not the yard.

17 We are told that those photographs were taken in
18 July 2013, and that would appear to be the case,
19 although we cannot confirm it for certain, because if
20 you blow up one of the photographs and look carefully,
21 there is a chalk mark for the tremie pipe location and
22 the chalk mark says "EM98", which was the first panel.
23 So that is consistent with the photographs having been
24 taken in July 2013.

25 It is not, however, known what day or time the
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1 photographs were taken. The installation and connection
2 took place -- I misled myself -- in fact from 26 July to
3 31 July, not the 29th as I indicated earlier. So it
4 took place over five days. And there most certainly
5 would have been times during that period when the
6 connections were not yet fully made and so therefore you
7 could take those photographs showing improperly
8 connected couplers, because it was a work in progress.
9 And indeed often it was necessary to take some time to
10 get everything aligned, sometimes by releasing couplers
11 that you had already connected, slackening off, letting
12 things come back to a more vertical position, and then
13 having another go.

14 As I said, that process was completed. A full set
15 of inspection records for that panel has been produced,
16 and particular attention was paid by all parties because
17 it was the first panel. As I have already indicated,
18 the metal wire around the cage does not show that the
19 works are complete, as in one commentary in the media.
20 It's in fact a tie wire that simply shows that the cages
21 were prefabricated, because that tie wire is an inherent
22 part of the prefabrication process.

23 Further, and for the avoidance of any doubt
24 whatsoever, Intrafor did not ever unlawfully cut or
25 shorten steel bars and is not aware of any others having
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1 done so. Certainly no such cutting or shortening ever
2 took place on the diaphragm wall, irrespective of what
3 may or may not have occurred on other parts of the work.

4 Finally, I turn to water seepage and cracking.
5 Intrafor wishes to make it clear to the Commission that
6 it has not seen any evidence to support the suggestion
7 that the reason why cracks have appeared in the
8 diaphragm walls is due to steel bars not being properly
9 screwed into the couplers. That was a suggestion made
10 in an early media commentary which again was the subject
11 of a question by the Commission.

12 Intrafor is not aware of any evidence that shows
13 that the steel bars in the diaphragm walls were not
14 properly connected at all. To the contrary.

15 Further, it will be apparent to the Commission, as
16 evidence proceeds, that it is normal for cracks, some
17 cracks, in the diaphragm walls to appear, as with any
18 concrete structure. Indeed, this is expressly
19 recognised by the sub-contract, which sets out
20 tolerances for cracks. Intrafor has attended the site
21 since the completion of the diaphragm wall to address
22 non-conformance reports. Intrafor, during those
23 inspections, has not seen signs or been notified of
24 structural cracks, which would be concerning, in the
25 diaphragm wall. Intrafor has not seen signs of or been

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1 notified of any defect or cracking or anything else that
2 would be a cause for concern.

3 Furthermore, at no point has any stakeholder in the
4 project ever suggested or notified Intrafor that there
5 are structural concerns or serious concerns about
6 cracking or water seepage.

7 Finally, Intrafor has submitted several witness
8 statements from its managing director, Mr Gillard, to
9 address matters of interest to the Commission, and he
10 will be giving evidence, on the current timetable,
11 tomorrow.

12 Sir, unless I can assist you any further.

13 CHAIRMAN: Fine. Thank you very much. It's nearly 10 to --
14 shall we -- just a ten-minute adjournment. Thank you
15 very much.

16 (11.50 am)

17 (A short adjournment)

18 (12.04 pm)

19 MR PENNICOTT: Sir, before Mr So goes next, can I just
20 mention this? I've had a helpful and constructive
21 discussion with both Mr Li for Pypun and Mr Connor for
22 Atkins.

23 CHAIRMAN: Yes.

24 MR PENNICOTT: They are content, indeed seem reasonably
25 keen, to stay here for today and tomorrow to hear all

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1 the opening addresses, and they would like to reserve
2 the position of saying a few words to you at the end of
3 that process.

4 CHAIRMAN: If they wish, yes.

5 MR PENNICOTT: Yes.

6 CHAIRMAN: Good. Thank you.

7 Sorry, before we proceed further, I'm going to leave
8 it for counsel to consider this. The option is mine at
9 the end of the day, but I'm wondering if we may not make
10 better time if we were to start at 9.30 in the morning
11 rather than 10.00. I appreciate that there's the
12 tyranny of distance, although that tyranny is benign in
13 the present case, and I also appreciate that it is often
14 necessary for counsel to have their meetings before they
15 start and to work things out for the day. But it may be
16 necessary, even if all of you think 10 o'clock is fine,
17 to move it to 9.30 later in the exercise. At this early
18 stage I think we can probably make fairly good progress
19 and I'm happy to abide by what you may think generally,
20 but later, if we are falling behind, I think we will
21 certainly have to go to 9.30.

22 But if you could give me an indication, through
23 Mr Pennicott, say tomorrow morning. We will start again
24 tomorrow at 10.00.

25 MR PENNICOTT: Yes. Sir, I will take soundings throughout
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1 the course of the day.

2 CHAIRMAN: Thank you.

3 MR SO: May it please you, sir.

4 CHAIRMAN: Yes.

5 Opening submissions by MR SO

6 MR SO: I appear with my learned friend Mr To for China
7 Technology. The opening submission of China Technology
8 goes to three different areas, first by way of
9 a bird's-eye view I wish to highlight the factual
10 context insofar as China Technology sees it. The second
11 part, I intend to go through the role and nature of
12 evidence that witnesses of China Technology are about to
13 give in this Inquiry. And lastly, if I may, to respond
14 in a macroscopic way to my learned friend's opening
15 submissions regarding the evidence of China Technology.

16 Sir, since 10 July 2018, when the Chief Executive
17 appointed this Commission of Inquiry, China Technology
18 were sent Salmon letters and were also required to give
19 witness statements in satisfaction of the terms of
20 reference stipulated by the Chief Executive-in-Council.

21 Pursuant to those directions of the Commission,
22 China Technology has furnished the Commission with
23 different witness statements which I wish to briefly
24 highlight the witnesses that China Technology is about
25 to call:

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1 The first being Mr Poon Chuk Hung, Jason, the
2 managing director of China Technology. I wish to add
3 that, after submitting the opening submission, the
4 a third witness statement dated 11 October 2018 has also
5 been filed;

6 Mr But Ho Yin, Ian, the assistant foreman of China
7 Technology. Again, after the time of the opening
8 submission a third witness statement dated 12 October
9 2018 has also been filed;

10 Mr Chu Ka Kam, the foreman of China Technology;

11 Mr Li Run Chao, assistant foreman of China
12 Technology; and

13 Mr Ngai Lai Chi, Thomas, superintendent of China
14 Technology.

15 Sir, the opening submissions of my learned friends
16 have already extensively, if not meticulously, covered
17 the factual background of the Shatin to Central Link.
18 I do not think I can helpfully add further to that, and
19 without doubt this Commission is also very familiar with
20 the scope of the sub-contract.

21 I don't propose to reiterate the particulars but
22 I wish to merely highlight a few points insofar as China
23 Technology is concerned. In the SCL, Hung Hom Station
24 plays an important role as it is the interlinking station
25 between the EWL and the NSL. As such, Hung Hom Station

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1 has to be extended to accommodate two additional
2 platform slabs for EWL and NSL, and SCL 1112 is
3 precisely the sub-contract responsible for the
4 extension.

5 On 28 May 2015, China Technology became
6 a sub-contractor of Leighton and was responsible for the
7 following works under SCL 1112, namely EWL slab
8 construction of areas A, B and C; the NSL slab
9 construction of areas A, B and C; the EWL and NSL of
10 area HKC; the roof and base slab of NSL; and railway
11 walls in the South Approach Tunnel.

12 That said, staff of China Technology did not
13 commence work in the Hung Hom Station construction site
14 until late July 2015. Further, Leighton orally did not
15 require China Technology to participate in the works of
16 EWL slab construction of area A and part of area C1.
17 Those were, nonetheless, not on written records.

18 In order to allow the information to flow amongst
19 the staff of China Technology, managing staff of China
20 Technology responsible for SCL 1122 would hold lunch
21 meetings on a regular basis which were usually held in
22 China Technology's temporary offices inside the Hung Hom
23 Station construction site. So the gist of the evidence,
24 in essence, given by Mr Poon and other staff members of
25 China Technology is what they saw themselves in the

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1 Hung Hom Station construction site or what transpired in
2 the course of the lunch meetings that they had in the
3 Hung Hom Station China Technology temporary offices.

4 The exposure of the defective works surfaced to the
5 public starting from some sort -- my learned friend
6 Mr Pennicott has mentioned -- of media coverages. The
7 issue then fermented and escalated after different
8 offices of involved parties have responded to media
9 enquiries and also attending to the subcommittee
10 meetings of the Legislative Council. Simply to assist
11 the Commission, we consider it fair to tabulate those
12 major incidents in our opening submissions, and those
13 are tabulated in paragraph 9 of the written submission.

14 To go through the list briefly, sir: on 20 March
15 2018, the Oriental Daily first reported, according to
16 a source, that MTRC staff discovered, during their
17 inspection, water leaking problems at the Northern
18 Tunnel. MTRC confirmed that incident, saying it ordered
19 reconstruction of the part and the inspection of similar
20 connection points. That report was attached with
21 photographs and mentioned the existence of an attached
22 threaded rebars to couplers.

23 On the same day the MTRC responds to media
24 enquiries, issued a press statement, clarifying that in
25 August 2017, the engineering staff spotted water seepage
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1 at the newly completed concrete connection joints of the
2 SCL NSL tunnel during a routine site inspection. Yet
3 the situation did not improve, despite a number of
4 mitigation measures. Further detailed inspections were
5 carried out in February 2018 which a portion of the
6 concrete on the surface of the tunnel was removed,
7 revealing that the workmanship of the reinforced
8 concrete, including the steel bars, did not meet
9 specifications and required standard.

10 On 30 March 2018, Apple Daily reported, in a series
11 of newspaper articles, that they from a source got hold
12 of photographs, videos and email correspondences between
13 China Technology and Leighton that threaded rebars were
14 being cut in September 2015. The report mentioned
15 an estimation of up to 16 per cent of the couplers were
16 being inappropriately connected but concrete was
17 nonetheless poured.

18 On the same day, MTRC issued a press statement
19 saying that the news reports "carried a misleading
20 heading and content which may cause unnecessary public
21 concerns". In the same statement, MTRC clarified that
22 as early as in December 2015, MTRC engineering staff had
23 discovered defective workmanship, but those were already
24 rectified by the contractor, which was Leighton
25 according to the context, and the sub-contractor, which
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1 was not named in the press name.

2 The press statement also said, "It is not uncommon
3 that rectification and improvement works are required on
4 reinforced concrete structures during the construction
5 process."

6 On 1 June 2018, China Technology issued a public
7 statement. The same day, representatives of MTRC and
8 THB attended the Subcommittee on Matters Relating to
9 Railways of the Legislative Council.

10 On 6 June, MTR held a press conference. The same
11 day, Ming Pao reported the cutting of threaded rebars by
12 staff in the uniform of Leighton.

13 On 7 June 2018, representatives of MTRC attended the
14 radio programme "On a clear day" of Hong Kong Commercial
15 Radio.

16 On 9 June, MTRC issued a public release confirming
17 that there were defective steel bars.

18 On 12 June, the Chief Executive-in-Council appointed
19 the Commission of Inquiry.

20 On 15 June, MTR submitted a report to the Highways
21 Department.

22 On 27 June 2018, MTR issued a statement criticising
23 China Technology. Mr Poon on the same day attended
24 an interview of "The tipping point" of D100.

25 On 28 June 2018, Mr Poon attended an interview of
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1 "On a clear day" of Hong Kong Commercial Radio and
2 another interview of RTHK.

3 After the preliminary hearing in 24 September, two
4 important and significant incidents occurred which China
5 Technology wish to highlight to this Commission. The
6 first being on 4 October 2018, where the expert adviser
7 team, through Mr Frank Chan, Secretary for Transport and
8 Housing, told the press that they were considering to
9 cut open part of the structures of Hung Hom Station, to
10 ascertain whether the works were up to standard.

11 The other matter which China Technology sees to have
12 importance would be on 8 October 2018 where the
13 Development Bureau, in accordance with the contractor
14 management handbook, suspended Leighton from tendering
15 for all works categories under which it is listed on the
16 list of approved contractors for public works and of
17 approved suppliers of materials and specialist
18 contractors for public works for a period of 12 months;
19 and another three months from tendering for the work
20 categories of "Buildings (Group C)" and "Roads &
21 Drainage (Group C)" which will take place after the
22 suspension of the initial 12 months.

23 If I may, this brings me to the second chunk, where
24 I wish to highlight the role and nature of the witnesses
25 of China Technology. I wish to state at the outset that
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1 those instructing me have informed me that they are
2 going to make application to this Commission, which
3 I understand will be dealt with by those instructing me
4 with the legal representatives of the Commission, to
5 crave leave for supplying a volume of up to 21,718
6 photographs and videos regarding those photographs and
7 videos taken at the site of Hung Hom Station.

8 I understand that those materials have already been
9 supplied to the police force and those materials have
10 already actually, in the form of an index, been provided
11 in the attachments in the police stations. It is just
12 China Technology in the course of reviewing, taking time
13 to review, those photographs and videos, which no doubt
14 are in great volume, and thus would require the time to
15 do so. I understand that those instructing me will be
16 communicating closely with the representatives of the
17 Commission.

18 As far as live evidence is concerned, those
19 witnesses that I have just highlighted will be giving
20 evidence before this Commission.

21 As far as China Technology sees it, the crux of the
22 matter of this Inquiry is essentially threefold, namely,
23 first, was there any cutting of the threaded rebars in
24 the Hung Hom Station construction site; and two, if so,
25 who was or were the parties actually cutting and/or

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1 directed the cutting of those threaded rebars; and
2 third, if there was cutting of the threaded rebars,
3 where did the cutting occur and what was the number of
4 threaded rebars involved?

5 To put it succinctly, insofar as China Technology is
6 concerned, the evidence primarily surrounds paragraph 35
7 of my learned friend Mr Pennicott's submission. That's
8 the question that China Technology primarily seeks to
9 address.

10 As will be apparent from the witness statements, the
11 main role of the witnesses of China Technology is to
12 give factual evidence as to whether they saw, in the
13 Hung Hom Station construction site, themselves
14 information that was shared amongst the staff of China
15 Technology in the course of SCL 1122.

16 That brings me to paragraph 13 of my opening
17 submission. In paragraph 13 is a table which
18 tabularised the incidents that were actually witnessed
19 by certain witnesses of China Technology.

20 In August 2015, in area C1, Mr Poon witnessed three
21 males wearing vests of Leighton cutting threaded rebars
22 using a grinding machine between bays 2 and 3.

23 In September 2015, area C1, on two occasions Mr But
24 observed two to three workers wearing vests of Leighton
25 cutting threaded rebars using a red cutting or grinding
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1 machine. Also in September 2015, Mr But reflected to
2 Mr Poon that someone was cutting threaded rebars. In
3 the same month, Mr Ngai saw staff of Leighton cutting
4 threaded rebars and pretending to have properly
5 installed the threads into the couplers.

6 Around 15 to 20 September 2015, in area C1, during
7 a joint site visit inspection with Mr So Yiu Wai and
8 Mr Khyle Rodgers of Leighton, Mr Poon and the two saw
9 a male wearing vest of Leighton cutting threaded rebars
10 using a hydraulic disc cutter.

11 On 22 September 2015, Mr Poon saw staff of Leighton
12 cutting threaded rebars with a hydraulic disc cutter.

13 In late October 2015, at area C of EWL, Mr Chu saw
14 two workers wearing vests similar to those of Leighton
15 cutting threaded rebars using a green grinding/cutting
16 machine.

17 CHAIRMAN: Sorry, just so that I understand -- so what was
18 seen was the cutting of a threaded rebar, not what
19 happened to the threaded rebar thereafter?

20 MR SO: Indeed, sir. It's the cutting itself, the process
21 of cutting.

22 CHAIRMAN: So whether it was intended for use by inserting
23 into a coupler or whether it was some sort of excess
24 rebar that was just going to be used for lapping, these
25 witnesses wouldn't have known?

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1 MR SO: I'm afraid I can't put anything higher than that.

2 As far as the evidence appears it's just the cutting
3 itself, the process of cutting.

4 CHAIRMAN: Thank you. It's just that I wanted to see how
5 wide the evidence is likely to be in that regard. Thank
6 you.

7 MR SO: Yes, I'm grateful.

8 In any event, I understand that the witnesses would
9 make necessary clarifications in the course of the
10 evidence.

11 CHAIRMAN: Of course.

12 MR SO: I'm grateful.

13 Going back to the table, sir. In December 2015,
14 area C, Mr Ngai saw two males in uniform cutting
15 threaded rebars at night using a grinder/cutter.

16 In January 2016, area B of EWL, Mr Li saw five to
17 six workers, not wearing any uniforms, cutting the
18 threaded rebars.

19 In late January 2016, at area A and area HKC of NSL,
20 Mr Li saw five to six workers in uniform cutting
21 threaded rebars.

22 In February 2016, at area C3, on two separate days,
23 Mr But saw workers wearing vests of Leighton cutting
24 threaded rebars using the cutting/grinding machine. The
25 workers cut the threaded rebars two to three times on
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1 each of those two days. Also in the same month, in
2 February 2016, near area A1, Mr But saw about
3 20 threaded rebars lying on the floor covered by a large
4 polyethylene cloth.

5 In mid-April 2016, at area HKC, Mr But saw about
6 30 threaded rebars lying on the floor, with only about
7 2cm of the threading remaining on each of them.

8 In mid-June 2016, at area A of NSL, Mr Chu saw two
9 workers wearing vests similar to those of Leighton
10 cutting threaded rebars using a red machine.

11 Sir, pausing at this juncture, it would perhaps be
12 convenient for me to respond to the contentions raised
13 by my learned friends in their written submissions, in
14 particular regarding those incidents that have been
15 observed by Mr Poon himself or indeed other witnesses
16 that China Technology is intending to call. I only
17 intend to respond to them macroscopically and leave it
18 to a more convenient moment to make a detailed response
19 regarding those contentions.

20 So far as China Technology understands, in essence
21 the gravamen of the complaints was that there was no
22 basis for China Technology to allege that there was
23 a widespread practice of defective works in the
24 construction site. Their criticism was, as I would
25 intend to summarise it, threefold, the first being that
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1 staff of China Technology simply lacked the expertise in
2 steelworks and that there were limited opportunities to
3 actually observe the malpractice, if any at all. And
4 two, to put it bluntly but frankly, if Mr Poon was to be
5 right, then everyone on the site must be wrong. And
6 three, that it would be illogical, based on economy,
7 based on the supervision plan, for the cutting of the
8 threaded rebar to occur given the multi-tier monitoring
9 system in place.

10 Allow me to summarise those criticisms. The attack
11 on the evidence of Mr Poon and indeed the witnesses was
12 basically because MTRC, Leighton and Fang Sheung were
13 all saying the same story, they were corroborative, and
14 therefore, if I may, the majority rules, therefore
15 Mr Poon was wrong.

16 We merely wish to highlight one overt fact that we
17 see from the evidence. Leighton agrees that eight bars,
18 on three occasions, at area C of EWL slab, were cut.
19 The overt fact begs the question: why didn't the system
20 of supervision which MTRC are at pains to advocate ever
21 allow this to occur? The overt fact also begs the
22 question: where comes the instrument or machine to cut
23 the threaded ends of the rebars?

24 To cut a long story short, this overt fact cries out
25 to this. There was the very existence of the fact that

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1 threaded ends of a rebar were cut, indeed cut, in the
2 Hung Hom Station construction site at EWL slab. From
3 clear, undisputed admissions of the witnesses of
4 Leighton, there were indeed cutting of the threaded ends
5 of the rebars, it was not a damaged threaded end, it was
6 not a defect in bond, it was simple. It was cutting of
7 the threaded ends of the rebars.

8 The overt fact flies in the face of the picture that
9 Leighton, MTRC and Fang Sheung intended to paint, that
10 their evidence corroborates with one another.

11 So to distil the complications, the overt fact is
12 this: Leighton accepts that there was at least this
13 cutting of threaded ends of the rebar. It is now their
14 submission, collectively with MTRC and collectively with
15 Fang Sheung, that it only took place in only three
16 occasions, it only covers eight rebars, and it only
17 occurs in area C and no more. That's it. That's the
18 evidence. That's the evidence that MTRC, Leighton and
19 Fang Sheung intend to paint.

20 I say no more and do not comment anything on that
21 picture. I only wish to say the facts speak for
22 themselves and it is clear whether this is true and
23 where the truth lies will be determined by this
24 Commission of Inquiry.

25 That said, while Leighton accepts this overt fact,
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1 Leighton claims that even if Mr Poon is right, given the
2 "minimal differences between the overt fact", readily
3 accepted by Leighton, the defective steelworks witnessed
4 by Mr Poon was only a minimal difference between the
5 incidence observed and it is therefore unworthy for the
6 costs and expense of the Inquiry.

7 So the picture intended to be portrayed, again, was
8 that the cuttings accepted by Leighton were simply
9 a single and isolated and individual episode.

10 I wish to highlight one point, that China Technology
11 is only one of the many, many sub-contractors under SCL
12 1122. China Technology is certainly not always, at all
13 times, on the construction site, and it also goes
14 without saying that China Technology is not playing the
15 part of supervising the quality of work in the
16 construction site. Nonetheless, China Technology
17 observed those practices. So, if those evidence is to
18 be believed, one would therefore have no difficulty to
19 come to infer that what was seen must be only the tip of
20 an iceberg or, to put it rhetorically and
21 metaphorically, there was never just one cockroach in
22 the kitchen.

23 This was apparently not the version of events that
24 was accepted by Leighton, MTRC and Fang Sheung. Rather,
25 the picture accepted was that Mr Poon was acting in

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1 concert with the staff of China Technology to make
2 everything up. But it just so happened that MTRC and
3 Leighton also realised that on three occasions there
4 were cutting of eight bars. This was accepted. There
5 were safety systems in place, there were supervisions by
6 Leighton, there were supervisions by MTRC, but it just
7 so happened that eight bars on three occasions were cut,
8 and it just so happened that MTRC realised this when
9 inspection took place, and it just so happened that
10 no one on the site, not MTRC, not Leighton, not the
11 staff of Fang Sheung, knew about who actually cut it,
12 and it just so happened that what was observed by the
13 staff of China Technology was precisely someone cutting
14 the bars, precisely what was revealed on the site and
15 precisely what was accepted by Leighton.

16 It would be simple to gloss over each and every
17 incident observed by the witnesses by saying that it was
18 merely a single and isolated or individual episode. It
19 would also be easy for one to use adjectives, namely
20 negligible or minimal, to describe the incidents, but
21 the overt fact is the thing China Technology wish to
22 highlight. The overt facts shed light on an important
23 clue. At least someone was cutting the threaded ends of
24 rebars on the site, and that person has the instrument
25 to cut it.

26

1 This could not easily be explained away by
2 discrediting a particular witness or trying to belittle
3 the evidence given by eye-witnesses, by amplifying how
4 magnificent the supervisory system can be. One must not
5 overlook one fact, that in each incident China
6 Technology now says of witnesses does not entail that
7 only one rebar or one threaded end of the rebar was cut.
8 As to how many threaded ends of the rebar were cut, had
9 been cut, were cutting or would be cut after the
10 incident occurred, no one knows. So that is where the
11 public safety point comes into play.

12 There were contentions that Mr Poon did not ever
13 report the matter to anyone else and only did so out of
14 commercial aggravations. That was not the case.

15 This conveniently also brings me to paragraph 14 of
16 my opening submission. In light of the development of
17 the incidents, Mr Poon actually did report the matter of
18 cutting threaded rebars to Leighton, the contractor, and
19 MTRC, the employer.

20 First, in September 2015, Mr Poon reported the
21 matter to the then superintendent and senior
22 superintendent of Leighton, a joint site inspection was
23 subsequently conducted. That joint site inspection,
24 sir, is exactly the incident that occurred around 15 to
25 20 September 2015, I have mentioned just earlier, where
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1 both Mr So, Mr Rodgers and Mr Poon actually witnessed
2 the cutting of -- two males cutting threaded rebars
3 using a hydraulic disc cutter.

4 The second being in September 2015, where Mr Poon
5 confirmed --

6 CHAIRMAN: Sorry, in respect of the first one, just for your
7 assistance, will there be evidence of any written record
8 of that particular meeting?

9 MR SO: On that point, I think I will have to clarify with
10 those instructing me, but thank you, sir. I will
11 definitely seek to address that point when Mr Poon
12 specifically gives evidence.

13 CHAIRMAN: Thank you.

14 MR SO: The second occasion being in September 2015, when
15 Mr Poon confirmed with Mr Aidan Rooney, the then general
16 manager of MTRC, that he himself witnessed, and was
17 informed by the staff of China Technology, the practice
18 of cutting the threaded rebars in the Hung Hom Station
19 construction site.

20 Third, between September --

21 CHAIRMAN: Sorry, again, please forgive me. It's my bad
22 reading of this. I read it slightly ambiguously there.
23 Who witnessed it?

24 MR SO: Mr Poon.

25 CHAIRMAN: Confirmed with Mr Aidan Rooney that he himself
26

1 witnessed --

2 MR SO: I do apologise.

3 CHAIRMAN: So it's not Mr Rooney witnessing, it's Mr Poon?

4 MR PENNICOTT: I'm sorry, I'm grateful, sir.

5 The third incident is between September 2016 and
6 January 2017, where Mr Poon discussed the matter with
7 Mr Anthony Zervaas of Leighton about possible remedial
8 works for the defective steelworks. On 6 January 2017,
9 Mr Poon sent an email to Mr Zervaas reporting, amongst
10 other things, this matter.

11 On 15 September 2017, Mr Poon sent another email to
12 Mr Zervaas. On the same day, Mr Poon reported the
13 matter to the THB, which was also cced to Leighton.

14 There were also two conferences held between
15 Mr Poon, Mr Zervaas and Mr Karl Speed, the general
16 manager of Leighton, on 15 and 18 September
17 respectively. A joint site inspection was conducted by
18 Mr Poon and Mr Zervaas on 16 September 2017.

19 Sir, those are basically the points that I wish to
20 submit. As my learned friend Mr Ian Pennicott has
21 mentioned in his opening submission, one of the main
22 purposes of the Commission is to look to the facts that
23 actually occurred in Hung Hom Station construction site.
24 There were also suggestions that the EAT has proposed
25 opening up part of the areas already constructed in

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1 Hung Hom Station. So far as China Technology is
2 concerned, we put no higher than that, that once it was
3 opened up, the truth was inside the concrete.

4 Just before I sit down, those instructing me remind
5 me that China Technology urge me to undertake to the
6 Commission that they will cooperate fully with the
7 Commission.

8 Unless I can assist, sir, any further, this would be
9 my submission.

10 CHAIRMAN: Thank you very much.

11 MR PENNICOTT: Sir, before -- I think it's Ms Chong next.

12 My learned friend Mr So mentioned towards the beginning
13 of his address to you -- seemed to foreshadow some
14 application about photographs. I'm afraid I didn't
15 quite follow what was coming. It's not something I'm
16 aware of. I don't know whether --

17 CHAIRMAN: I may have misunderstood, but my reading of it
18 was that there was a request for a great many
19 photographs, and that request has been met, but
20 individual -- ah, in which case I have misunderstood
21 it -- but individual identification of photographs is
22 an ongoing work; would that be right or would that be
23 wrong?

24 MR SO: Sir, you have it right, but there is one thing we
25 add in our application, which would be photographs

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1 supplied by China Technology to the Commission regarding
2 the number of, in the order of 20,000-odd, photographs
3 and videos. Those photographs and videos have been
4 already disclosed to the police force, and the police
5 statements have already been submitted to the
6 Commission, and at the annexures of the police
7 statements there would be found those files. We are
8 working hard to identify where those files are, and once
9 we have identified all of them we will supply and
10 furnish to the Commission soft copies of those
11 photographs and videos to the Commission.

12 MR PENNICOTT: Sir, there are two separate things here, with
13 respect. First of all, because of an application or
14 notice of a potential application that we've received
15 from Leighton regarding photographs and mobile devices,
16 and so forth, on 18 October -- page D2/1018 -- those
17 instructing me wrote to those instructing my learned
18 friends for China Technology, making specific reference
19 to the photographs that you see listed there, which
20 I think add up to about 25 photographs or so -- asked
21 a number of questions in relation to those
22 25 photographs and those 25 photographs exclusively, and
23 one sees the questions that were asked. As I say, the
24 backdrop to that request is a pending application by
25 Leightons.

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1 This morning, we received a letter -- not yet in the
2 bundle, I'm afraid -- asking for an extension of time on
3 behalf of China Technology to deal with that particular
4 or those particular questions, and that has not yet been
5 dealt with. They have asked for an extension of time
6 until 25 October to deal with that letter. I understand
7 that, and that's as far as I know on the current state
8 of play. So they have asked for 25 October. It's
9 a matter they haven't raised with you yet but I suspect
10 there won't be any difficulty in giving them the
11 three-day extension they are seeking for that.

12 What my learned friend seems to be talking about is
13 something entirely different, which is not something
14 that we have made any enquiries about, raised any
15 questions about. I'm well aware that when Mr Poon was
16 first interviewed by the police, and when he gave his
17 first witness statement, he provided them with a USB
18 stick, and one wondered at that point in time what was
19 on the USB stick. It all became clear a bit later, when
20 he went and gave a subsequent statement to the police,
21 the police presumably having had an opportunity to go
22 through what was on the USB stick.

23 So when he was interviewed on 31 July this year --
24 D1/831.1 is the English translation -- he then explained
25 to the police the position with regard to what was on
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1 the USB stick, and I understand from reading this fifth
2 witness statement to the police that there were some
3 40,000-odd photographs and videos on the USB stick. But
4 so far as current disclosure to the Commission is
5 concerned, it is limited, as I understand it, unless
6 I've got it wrong, to the 25-odd photographs that we've
7 seen reference to in the earlier letter.

8 Now, if there's going to be an application for the
9 introduction of many, many more photographs, then
10 frankly, the sooner that application is made the better,
11 and an explanation for it is made, and so we can try and
12 deal with it. But at the moment I have no knowledge of
13 any such application.

14 It is right that we have asked, in that letter that
15 I showed you, for the devices -- mobile phones and other
16 devices that might have taken the photographs -- but
17 I think that's a separate point to disclosing thousands
18 and thousands of photographs.

19 So, as I say, at the moment I'm not quite sure
20 whether there is going to be an application; if there is
21 going to be an application, what it comprises; but if it
22 is foreshadowing many, many photographs that frankly
23 none of us have seen at the moment, then it needs to be
24 made pretty quickly, with respect.

25 CHAIRMAN: Just so that I can understand, my perhaps

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1 incorrect initial understanding was that the company had
2 a practice whereby wherever it was working, various
3 workmen would put into a Dropbox their photographs
4 and/or videos, so that that large number, 40,000 or
5 more, might comprise any number of contracts in any
6 number of places in and near Hong Kong.

7 Would that be right?

8 MR TO: Your Honour, if I may. That's correct. What
9 Mr Poon is trying to do, and also my learned friend
10 Mr Ian Pennicott has said -- Mr Poon is trying to
11 identify those photographs that are more particular to
12 this matter on hand, and that's why he, through
13 solicitors, will be instructing us, and writing to the
14 Commission to ask for an indulgence in terms of maybe
15 a week or so to give those photographs so that everyone
16 can see those photographs in the light.

17 CHAIRMAN: Could I ask, while I'm here -- while we're
18 dealing with this -- the question of the hardware for
19 the photographs that have been put forward, is that
20 a matter that can be dealt with on the turn?

21 MR TO: Yes, it can, your Honour, and basically we are
22 trying to deal with it right now, and hopefully, as
23 Mr Ian Pennicott mentioned, for example, we just need
24 a few days to clarify that.

25 CHAIRMAN: But you have no objection in principle or in law?
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1 MR TO: No objection in principle. No.

2 CHAIRMAN: Thank you very much.

3 MR TO: Thank you, your Honour.

4 COMMISSIONER HANSFORD: Could I just ask, to what extent do
5 these photographs refer to paragraph 13 in the opening
6 statement? Are they separate from paragraph 13, or do
7 they supplement paragraph 13?

8 MR TO: Sir, if I may. They actually supplement
9 paragraph 13, and actually paint a picture in terms of
10 giving you a pictorial view in terms of what happened on
11 that day, in that site.

12 COMMISSIONER HANSFORD: Thank you.

13 CHAIRMAN: Yes, thank you.

14 Mr Pennicott, anything further?

15 MR PENNICOTT: No, sir. I'm a little bit confused as to
16 what precisely it is that Mr Poon is doing at the moment
17 with regard to these photographs. He's been asked
18 a series of specific questions in that letter, and we
19 simply, for our part, want him to address those
20 questions and give us the answer to them, and there
21 doesn't seem to be any objection in principle to that,
22 as I understand it.

23 What I'm more concerned about is some rather more
24 expansive exercise that might be going on, which may
25 lead, I don't know, to further photographs being given
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1 to us, or leave being given.

2 CHAIRMAN: So, as I understand it, the hardware question, if
3 I can call it that, is the hardware used in respect of
4 the photographs that have already been made available?
5 We are not after the hardware that may have been used in
6 respect of a very large, amorphous extra number of
7 photographs.

8 MR SO: Exactly.

9 CHAIRMAN: That's at the moment, and my understanding is, as
10 per my question, you have no objection no law or
11 principle to delivering up that hardware so that it may
12 be examined, subject to undertakings not to damage it.

13 MR SO: Exactly. No objection whatsoever.

14 CHAIRMAN: All right.

15 MR PENNICOTT: Sir, I'll say nothing more about that.

16 MR BOULDING: I wonder if I could just put a marker down.
17 I heard my learned friend Mr Chris To say that these
18 photographs, these many thousands of photographs, are
19 going to supplement paragraph 13, and I assume by that
20 that it's going to be suggested that these are yet
21 further examples of malpractice on site.

22 If that be the case, and we are not going to get
23 these photographs for five or six days, I ought to say
24 I'm rather concerned, because on the current timetable,
25 it appears to me that the China Technology witnesses

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1 could well be taking the box tomorrow.

2 CHAIRMAN: I think I may be wrong and I'm sure Mr So can
3 clear it, but just in case I've got it correctly, the
4 reference by Prof Hansford as to paragraph 13 is those
5 photographs which have already been discovered, if I can
6 put it that way, that smaller group of photographs, they
7 relate to paragraph 13. That great, amorphous mass of
8 photographs that were in the Dropbox and that arose out
9 of any number of different contracts is an entirely
10 different matter, and what Mr Poon is doing is going
11 through an exercise to try to identify if any of those
12 photographs in fact relate to the issue at hand or
13 whether they are all or largely extraneous to the issue
14 in hand.

15 MR BOULDING: Obviously, sir, if they are all or largely
16 extraneous, that's not such a problem, but if the
17 exercise reveals, so far as Mr Poon is concerned, that
18 they are supportive of his position as to the industrial
19 scale of this malpractice, then clearly the sooner we
20 get them the better, because I suspect we might want to
21 discuss one or two of them with Mr Poon and his
22 lieutenants.

23 CHAIRMAN: Yes, of course.

24 MR TO: Sir, if I may, I will try to convince our client to
25 give them this week, if that will help everyone here.

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1 CHAIRMAN: It's not just a question of trying to convince
2 your client. It's a question of we need them, because
3 your client, on a logical progression of this Inquiry,
4 will be giving evidence sooner rather than later. So if
5 he has to burn the midnight oil -- I don't say this as
6 a criticism, I would say the same to anybody here -- if
7 you have to burn the midnight oil now that we've
8 started, then so be it.

9 MR TO: Your Honour, I think he will do that.

10 MR SHIEH: If I may add this, at page 81 of the [draft]
11 transcript, Mr To put it rather skilfully. At line 12
12 he said:

13 "They actually supplement paragraph 13, and actually
14 paint a picture in terms of giving you a pictorial view
15 in terms of what happened on that day, in that site."

16 So, first of all, it looks as though he already knew
17 exactly the picture sought to be painted. It's not as
18 if Mr Poon hasn't done it yet. I may be wrong. He
19 might have suffered a slip of his tongue.

20 Secondly, he doesn't actually say they showed
21 cutting of threaded bars or screwing in of threaded
22 bars. He said it rather skilfully, "what happened on
23 that day, in that site", so a bird's-eye view would be
24 what happened on that day in that site.

25 So perhaps my observation is: is it or is it not the
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1 case that Mr Poon still hasn't decided what to make of
2 those photographs, and if so, is it going to be said
3 that those actually show actual cutting, and more
4 importantly screwing or non-screwing onto couplers, or
5 is it just a bird's-eye view for you to know what the
6 site looks like, because it is of crucial importance and
7 he ought to have done it long ago, as I will show in my
8 opening? In fact he says he has done it long ago, as
9 I will show in my opening.

10 MR TO: Your Honour, I don't have any comments to make on
11 that point.

12 CHAIRMAN: All right. Good. Shall we continue with the
13 next --

14 MR PENNICOTT: Yes. Sir, I see it's nine minutes to one,
15 but we need to press on, I guess, unless you want to
16 break now and then start early.

17 CHAIRMAN: Who is next?

18 MR PENNICOTT: It's Ms Chong next.

19 CHAIRMAN: How long are you likely to be?

20 MS CHONG: I think maybe 15 to 20 minutes.

21 CHAIRMAN: Would you rather start now and have it done? We
22 can begin lunch a little bit later.

23 MS CHONG: I think it may be more convenient after lunch
24 then.

25 CHAIRMAN: All right. If you would prefer to go after
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1 lunch, then we'll do that. One hour?

2 MR PENNICOTT: Can we, say, start at 2.15?

3 CHAIRMAN: All right. 2.15. Thank you.

4 (12.53 pm)

5 (The luncheon adjournment)

6 (2.18 pm)

7 MR SO: Sir, just a slight matter before the hearing begins.

8 We have sought clarification with Mr Poon and other
9 members of China Technology. Those instructing me
10 informed me that regarding the letter Lo & Lo gave China
11 Technology on the 18th regarding those questions, those
12 enquiries would be answered as soon as practicable and
13 in any event no later than 25 October.

14 Regarding the 40,000-odd photographs and videos,
15 those that have been mentioned in the course of my
16 opening submission, those will be furnished through the
17 Commission with the condition that Mr Poon himself would
18 not be relying on those as proving particular incidents
19 that would be arising in the course of the evidence.
20 Those would merely form part of the background as
21 photographs and videos that have already been given to
22 the police force, so in order to give the Commission
23 a complete picture those would be disclosed accordingly.

24 Regarding the enquiry raised by Mr Chairman during
25 the course of the opening submission, as to whether

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1 Mr So and Mr Rodgers and Mr Poon visiting the Hung Hom
2 Station construction site as to when the written records
3 were in existence, insofar as we understand there were
4 no such written records, but they would be furnished in
5 greater detail in the course of the evidence of Mr Poon.

6 Those would be my points.

7 CHAIRMAN: Thank you.

8 MR BOULDING: Sir, I am still a bit confused over these
9 many, many thousands of photographs. It seems to me
10 that Mr Poon either relies upon them or he doesn't. To
11 have them put in to somehow give you a complete picture
12 in circumstances where my learned friend says he doesn't
13 rely upon them is, in my submission, a rather
14 unsatisfactory state of play.

15 CHAIRMAN: I agree, otherwise people can say, "Here's a lot
16 of evidence, there's no value to us, probably no value
17 to anybody, but let's dump it on the tribunal", and
18 that's simply not satisfactory. That's not a criticism
19 there. I can understand that perhaps Mr Poon feels that
20 because the matter has been raised, he should make them
21 available. But for myself, as a matter of procedure, if
22 Mr Poon himself is not going to rely upon it, upon any
23 of those photographs, if most of those photographs, from
24 what we understand, by inference, relate perhaps to
25 contracts and work which had nothing to do with the

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1 present issue, I don't see the purpose of just tendering
2 them as a kind of general, "Here we are, if you want to
3 go to the bother of trying to analyse them." I think
4 it's easier just to simply say, if we have a specific
5 request, we will entertain it, but absent a specific
6 request we see no purpose; they have no relevance as far
7 as we are concerned.

8 MR TO: Your Honour, if I may. Thank you very much for
9 that. Mr Poon merely just wants to disclose any
10 information that is available to himself for the
11 Commission, if they want to look at it. He doesn't
12 really want to rely on them at all. But if the
13 Commission doesn't really want to actually adduce those
14 kinds of documents, he is quite happy with that as well.

15 CHAIRMAN: All right. So we will work on the basis he's
16 already shown these documents, these photographs, and
17 other photographic material, to the police --

18 MR TO: That's correct.

19 CHAIRMAN: -- or he's made reference to them. They are
20 there, if anybody should want to obtain enquiries as to
21 them or obtain any of the material that's there.

22 MR TO: That's correct, sir.

23 MR PENNICOTT: Sir, my understanding of what Mr To had told
24 me over lunch, that they were simply going to give us
25 the USB stick and we were just going to say they have no
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1 evidential value unless and until they are actually
2 referred to during the course of the hearing, but if
3 anybody wanted to spend some time looking at 40,000
4 photographs, then they should feel free to do so.

5 CHAIRMAN: All right.

6 MR PENNICOTT: But certainly, as you have indicated, they
7 will have no evidential value, other than the
8 25 photographs or so that are, as it were, in play.

9 CHAIRMAN: Thank you. I think that clarifies the situation.

10 MR BOULDING: Thank you, sir.

11 CHAIRMAN: Yes?

12 Opening submissions by MS CHONG

13 MS CHONG: May it please sir, I represent Fang Sheung
14 Construction Company.

15 Fang Sheung is a sub-contractor of Leighton for the
16 steel reinforcement bar cutting, bending and fixing work
17 on the slabs connecting diaphragm walls in the East West
18 Corridor and the North South Corridor under contract
19 1122.

20 According to the witness statements of Fang Sheung,
21 from Pun Wai Shan and Cheung Chiu Fung, Fang Sheung
22 worked on the site from around August to September 2015
23 until November 2016.

24 The issue in this Inquiry as far as Fang Sheung is
25 concerned is only the proper installation and connection

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1 of rebars to couplers on the slabs. It is Fang Sheung's
2 case that before the pouring of concrete at each hole
3 point, all bar-fixing works had been properly done by
4 Fang Sheung and had been thoroughly inspected and fully
5 approved by both Leighton and MTRC.

6 There are a number of reasons not to doubt the
7 integrity of the work of Fang Sheung. Number one,
8 Fang Sheung's reputation and expertise. Starting from
9 1975, Mr Pun Wai Shan -- "Mr Pun" -- had been working in
10 the bar-fixing industry. In 1980, Pun set up Ying Fai
11 Construction Company specialising in bar-fixing
12 construction work. In 1989, Ying Fai was renamed to
13 Fang Sheung Construction Company. Over the past
14 38 years, Fang Sheung, under the management of Pun, has
15 undertaken bar-fixing works in major construction
16 projects in Hong Kong, for example the Tung Chung Bridge
17 to Chek Lap Kok Airport and the MTR's South Island Line.
18 Fang Sheung, albeit being a small-scale company, is
19 a reputable bar fixer in the industry.

20 It is considered a fraud in the industry in cutting
21 short the threaded rebars pretending that the threaded
22 end has been fully screwed into a coupler. Fang Sheung
23 could not have operated in the industry for such a long
24 time if it had ever engaged in such fraudulent practice.

25 The second reason, Fang Sheung's scope of
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1 contractual duties. Under the sub-contract with
2 Leighton, Fang Sheung provided labour for manual work of
3 screwing the rebars into couplers. Fang Sheung worked
4 according to the instructions of Leighton. The rebars
5 and couplers were provided by Leighton. Should
6 Fang Sheung encounter damaged couplers or defective
7 rebars, which hampered its work, what Fang Sheung had to
8 do was notify Leighton for the latter to find
9 replacement or remedy. This scope of contractual duties
10 was confirmed by Edward Mok, the on-site engineer of
11 Leighton, in his witness statement.

12 It would not be difficult for Leighton to replace
13 the faulty coupler with a new one or order replacement
14 bars from BOSA. BOSA had a manufacturing facility on
15 the site. BOSA was the provider of the coupler and
16 rebars to Leighton, the supplier. The occurrence of
17 such odd bars or thread should be rare. This is
18 according to the witness statement of Intrafor
19 witnesses.

20 In terms of work efficiency, it would only take
21 20 to 30 seconds to completely screw a rebar into
22 a coupler, whilst it would take at least 1.5 to
23 2 minutes to cut a steel bar even with a very good
24 electric cutter being used. Fang Sheung's workers had
25 no reason to engage in a more strenuous and
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1 time-consuming task in cutting the rebars.

2 In any event, Fang Sheung did not have the right
3 tool, namely hydraulic cutter, on the site.

4 Cheung Chiu Fung, the former chief foreman of
5 Fang Sheung, confirmed that he had neither seen nor
6 heard any workers on site fraudulently cutting the
7 threaded rebars.

8 The internal supervision of the bar-fixing workers.
9 Fang Sheung performed the sub-contract solely with its
10 own manpower. There was no further sub-contracting.
11 All bar fixers of Fang Sheung are experienced and
12 longstanding employees. The chief foreman, Mr Cheung
13 Chiu Fung, joined Fang Sheung in 1997. Cheung would
14 take photographs of the work of Fang Sheung and brief
15 the workers the way of bar-fixing required by Leighton.

16 For this project at Hung Hom Station, Fang Sheung
17 employed 38 long-term bar fixers and 30-odd temporary
18 bar fixers. The number of temporary bar fixers varied
19 depending on the manpower needed for the work. Apart
20 from the chief foreman, there were five other foremen
21 supervising the workers. In addition to the foremen,
22 Mr Pun and his son, Mr Pun Kin Lung, were also stationed
23 at the site overseeing the whole team.

24 Assuming all workers worked on the site, the ratio
25 of supervisory staff to workers is about 1 to 8.5.

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1 There was good internal supervision of its workers by
2 Fang Sheung.

3 Number 4, supervision and inspection by Leighton and
4 MTR. There was multiple supervisions and inspections of
5 Fang Sheung by Leighton and MTRC.

6 Leighton directly supervised Fang Sheung. The
7 system of Leighton's supervision and inspection is set
8 out in the witness statement of Raymond Brewster, the
9 group pre-contracts manager of Leighton. In gist,
10 Leighton had a team of technically competent persons
11 working full-time to supervise the works. They
12 conducted multiple routine inspections every working day
13 and two formal inspections for rebar-fixing and pre-pour
14 checks with MTRC.

15 The supervisions in particular are by Mr Edward Mok,
16 graduate engineer of Leighton. He stated that he
17 conducted three to four rounds of site inspection each
18 day, with each round lasting approximately one hour. He
19 would spend three to four hours on site;

20 Mr Andy Ip, sub-agent of Leighton, stated that he
21 conducted site inspection at least once and often twice
22 per day. There were meetings, initially three times
23 a week and later daily, of Leighton with senior
24 representatives of Fang Sheung and other
25 sub-contractors;

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1 Mr Man Sze Ho, assistant engineer of Leighton,
2 stated that he conducted two rounds of site inspection,
3 one in the morning and one in the afternoon. He would
4 spend about three to four hours on the site per day;

5 Mr Chan Chi Ip, site supervisor of Leighton, though
6 not involved in the inspection of Fang Sheung's work,
7 was responsible for supervising the work progress of
8 Fang Sheung. He stationed on the site the whole day,
9 from around 8.30 am to 6 pm, plus overtime if required;

10 Mr Joe Leung, site agent of Leighton, though not
11 involved in the inspection of Fang Sheung's work, was
12 responsible for ensuring Fang Sheung did the bar-fixing
13 work according to Leighton's drawing and instructions.
14 He had regular progress meetings with Cheung of
15 Fang Sheung.

16 Apart from the team of engineers, there were at
17 least four foremen of Leighton supervising Fang Sheung's
18 work. This is from Mr Cheung of Fang Sheung, from his
19 statement to the police.

20 MTRC also monitored the site with their team of
21 engineers, site agents and foremen stationed on the
22 site. They took a proactive role in intervening when
23 the work of Fang Sheung failed their standard. This can
24 be seen from Mr Kobe Wong of MTRC's statement.

25 Fang Sheung had never engaged in any fraudulent
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1 practice of bar cutting and installation. Even if
2 Fang Sheung had ever contemplated such practice, which
3 is denied here, with such thorough supervision, it
4 simply was inconceivable that Fang Sheung could still be
5 able to cut any rebars fraudulently on site, let alone
6 cutting it in a massive scale.

7 Number 5, rectification of defective installation.

8 According to Mr Edward Mok, frontline engineer of
9 Leighton, there were three incidents, the first one
10 being in September 2015, the second in October or
11 November 2015, and the third in December 2015, involving
12 not more than eight cut rebars being defectively
13 installed into couplers. The defective installations
14 were promptly rectified.

15 It was unknown who cut the bars and under what
16 circumstances the bars were cut. The mere fact that the
17 threaded rebars were cut does not necessarily implicate
18 fraud. The issue is whether the rebars were cut for
19 fraudulent purpose. In that case, Fang Sheung was
20 reminded to ensure its workers properly check the
21 threaded bars in good condition before screwing them
22 into the couplers. According to the third -- I wish to
23 supplement here. There were no records whatsoever
24 regarding the first and second incidents. As to the
25 third incident, the only record was the non-conformance
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1 report, NCR. In the NCR, the cause of the defective
2 work was workmanship. There was no contemporaneous
3 finding of fraud on the part of Fang Sheung, nor any bar
4 cutting. The cause the defective work was workmanship.

5 In view of the stringent system of supervision and
6 inspection, the three incidents must be isolated
7 incidents. This was proven to be so by the sample
8 testing of unscrewing three other bars in the same bay
9 as the five defective bars were found. This can be seen
10 from Edward Mok's witness statement.

11 In fact, the sample testing was not necessary as
12 visual check would be sufficient to detect any defective
13 installations. Both Mr Edward Mok of Leighton and Mr Ho
14 Hon Kit of the Buildings Department say so in their
15 witness statements. If there had been other incidents
16 of defective installation with cut rebars, it would not
17 have escaped the stringent inspection of Leighton and
18 MTRC.

19 Hence, all defective rebar installations had been
20 detected and rectified before the pouring of concrete.

21 The eight defective installations due to poor
22 workmanship on the part of Fang Sheung, comparing to the
23 size of the project, which was stated to be 43,300
24 couplers in the MTRC report, that only accounts for
25 a negligible percentage. In all construction projects,

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1 poor workmanship could be unavoidable occurrences
2 sometimes. The issues are whether such poor workmanship
3 exceeded the tolerance level and whether there was
4 proper system of supervision and inspection to detect
5 and rectify such poor workmanship. In the present case,
6 poor workmanship was well within the tolerance level and
7 there was indeed a proper system in place to guard
8 against and to rectify poor workmanship.

9 Number 6, the evidence of China Technology.

10 There were 11 incidents of bar cutting witnessed by
11 the staff of China Technology as summarised by my
12 learned friends in their opening submissions, my learned
13 friend for Leighton. But all appear to be equivocal and
14 tenuous in that:

15 It was unknown under what circumstances the rebars
16 were cut;

17 It was unknown for what purpose the rebars were cut.
18 Apart from one observation of screwing a cut rebar into
19 a coupler, all other incidents were mere cutting. There
20 was no evidence of correlation between the cutting and
21 installing the cut rebars into couplers;

22 As to the incident of cutting and installing the cut
23 rebars, the observation could be out of context as the
24 staff of China Technology had never attempted to clarify
25 the situation there and then;

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1 Staff of China Technology had no expertise in steel
2 reinforcement work nor any involvement or knowledge of
3 the working schedule or instruction of other entities
4 on site;

5 There were no contemporaneous records of the
6 observations;

7 The observations were brief, momentary, at
8 a distance, from imperfect angles; and

9 Their accounts now are retrieved from fading
10 recollection, which could be prone to speculation and
11 conjecture.

12 In any event, the totality of the evidence of China
13 Technology pointed to Leighton, not Fang Sheung.

14 All along, Fang Sheung was working under the
15 instructions of Leighton. Fang Sheung did not know
16 other work schedules of Leighton. Suffice it to say
17 that Fang Sheung was not aware of any fraudulent bar
18 cutting on the site.

19 To conclude, there is no reason to doubt the safety
20 and integrity of the bar-fixing work done by Fang Sheung
21 in this project.

22 Mr Pun Wai Shan, the director of Fang Sheung, and
23 also Cheung Chiu Fung, the chief foreman, have rendered
24 witness statements to this Commission and they will in
25 due course give evidence. Fang Sheung will cooperate

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1 fully with this Commission.

2 Unless I can assist further.

3 CHAIRMAN: No. Thank you very much, Ms Chong.

4 Opening submissions by MR SHIEH

5 MR SHIEH: Mr Chairman and Mr Commissioner, I speak on
6 behalf of Leighton. The written opening that we have
7 submitted were the joint efforts of myself, Mr Wilken,
8 Mr Jonathan Chang, the counsel team, and also O'Melveny
9 & Myers, my solicitors instructing. I am grateful to
10 everyone who has taken part in the preparation of those
11 submissions.

12 Mr Chairman and Mr Commissioner, based on the terms
13 of reference and the evidence so far, there are two
14 issues in this Inquiry for Leighton. The first relates
15 to what we call the cutting of thread in this opening,
16 not just cutting of rebars but the cutting of the
17 threaded ends of rebars.

18 The second issue relates to the alleged deviation
19 from the accepted design without approval, between the
20 EWL and the OTE slabs.

21 Can I first deal with the cutting of thread,
22 followed by the design change. The cutting of thread,
23 as Mr Pennicott has mentioned, would potentially involve
24 a good deal of factual enquiry. It involves a question
25 of pure fact. The Commission would probably recall,

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1 certainly those in Hong Kong would recall, that prior to
2 this Inquiry, in May and June, the allegation was that
3 there was a widespread practice of cutting of thread.
4 That allegation had come from China Technology, and in
5 essence Mr Poon himself.

6 But we have now seen from the actual evidence filed
7 in this Inquiry that not even China Technology and its
8 witnesses persist with any allegation of systemic or
9 widespread practice of thread cutting. We would analyse
10 that evidence further by way of a table.

11 Leighton has submitted evidence from 20 witnesses.
12 They are all clear that, as far as Leighton is
13 concerned, there was no cutting of thread, no
14 instructions were given to cut thread, and no one was
15 permitted to do so. The only exceptions, as far as
16 Leighton was concerned, relate to eight bars found on
17 three occasions and in area C of the EWL slab. But, on
18 Leighton's evidence, those were all remedied
19 expeditiously.

20 I am not going to go through the primary documents.
21 We will have some more to go through later, when we get
22 to what I may call the juicier bits.

23 It is also clear that there was one occasion that
24 a non-conformance report, called NCR, was issued by
25 Leighton in December upon being told by MTR in respect
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1 of threaded rebar cutting. That was remedied. So, as
2 far as Leighton can see, the system of checking actually
3 worked.

4 China Technology earlier said, before lunch, that
5 some cutting had occurred; how do we know there were not
6 others? But the answer was, yes, some occurred, and
7 they were spotted, and there is no reason, on Leighton's
8 part, to think that if it were to cut the threaded ends
9 of the rebars, it could readily get away with it, and
10 nor is there any evidence of any attempt by MTRC to try
11 to cover up for Leighton. Both Leighton and MTRC had
12 investigated China Tech's allegations and found them to
13 be unfounded.

14 Let's turn very briefly now to the other players or
15 contractors on site. We have Leighton; we have
16 Fang Sheung. Fang Sheung had just opened, so I'm not
17 going to repeat what Fang Sheung's position is. It
18 raised four other points by way of argument. First,
19 China Tech did not have the relevant expertise to
20 understand what actually was being done to the thread.
21 Second, China Tech was not in the same work areas, and
22 so China Tech people would have limited opportunity to
23 observe what was being done to the thread. Third, there
24 was no rationale or reason for cutting thread because it
25 would take longer and drag out Fang Sheung's work.

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1 Fourth, Fang Sheung wasn't aware of any other people
2 cutting threaded rebars.

3 I now come to Intrafor. Intrafor has also opened
4 this morning so I'm not going to repeat what Intrafor's
5 position is. Intrafor sub-contracted some of the work
6 to Hung Choi. Hung Choi would be Commission witnesses.
7 Hung Choi said there was no defective works, couplers
8 were properly installed, and no cutting -- no
9 instruction to cut thread and no hydraulic cutter
10 on site.

11 MTRC says that apart from five or six isolated
12 occasions, there was no cutting of thread and certainly
13 no instruction to cut thread. This is a constant theme.

14 Mr Kobe Wong and Mr Andy Wong from MTRC gave
15 evidence about the five or six occasions. One of those
16 was the December 2015 incident, where an NCR was issued
17 and the position rectified. In respect of the other
18 occasions when NCRs were not issued, Mr Wong did not see
19 fit to report the defect because the incident was not
20 regarded to be serious, and it was resolved on the day
21 on site.

22 Turning to Andy Wong, Andy Wong also talked about
23 the December 2015 NCR incident. There was another
24 incident at the end of December 2015 that also was
25 partly remedied. Mr Kobe Wong thought the number of
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1 non-compliant rebars was very small and immediately
2 rectified, and not really an issue given the size of the
3 project.

4 So, of all the players on site in Hung Hom, apart
5 from China Tech, we have Leighton, we have MTRC, we have
6 Fang Sheung, we have Intrafor, we have Hung Choi, the
7 unanimous view is that there was no widespread cutting
8 of thread and no instructions were given to do so.
9 Other than China Technology's allegations, that is,
10 there is nothing to support the picture which
11 unfortunately had been painted in the media.

12 Importantly, as a matter of site management, there
13 is an inspection process of MTRC and Leighton called
14 "hold points". A hold point was a point at which work
15 was formally inspected by both Leighton and MTRC, and if
16 the work was not satisfactory, there could be no further
17 progress.

18 There were two relevant hold points. The first is
19 after installation of the rebars and also before the
20 pouring of the concrete.

21 Leighton's evidence is very clear. If there were
22 defective rebar, it would have been spotted during
23 routine inspections or during the formal inspections.
24 Other than the three occasions which I have just
25 mentioned and also testified by Mr Edward Mok, no
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1 defective rebar was found by Leighton.

2 That was echoed also by MTR, Intrafor, Fang Sheung
3 and Hung Choi.

4 Also, the Commission has to realise that the
5 non-connection of the threaded end of rebar to couplers
6 is readily obvious on inspection. Perhaps we can have
7 a look at some photos. Bundle C12, please, at
8 page 8123. That is a photograph of a threaded end of
9 a rebar not being screwed into the coupler. And can we
10 move on to 8129. Again, photos of threaded ends not
11 screwed properly into the couplers.

12 The ease with which non-conforming threaded ends
13 could be spotted is also the Buildings Department's
14 position. I'm not going to go through that part.

15 Against all this, Mr Chairman and Mr Commissioner,
16 we have Mr Poon. Counsel for the Commission during the
17 preliminary hearing had already highlighted the fact --
18 I am not going to read out the entirety of that
19 passage -- that the primary reason why we are all here
20 is because of Mr Poon. And Mr Pennicott has highlighted
21 that Mr Poon could well be put under the microscope or
22 his evidence would be put under the microscope, and
23 Mr Pennicott repeated that this morning.

24 So, that being the view of the Commission,
25 certainly, and also echoed by Leighton, it does not lie

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1 in the mouth of China Tech this morning to say, "It
2 doesn't help to belittle the evidence of maybe one
3 witness or two." Mr Poon's evidence is crucial. For
4 Mr Poon to be right that there was wholesale cutting and
5 instructions given to do so, as opposed to isolated
6 non-conformances which were spotted, everyone else
7 on site must be wrong; the inspection and hold point
8 process must have fundamentally failed.

9 To test that, we need to look closely at the
10 evidence produced by China Tech for this Inquiry, and
11 not in any other forum. Mr Chairman and
12 Mr Commissioner, I had emphasised in paragraph 31 of our
13 opening "not in any other forum", for reasons that
14 I hope are obvious, because we are not here concerned
15 with things which Mr Poon might have said to various
16 other people, to the media or to the politicians or
17 whoever he saw fit to utter things to. Those could very
18 well be things which were uttered at a time when he
19 didn't realise that he had to come to a judicial
20 commission, be cross-examined, have his evidence tested,
21 as Mr Pennicott said this morning, and to face the
22 music.

23 So we focus not on anything that he had uttered by
24 press releases or interviews and that kind of thing. We
25 look at what evidence he and his employees had produced
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1 by way of witness statements.

2 We had done a table -- I'm not going to go through
3 the details and certainly I'm not going to go through
4 who said what in which particular paragraph -- there
5 were 11 occasions or incidents, according to the
6 eyewitness testimony put forward by China Tech. There
7 were 11. And in paragraph 33, we try to eliminate some.
8 Of course, things will become clearer on
9 cross-examination, of course, but on paper we hoped that
10 we could eliminate some which, even on the face of it,
11 didn't really relate to the cutting of threaded ends or
12 more importantly the affixing of threaded ends.

13 So, for example, there are witnesses such as
14 Mr But -- in fact, I should also add Mr Chu, even though
15 I didn't put it in writing; we have reviewed Mr Chu's
16 witness statement -- for Mr But and Mr Chu, they both
17 said they saw something cut but they actually saw them
18 put on the floor. So they didn't go so far to say that
19 they saw those rebars being affixed. And there are
20 other items which we say could be eliminated, such as
21 Mr Ngai's incident, and there was a Mr Li who couldn't
22 even see whose uniform and what workers there were.

23 In paragraph 34, we did some numbers. The numbers
24 could get a little tedious to work out, but the point we
25 are trying to drive at is this. Taking the three

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1 incidents accepted by Leighton, looking at the five or
2 six incidents witnessed by MTRC, on a proper analysis of
3 the China Technology witness testimony, at most you have
4 two or maybe three more additional incidents relating to
5 rebar threaded ends being cut and connected.

6 So those add up, in paragraph 36.1, to maybe eight
7 alleged incidents, maybe eight or nine or even to round
8 up, let's say ten; it doesn't matter. Count with two
9 hands, on the one hand. And the three incidents which
10 Leighton accepts to have occurred.

11 So eight, nine or ten, depending on what number you
12 take, would be the numbers observed by MTR plus perhaps
13 China Tech, discounting those which may relate only to
14 uninstalled rebars on the one hand and three accepted by
15 Leighton to have occurred and to be rectified.

16 We would suggest that such a difference is minimal
17 and unworthy of the cost and expense of this Inquiry.

18 Mr Poon's theory is that of widespread cutting of
19 thread, and we say there is no evidence to support it.

20 Thirdly, the fundamental flaw, we say, of the
21 allegation that there was widespread cutting is the lack
22 of any rationale for doing so, because one must be
23 careful. Mr Poon is not saying there were random
24 cuttings by different workers employed by different
25 contractors. Mr Poon is very specific. Mr Poon targets
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1 Leighton. On his theory, even though there is a rebar
2 contractor in the form of Fang Sheung, Leighton, of all
3 people, sent staff on site to bypass Fang Sheung, in
4 order to cut the threaded ends, not to make it fit, but
5 for other unspecified reason, and having done so
6 Leighton would then have to go further to bypass the
7 hold points, the official inspection before the next
8 stage could be reached, also to bypass the continuous
9 routine supervision and also formal inspections with
10 MTR. And I ask rhetorically: all for what? No
11 rationale had been put forward on Mr Poon or China
12 Tech's evidence.

13 Finally, the lack of any rationale is even more
14 obvious when we consider the fact that cutting the
15 thread would actually take more time and effort, and we
16 go through the reason why: you need people taking over
17 work from Fang Sheung and they had to do extra work,
18 et cetera -- smuggle people in -- for no obvious
19 benefit.

20 The fifth point, we have to look at the China Tech
21 evidence more closely. The China Tech evidence is that
22 of rebar being cut, not necessarily the threaded end --
23 and that's a crucial distinction. China Tech has not
24 adduced any evidence as to the operation of hold points
25 or about inspection or about how these could possibly be
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1 bypassed. They have adduced no evidence that any
2 allegedly defective rebar, assuming that they were
3 connected, that they have not been spotted and remedied.
4 And China Tech has adduced no evidence that there were
5 in fact defective rebars and couplers installed at
6 Hung Hom now, which they took part in burying by pouring
7 concrete all over it.

8 Sixth, China Technology's evidence does not
9 establish the media perception. It goes nowhere near
10 that there were defective couplers being connected --
11 well, defective coupler connections -- and that they
12 were missed.

13 So we say there was no case to answer.

14 Mr Chairman and Mr Commissioner, the genesis of this
15 Inquiry is concerns about safety due to, I repeat,
16 widespread installation of defective rebar. That is why
17 we are here, with an array of legal talent, at
18 considerable expense. Even when China Technology's
19 evidence in this Commission is accepted, there was no
20 widespread installation of defective rebar. Mr Poon in
21 his witness statement says, "Let's have a survey and do
22 some remedial works." We say they are unnecessary
23 because, on China Tech's own case, why would anyone want
24 to investigate and remedy a building that was safe or,
25 can I put it the other way, that has not been shown to

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1 be unsafe?

2 Finally, there is no direct evidence to support
3 Mr Poon's estimate or allegation that something in the
4 order of 1,000 bars were cut. Can I pause here to look
5 at the numbers which Mr Poon has been giving from time
6 to time? In assessing his credibility, we have to look
7 at the kind of things which he had said from time to
8 time. That is why I say we must focus on what he says
9 now, potentially on oath, at risk of perjury, to this
10 Commission, and what he had liberally uttered, not on
11 oath, previously.

12 Can I ask this Commission to look at bundle D1, at
13 page 237. This was an email, in the middle. I will
14 come to this email in greater detail when I talk about
15 Mr Poon's commercial motivation in raising these
16 complaints at rather commercially strategic moments.

17 But pausing here for present purposes, in the middle
18 of this page, 15 September 2017:

19 "Dear Anthony" -- this is to Anthony Zervaas of
20 Leighton --

21 "It's already 8 months after our report on the
22 captioned concerns on structural safety.

23 We [are] unable to obtain your feedback and we
24 observe that there is no remedial works being committed
25 on site in these 8 months' time.

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1 Concerning the public safety and durability of the
2 structurally critical 3 metre thick EWL slab, which
3 accommodate all the East West Lane's railways of the
4 SCL, we propose all transverse shear keys interfacing
5 the diaphragm wall panels and all longitudinal
6 construction joints between construction bays must be
7 100 per cent inspected and assured for structural
8 safety. We opine all damaged and malpractice couplers,
9 include installing without torque test and cheating
10 practice by Leighton direct staffs cutting away most of
11 the threads" -- and here are the important words --
12 "estimating over 30,000 pieces must be tackled ... with
13 high respect.

14 We demand your feedback ..."

15 So in this email, in September, Mr Poon put the
16 number as high as 30,000 pieces. In the MTRC internal
17 investigation, in D1, page 37, at his witness statement
18 paragraph 87, he said -- and this was him describing
19 what he said in the MTRC investigation in June:

20 "I was asked by representatives of the MTRC how many
21 threaded rebars were actually cut. I told them that
22 I estimated that each bay of EWL slab ... should have 30
23 to 100 problematic connections. On average, that would
24 be around 50 problematic steel bars at each bay.
25 I therefore estimated (by sole arithmetic means) that

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1 there would be approximately 1,000 threaded rebars being
2 cut. I emphasised that the figure mentioned were only
3 a rough estimation."

4 So from 30,000 he moved or shifted or shrank to
5 1,000.

6 At one point in time -- and this ties in with the
7 question of photos -- when this document was filed, we
8 didn't know that anyone was going to talk about photos,
9 tens of thousands of photos, so just as well I dwell on
10 this topic. At one point in time, Mr Poon stated that
11 hundreds of thousands of site photos were being reviewed
12 by him.

13 Let's look at bundle C12, page 7940. That is
14 an email dated 7 January.

15 COMMISSIONER HANSFORD: Could we have that larger, please?

16 Thank you.

17 MR SHIEH: It's 7940.

18 That was January 2017. Again, I will dwell on this
19 more closely later:

20 "Dear Anthony,

21 We had investigated internally and it is quite clear
22 that your site in charge Khyle Roger was well aware and
23 directing these activities.

24 We take it seriously especially on any subjects
25 concerning public safety, when our company is part of

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1 the party being engaged on the construction. However we
2 have crystal clear mission to build everything under the
3 sunlight.

4 Call a spade a spade, it is your unfair commercial
5 manner leading to our action on commercial review,
6 include review on hundred thousands of site record
7 photos and videos and we ... start reviewing our
8 internal records from May 2015 in Thursday afternoon.
9 We afraid further findings on serious non-conformity
10 will be explored later which may evidence many hearsay
11 on site."

12 It's a little bit of gobbledegook but he actually
13 said "reviewing hundred thousands of site record
14 photos".

15 Mr Chairman and Mr Commissioner, that puts paid to
16 any possible suggestion that had come in this morning
17 and which was buried just now, that somehow they want to
18 put in 40,000 or they were trying to review 40,000, to
19 find out whether there's anything there which we want to
20 rely on. I rose this morning to say I would show in the
21 opening that they've had ample time to do it. So if
22 their case was they wanted time to review site photos,
23 whether taken by them or not, to see whether there is
24 anything they could rely on to show, "Aha, gotcha", they
25 had ample time to do so. They said it already in

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1 January 2017. And now we know that is actually not what
2 they are doing. They are simply saying, "If you want to
3 look at it, you look at it. We are not relying on it.
4 We I will bury that."

5 But importantly it actually shows -- if I may
6 respectfully say so -- what China Tech was really trying
7 to do. When China Tech opened this morning, it wasn't
8 actually clear what they were saying. To the extent
9 that Mr Chairman understandably misunderstood what they
10 were saying, in my submission -- and this is no laughing
11 matter -- this is bluntly a media ploy. All they want
12 to do is to put a figure out, hoping that some unwitting
13 media gets the figure, 20,000-odd or 40,000, and then
14 makes a song and dance about it. Fortunately, the eagle
15 eyes in this room have spotted that, so may I announce
16 now that there are no 40,000 photographs showing cutting
17 of threaded rebars. In fact, Mr Poon has announced that
18 he is not going to rely on any of the 40,000. But
19 I cannot let this reference to the photographs pass
20 without showing this email to the Commission, that
21 Mr Poon has already mentioned the review of photos back
22 in January 2017, and I don't know why counsel could
23 still say he would try to convince Mr Poon to complete
24 his review this morning, maybe forgetting that Mr Poon
25 himself had said they were reviewing in January 2017.

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1 What is the result of any review of photographs
2 after all this? Five photos. Mr Chairman and
3 Mr Commissioner, five photos are the sum total of the
4 photographic evidence which China Tech witness statement
5 had put forward.

6 Can I take the Commission to Mr Poon's witness
7 statement, bundle D1, page 21. Mr Poon will no doubt
8 speak to it later, but at 21 Mr Poon described
9 an incident -- at paragraph 41:

10 "On 22 September 2015, I, again, saw staff of
11 Leighton cutting the threaded rebars with hydraulic disc
12 cutter. I (secretly) used my personal Huawei mobile
13 phone to take 7 photographs. Amongst those 7
14 photographs, 2 of which were random photographs I took
15 in order not to alert the staff of Leighton."

16 So seven minus two equals five. And he then
17 exhibited the seven photographs.

18 Now, what the seven photographs show, we will come
19 to that in the actual witness testimony. As far as
20 Leightons are concerned, we say they don't actually show
21 the cutting of threaded rebars or the connection of the
22 cut ends of threaded rebars.

23 But for present purposes, the important point is
24 however many thousands of photographs they say were on
25 their cloud or Dropbox system, the only extent to which
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1 Mr Poon was prepared to stick his neck out potentially
2 on oath to exhibit to his witness statement were seven,
3 minus the two, which means the five photographs in
4 exhibit 5. In the previous paragraph, he says he took
5 two photographs and a video but those were not produced.
6 So just fine.

7 The China Tech employees which we have heard about
8 did not produce any photographic evidence either, so
9 I am not exaggerating or being inaccurate when I say the
10 sum total of contemporary photographic evidence that
11 China Tech can seek to prove are seven minus two equals
12 five photographs.

13 I now come back to the figure of 1,000 rebars given
14 by Mr Poon. The only evidence about how that is arrived
15 at was Mr Poon's guesstimate given in his witness
16 statement which I read earlier. We say that is a purely
17 hypothetical guess. It's unsupported. And even if we
18 accept China Tech's allegations, his witness testimony,
19 at face value, in fact all the MTR incidents, the number
20 of incidents, are under 20.

21 We say China Tech's evidence -- just now, I've been
22 looking at it at face value, but we say they are not
23 plausible. They are not plausible because of a number
24 of reasons. First, no motive can be advanced. Two,
25 there are no proven contemporary documents to support
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1 China Tech's allegations. We heard the number 20-odd
2 photographs just now, as opposed to the five attached by
3 Mr Poon. In fact, we await with keen interest how the
4 20-odd photographs are proven, because if we simply look
5 at witness testimony, the witness statements adduced by
6 China Tech, no one else adduced or tried to prove any
7 photographs. So there is no point for Mr Poon or China
8 Tech just to say, "I rely on these 20-odd photographs",
9 without saying who took them and where and what they
10 thought they showed.

11 So I am going to stick to my number of seven minus
12 two equals five.

13 Apart from the five, there were no contemporary
14 documents purporting to support China Tech's
15 allegations. If Mr Poon thought that cutting of the
16 threaded end was wrong and there was widespread cutting,
17 as a matter of inherent probability and common sense and
18 human decency, because if Mr Poon is such
19 a whistleblower as he says he is, there would be
20 contemporaneous documents or complaints setting out
21 Mr Poon's allegation. There are zero, none, nought,
22 "(本地話)零", "(普通話)零", "(普通話)沒有", "(本地話)沒有",
23 different ways of saying the same thing in Chinese and Putonghua
24 and English.

25 Paragraph 52. China Tech's witnesses all say that
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1 Mr Poon raised the question of threaded bar cutting in
2 lunch meetings, and there are a number of them. And
3 Mr Poon even was reported by a few of the witnesses as
4 saying, "Please take pictures if you see anyone cutting
5 rebars." Mr Poon had said himself he would report to
6 MTR. Some of his employees have also said they reported
7 to MTR.

8 But, Mr Chairman and Mr Commissioner, what we know
9 is there is no written documentation about any report or
10 complaint, whether to Leighton or MTR,
11 contemporaneously. By "contemporaneously", for those
12 listening to these proceedings who are not familiar with
13 courtroom terminology, "contemporaneously" meaning at
14 the time when the events took place rather than two
15 years later. There were no contemporary or
16 contemporaneous complaints, and despite Mr Poon telling
17 his staff to take photographs if they were to see any
18 people cutting threaded rebars, none of his witnesses
19 was able to adduce any such photographs, and we say the
20 only credible conclusion is that there was no practice
21 of widespread cutting of rebars.

22 Mr Poon had adduced two late witness statements.
23 I am not going to be able to comment on them in detail,
24 because I believe the time for us to respond has not yet
25 expired, but it gave rise to two points. First is our
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1 request for the hardware on which any alleged
2 photographs are taken. So we had made a request and we
3 are awaiting any response. Secondly, insofar as any
4 photographs referred to in those additional witness
5 statements, they don't actually show anyone cutting
6 rebar, leave alone the fact that we don't know who took
7 those photographs.

8 I now come to what Mr Poon said to be meetings.
9 This was a point raised by Mr Chairman just now.
10 Paragraph 55: Mr Poon said there was a meeting between
11 15 and 20 September 2015, and he was told by Mr So and
12 Mr Rodgers of Leighton that they would ensure that the
13 cutting of threaded end would never happen again.

14 According to Mr Poon, two days later, on
15 22 September, Mr Poon saw people cutting again and he
16 took photographs. On his own evidence, that would mean
17 that Leighton had not kept its promise. If he did take
18 the photos, and if he was so concerned about Leighton
19 breaking its promise, the obvious and credible thing to
20 have done would have been to pass those photos to
21 Leighton or MTRC or the government and make complaints.
22 Mr Poon did not.

23 Now, this is not to show all my cards in terms of
24 what I am going to ask Mr Poon in cross-examination. No
25 doubt, I will explore with him in greater detail other
26

1 topics, assuming that any topics are left for me after
2 Mr Pennicott has finished his turn.

3 58: in late September 2015, October, November, and
4 February 2016, where according to Mr Poon he was going
5 to report matters to Leighton. We have no record, and
6 our witnesses all say he had not reported to Leighton.
7 Even Mr Poon himself did not actually say that after
8 September 2015 he had contacted Leighton to make any
9 complaints. On his own witness testimony, his last
10 contact with Leighton at the time of cutting was
11 22 September, when he took the alleged photographs.

12 I now come to the documents. Mr Poon not only did
13 not come forward to raise issues at the time the works
14 are carried out. Mr Poon actually allowed concrete to
15 be poured on the steel bars which, according to him, had
16 their threaded ends widely cut. If that were so, he had
17 himself put the safety of the public at risk, because he
18 was aware of widespread cutting and he poured concrete.

19 We know, as a matter of objective fact -- and we are
20 grateful to Mr Pennicott for his written opening
21 annex 2, which we have seen this morning -- could we
22 have a look at Mr Pennicott's opening, at annex 2, where
23 he actually set out the completion date of the pouring.

24 If we can actually magnify the balloons down
25 there -- yes -- most of the pouring on most of the areas

26

1 ended in late 2015 or January 2016; under the Hong Kong
2 Coliseum, they ended in mid-2016. So it's not just our
3 witnesses saying it. I refer to Mr Speed's witness
4 statement now we have the Commission's analysis. Most
5 were completed in late 2015. The latest completed in
6 mid-2016.

7 Mr Poon chose to pour concrete, and he waited until
8 January to make the allegations in writing for the first
9 time, and even invoked the possibility of telling the
10 media.

11 Page 12, paragraph 61: if there was indeed
12 widespread cutting of the threaded ends of rebars, as
13 Mr Poon has alleged, and if Mr Poon was a genuine
14 whistleblower, as he now portrays himself to be in the
15 media and in the public eye, there is no reason why his
16 company would have proceeded to pour concrete onto the
17 steel rebars. To say, as he had tried to in some other
18 places -- the contract says he has to -- is no excuse.
19 He saw gigantic wrongdoing, endangering public safety.
20 Anyway, in his evidence filed in this Commission of
21 Inquiry, he did not even attempt to explain why his
22 company decided to pour concrete when he says he knew
23 there had been widespread cutting of threaded ends of
24 rebars.

25 If he thought the problem still existed at the time
26

1 he poured the concrete, then he was being grossly
2 irresponsible in pouring concrete. If he thought, "the
3 problems had been resolved, that's why I poured the
4 concrete"; he had not explained why, suddenly, in 2017,
5 he decided to change his mind and thought, "Oh, there
6 were still problems."

7 Unknown to many people, I am going to show that the
8 timing of when he first raised these issues about
9 cutting was highly revealing. This is paragraph 62.
10 When Mr Poon first made the allegations in writing with
11 Leighton in January 2017, by email, China Technology was
12 in dispute with Leighton over the quality and progress
13 of his works under the engineering contracts with
14 Leighton. He was demanding immediate payment from
15 Leighton of HK\$6 million, and he was removing workers
16 from the site. Leighton sent a letter of complaint to
17 China Technology on 5 January. And note the timing: it
18 was only after China Technology had received this letter
19 from Leighton that it first raised the issue of threaded
20 rebar cutting for the first time.

21 I refer to Mr Zervaas's witness statement, but
22 I respectfully suggest looking at the actual email would
23 be more fruitful. Can we turn to bundle C12, page 7858.
24 This is an email on 5 January from Leighton to China
25 Tech. It enclosed a letter of complaint, and I'm not
26

1 asking this Commission to resolve the rights and wrongs
2 of a construction dispute. That is not my point, as the
3 Commission well understands. I'm providing the
4 background. There is a dispute, and this is what led to
5 the dispute.

6 5 January 2017, "Dear sirs" -- this is from Leighton
7 to China Tech -- I'm sorry, the next page:

8 "Dear Sirs,

9 ...

10 We refer to the milestone and final account payment
11 schedule ... and your email dated 4 January ..."

12 As in all construction contracts there are
13 milestones, basically schedules of when things are to be
14 done by, and final account payment schedules, so when
15 China Tech can expect to be paid.

16 In the middle of the page:

17 "It is apparent from the record above that you have
18 failed to achieve the milestone for end of December
19 2016.

20 While we note your concerns on payment, we disagree
21 that the non-certification of any payment gives you any
22 grounds to suspend your works for three days and
23 consider that such actions will only compound the
24 existing delays ...

25 You are instructed to immediately take such steps as

26

1 are necessary to expedite the completion of the
2 sub-contract works ..."

3 Then over the page:

4 "In spirit of our common target on the successful
5 completion of this project and accordance with the
6 milestone and final account payment schedule, we have
7 prepared a cheque of HKD6 million which can be readily
8 released following your completion of the milestone
9 scheduled for end of December 2016.

10 We trust the above provides clarification ..."

11 Can I then ask the Commission to look at 7861, the
12 next page, because this is, to be fair to Mr Poon,
13 Mr Poon denied our letter so there's a dispute. That's
14 the only thing we need to know: there's a dispute. We
15 complained and Mr Poon denied. 7861:

16 We deny the content of your letter which hides or
17 delay resources, demand a copy of the update status ..."

18 But at page 7923, on top of sending that email
19 denying the complaint, at 7923, that's the famous email
20 dated 6 January from Jason Poon to Anthony Zervaas, who
21 is from Leighton, and it cced Joe Tam, another person
22 from Leighton, even though the email was addressed to
23 "Dear Joe":

24 "Dear Joe,

25 During our review on progress photos and videos, we
26

1 found plenty of records concerning malpractice use of
2 coupler in this project ... observing as follow:

3 1. Along the shear face of the EWL track slab, it
4 is quite normal that the embedded couplers in the D-wall
5 were not able to accommodate the correct installation of
6 the threaded lapping bars due to possible reasons of
7 damage ... Leighton labour had cut away the threading
8 section of the threaded lapping bar and pretended
9 secured installation on these important tensile ...
10 These malpractice activities of Leighton staff was
11 deliberately taken at the intersection period between
12 MTRC day-shift and night-shift supervisory for vacant
13 supervision.

14 Along the shear face ... malpractice mentioned ...

15 We witnessed that there is no propose inspection to
16 the use of coupler on site.

17 We attach herewith two of the found photos taken at
18 1818 to 1819 of 22 September 2015 showing two Leighton
19 labour cutting away the threading section of the
20 threaded lapping bars and installing them onto the west
21 shear face ... The pour had been poured without finding
22 on such malpractice finally.

23 We doubt the structural safety and lifetime of the
24 EWL track slab, especially on the following structurally
25 critical vicinities:

26

1 The 36 nrs of face ...

2 If the EWL track slab fails due to the failure on
3 these critical structural key construction in future, it
4 will be a big, big crisis on public life ...

5 We demand a feedback by end of today including
6 records proofing the certainty on structural safety, or
7 we will report this finding directly to the LegCo Panel
8 on Transport and ask for public investigation tomorrow
9 morning."

10 Well, he asked for a public investigation; he has it
11 now.

12 If I can then turn to page 7926. This is the same
13 day, 6 January. The one we have just looked at was
14 9.45 am. The one at 7926 is 1.18 pm, a few hours later.
15 This shows perhaps a habit of Mr Poon, as we will see
16 later. That is to line up the media:

17 "Dear Anthony,

18 Please kindly note that there will have several
19 reports from local media visiting our site office for
20 an interview on our company."

21 He can say, "I didn't say interview for what", but
22 the inference is obvious, we say.

23 Actually, Leighton continued to send further
24 complaints to China Tech. I'm not going to go through
25 those. There is one point that I wish to comment on,

26

1 and that is paragraph 63 of our written opening.
2 Remember the email on 6 January which we have looked at,
3 at 7923. That was sent to Mr Zervaas on the 6th.
4 Mr Zervaas actually immediately wrote back, and we can
5 find that at 7937. 6 January, 5.49 pm. It's a reply to
6 Jason Poon. As Mr Zervaas put it, Mr Poon had not
7 brought this issue to Leighton's attention earlier,
8 particularly as the alleged malpractice occurred in
9 September 2015. So Leighton didn't admit anything. We
10 say you have never brought this to our attention.

11 COMMISSIONER HANSFORD: Sorry, can we scroll that down?

12 Thank you.

13 MR SHIEH: Mr Zervaas also told Mr Poon that an
14 investigation has commenced to review the allegations
15 made in the email.

16 The point to note is Mr Zervaas made it clear that
17 Mr Poon has not mentioned this any earlier, this
18 allegation of rebar cutting.

19 What does this go to? It goes to Mr Poon's evidence
20 which China Tech's counsel took this Commission to, that
21 Mr Poon had raised complaints with Leighton in meetings
22 as early as September 2015. It also goes to Mr Poon's
23 allegation, which I now show to this Commission at
24 bundle D1, page 23. The reference to C1 in
25 paragraph 63, the last line, is a typo. It should be

26

1 a reference to D1, page 23, paragraph 46.

2 At paragraph 46, Mr Poon, in his witness statement,
3 said:

4 "... in or about late November 2016, Mr Zervaas
5 orally admitted to me that there were practices of
6 cutting of the threaded rebars in the Hung Hom Station
7 construction site. Mr Zervaas, also, on behalf of
8 Leighton, agreed to find a solution to settle the
9 defective steel works."

10 So Mr Poon said there were meetings in 2015. In
11 2016, there was a confession which Mr Zervaas. But what
12 Mr Zervaas did in January was to write to Mr Poon, to
13 refute to him immediately and say, "This is the first
14 time you mentioned to us."

15 Mr Poon, if Mr Poon were being accurate in his
16 testimony, that in fact there were meetings and even
17 oral confessions in 2015 and 2016, Mr Poon would be
18 expected to write back immediately to Mr Zervaas to say,
19 "Stop pretending. You've admitted to me in 2016, we've
20 had all these meetings", and the fact is Mr Poon did
21 not. In fact, if we revisit the language of Mr Poon's
22 email of C12/7923, the language of that email -- the
23 earlier one, 7923 -- in fact, the way Mr Poon put the
24 matter in his email doesn't seem to suggest that he had
25 himself raised it previously. He didn't say, "I refer

26

1 to our earlier site meetings and your confession." He
2 sounded as though he was really raising it for the first
3 time, because he said "During our review on progress ...
4 we found plenty of records concerning malpractice ..."

5 And he has then explained the matter as if he was
6 explaining it from day one.

7 So that must go to Mr Poon's credibility.

8 Alarmingly, Mr Poon's witness statement did not even
9 refer to Mr Zervaas's response to his email. MTR
10 thought that this was a strategy by Mr Poon to extract
11 money from Leighton, and there's an internal email from
12 Mr Rooney which we set out in paragraph 64 of our
13 opening, where Mr Rooney said:

14 "This is a part of Jason's strategy to place
15 pressure on Leighton to pay him the extra \$3 million
16 this week".

17 Mr Poon was quite clear himself as to what this was
18 all about, because in the 7 January email -- C12/7940 --
19 he said:

20 "Call a spade a spade, it is your unfair commercial
21 manner leading to our action on commercial review ..."

22 Because we have acted to them in a way in which he
23 regards to be unfair, call a spade a spade, that's why
24 they are doing all this.

25 But the allegations of Leighton, of China Tech, were
26

1 immediately investigated and found to be unfounded.
2 Now, Leighton actually immediately commissioned
3 an internal investigation. That all culminated in
4 a report done by Mr Stephen Lumb who will be a witness.
5 He prepared a draft report of I think 17 January. Can
6 I ask the Commission to look at bundle C27, page 20116.
7 That's Mr Lumb. There's a reference to a draft report
8 of 17 January. If we can move on to the next page, that
9 is a draft report prepared by Stephen Lumb. To cut
10 a long story short, he found that the system worked
11 properly and there were instances of non-conformity
12 found, but they were all sorted.

13 COMMISSIONER HANSFORD: Sorry, Mr Shieh, can you go back one
14 page: did it not say that the draft report and final
15 report were the same date?

16 MR SHIEH: Yes. The "same date" was actually an error
17 because the final report was actually sometime in
18 February. The difference is in the final report there's
19 a section dealing with statutory requirements.

20 Just while we are here, can we perhaps take a look
21 at the conclusions in the draft report and the final
22 report: C27, Mr Lumb's exhibit, at 20116. Let me just
23 have one moment. If we could turn to the internal page
24 numbering of the report, it's page 11. Yes. So that's
25 the conclusion. Page 20131:

26

1 "Information collected during the investigation
2 indicates suitable QA/QC documentation was prepared,
3 submitted and approved by MTR ... construction and
4 checking process was carried out in accordance with the
5 approved method statement ...

6 It would appear that the works were carried out with
7 an appropriate level of on site supervision by both
8 Leighton's own engineering and supervisor staff, and
9 MTR's own inspector of works.

10 It was found that while some non-conformances were
11 identified during the construction ... these were raised
12 by Leighton's own supervisors through the established
13 NCR process, and were rectified accordingly.

14 It is understood that other observations picked up
15 during routine site inspections in relation to the
16 installed rebar not following the construction drawings
17 were addressed directly at site level between MTR,
18 Leighton's supervisors and the sub-contractor."

19 The final version is actually at page 20242. It was
20 10 February, and the section that was added was at
21 20255, basically dealing with the statutory requirement
22 that has to be complied with.

23 But the conclusion, at 2065, remained unchanged.

24 So it's not as if Leighton, shock and horror, tried
25 to do something to cover up. Leighton commissioned

26

1 an internal investigation, first report done in
2 mid-January -- draft report in mid-January, final report
3 in December.

4 If I may complete the narrative -- and this is
5 something not in the written opening, but just in case
6 people want to know what happened to the dispute between
7 Mr Poon and Leighton -- bear in mind that Leighton had
8 already concluded by its internal investigation that
9 there is no substance to Mr Poon's complaint, Mr Zervaas
10 in his witness statement said he resolved the
11 construction contract dispute with Mr Poon by
12 an agreement on 23 January.

13 Can I ask the Commission to look at C12, page 7676.
14 Always remember that the draft report had already
15 cleared it internally, within Leighton, 17 January. On
16 the 23rd -- this is paragraph 17 of Mr Zervaas:

17 "To achieve work progress, I brought Poon back to
18 the negotiation table. I could see that Poon thought he
19 had miscalculated his cost to complete the contract
20 works, whereas I wanted to make sure that he had enough
21 money to finish the job so that we could get the work
22 progressed. On or around 23 January ... Leighton agreed
23 to increase the final account payment from 28 million to
24 33 million for the same reasons noted in paragraph 6
25 above, and signed a revised milestone and final account

26

1 payment schedule ... Poon did not make further
2 allegations to me regarding the malpractice until
3 September 2017."

4 Can I now move on to the next occasion when Mr Poon
5 raised such complaints.

6 MR PENNICOTT: Before Mr Shieh does that, can we have ten
7 minutes? I think everybody, certainly here --

8 CHAIRMAN: Yes, certainly. Would that be acceptable to you?

9 MR SHIEH: Yes.

10 CHAIRMAN: Thank you. Ten minutes. Thank you very much.

11 (3.45 pm)

12 (A short adjournment)

13 (3.57 pm)

14 MR SHIEH: Thank you, Mr Chairman and Mr Commissioner.

15 Can I now move on in time to September 2016. This
16 was the second time Mr Poon raised allegations about
17 rebar thread cutting. Having seen what gave rise to the
18 first occasion of Mr Poon raising allegations of thread
19 ends of rebar being cut, it probably wouldn't surprise
20 anyone now to be told that the second occasion also took
21 place against the context of a dispute between Mr Poon
22 and Leighton.

23 On that occasion, Leighton complained that China
24 Tech was in breach of its obligations under its
25 sub-contract with Leighton, and there were letters of
26

1 complaint sent by Leighton.

2 Can I ask to look at C12/7979. This is a letter
3 dated 11 September 2017 from Leighton to China Tech:

4 "Dear sirs,

5 ...

6 You have continued to fail to provide the sufficient
7 resources, both labour, materials and supervision, to
8 complete the sub-contract works.

9 It is noted that at the time of this letter only
10 7 workers were on site against a planned minimum [of]
11 30. It is also noted that those workers that are
12 on site have either stopped work or are working
13 unproductively."

14 Then there's a list of outstanding work.

15 Over the page, 7980:

16 "You are critically impacting the progress of the
17 sub-contract, the main contract, follow-on sub-contract
18 and designated contract works. This is exposing the
19 contractor to the risk of claims for general
20 damages ..."

21 Then, skipping all that, the penultimate paragraph:

22 "With immediate effect, you are to provide
23 sufficient resources to complete the sub-contract work
24 by the programme dates ..."

25 The final paragraph:

26

1 "We shall immediately, and without further notice,
2 pursuant to GCS8.4(b), engage the necessary resources to
3 continue your sub-contract works until you have
4 corrected the resource levels sufficiently."

5 So that's the first complaint letter. There is
6 another complaint letter at 7982, also from Leighton to
7 China Tech:

8 "Dear Sirs,

9 ...

10 Further to our letter ref" -- that was a reference
11 to the 11 September letter that we have just seen -- "we
12 record that after our written instruction to immediately
13 take all necessary measures to provide sufficient
14 resources to continue and complete the sub-contract
15 works that there has been no response or visible attempt
16 to take corrective action ...

17 We hereby record and give notice under GCS21.1(a)
18 and (b) that you have failed to proceed with the
19 sub-contract works with due diligence ...

20 We hereby require you to immediately remedy these
21 breaches, and reserve all of our rights accordingly."

22 Mr Poon, again, in fairness to him, responded by
23 a letter at 7984. This is 15 September:

24 "Your letter ... dated 11 September ... is referred.

25 We clarify ... the works list out on your aforesaid

26

1 letter are either not our working scopes, working under
2 variation ..."

3 So he set out a number of denials. He disputes our
4 complaint. As I say, I'm not here to ask you to try the
5 rights and wrongs.

6 Paragraph 7:

7 "We reiterate herewith we had already reported the
8 matter of cheating coupler and threading since this
9 January, and there is no action on Leighton ... We do
10 not want our company or our labour being forced to
11 involve on covering up this illegal fault.

12 Please do not pretend nothing happen on the EWL
13 slab, please investigate and remedy the cheating coupler
14 and threading with immediate effect, instead of speeding
15 up the wet trades of plasterer ..."

16 But more importantly, by email of the 15th, which is
17 7987 --

18 COMMISSIONER HANSFORD: This is the same date as the letter?

19 MR SHIEH: Yes, the same day as the letter. The letter kind
20 of refuted the building construction complaint but this
21 one focused on the couplers.

22 "Dear Anthony,

23 It's already 8 months after our report on the
24 captioned concerns on structural safety.

25 We still unable to obtain your feedback and we
26

1 observe that there is no remedial works being committed
2 on site in these 8 months' time."

3 But pausing here, they have already poured concrete
4 all over it back in 2015/2016.

5 "Concerning the public safety and durability of the
6 structurally critical 3 metre thick ... we propose all
7 transverse shear keys ..."

8 So there is a repetition of their proposal about
9 100 per cent inspected and assured structural safety.

10 "We opine all damaged and malpractice couplers,
11 include installing without torque test ... estimating
12 over 30,000 pieces ..."

13 This is the 30,000 estimate we looked at this
14 morning.

15 "We demand your feedback ..."

16 So this is the email that Mr Poon chose to reveal to
17 the media and in his witness statement, but we would ask
18 the Commission to note the sequence of events. Leighton
19 complained about China Technology's work first, on
20 11 and 13 September, before China Technology raised the
21 thread cutting issue again on 15 September by this
22 email, after eight months. It is not the other way
23 around, in case it is said that Leighton complained
24 after seeing this complaint by about China Tech. It is
25 Leighton complained about China Tech, then China Tech

26

1 almost by return raising this allegation.

2 But standing back -- this is paragraph 70 of my
3 written opening -- it was about two years after the
4 works had been carried out in September 2015 and eight
5 or nine months after the first allegations in January.
6 Mr Poon in his witness statement has not suggested or
7 offered any reason why he should suddenly revisit or
8 revise this complaint after so many months, and his
9 witness statements were completely silent on the
10 commercial background to his threats.

11 Mr Poon this time sought to raise the pressure by
12 emailing Mr Frank Chan, and this is C12/7991. That's
13 his email to Mr Frank Chan.

14 COMMISSIONER HANSFORD: This is the same date?

15 MR SHIEH: Yes. He cced Anthony Zervaas:

16 "Dear Mr Frank Chan/Secretary for Transport and
17 Housing,

18 It is our knowledge that you are also the
19 non-executive director of MTRC and hence committing twin
20 roles ...

21 we are a sub-contractor responsible for the works
22 of formwork ... We would like to invite a joint
23 interview in presence of the senior rep of the Bureau,
24 MTRC, Leighton and our company reviewing and discussing
25 an important issue that we found and reported in this

26

1 January ... on the execution of the works, which is much
2 related to the interest of the public."

3 He didn't say what it is, probably dangling it.

4 Mr Poon omitted, as I said, to mention -- I'm sorry,
5 yes, he raised it with Mr Frank Chan, and in
6 paragraph 72 we say Leighton had already investigated
7 the issue in January 2017. The Commission will remember
8 the draft report dated 17 January and the final report
9 of 10 February. and Leighton found the complaint to be
10 baseless. But because Leighton took the view that it
11 had better part company with China Technology, because
12 of quality of work and other matters, such as no
13 intention to finalise the contract work on the part of
14 China Tech, it entered into a final account for China
15 Technology's sub-contract works.

16 And accompanying that final account, which is
17 basically like a termination agreement, it also entered
18 into a confidentiality agreement with Mr Poon. And
19 after that, Mr Poon emailed Frank Chan to withdraw his
20 allegations on 18 September 2017. That is bundle C12,
21 page 8006.

22 The government did respond, because if you look at
23 the bottom of 8006:

24 "Dear Mr Poon,

25 Thank you for your email this morning and our
26

1 telephone conversation this afternoon. According to
2 your information provided over the phone, your concerns
3 would be technical in nature about the site works ...
4 and you agreed to have a discussion with professional
5 staff at Highways Department, which is the technical
6 department ..."

7 Then at the top of that page, "Dear Mr Leung", and
8 there was a three-day gap because 15 September and then
9 come 18 September:

10 "Dear Mr Leung ...

11 During these few days we are working tight and hard
12 on the suspecting technical issue with Messrs Leighton
13 and had reached satisfactory understanding and full
14 clarification, ie the suspecting subject had been
15 cleared now and no significant impact is retained.

16 In order to avoid any unwanted impact and due to the
17 good progress observed, we thus kept silent on the
18 investigation from Messrs HyD and we had did our best
19 endeavour on our act of non-disclosure.

20 We believe it is a full and final end of the
21 issue ..."

22 The final account is a usual construction contract
23 document, bundle C12 at 7993.

24 CHAIRMAN: Sorry, can we just go back to that last email, or
25 the last communication.

26

1 MR SHIEH: 8006, yes.

2 CHAIRMAN: If you read it, a cynic may perhaps suggest that
3 it is to be read as saying that what had now been
4 clarified was the issue of the safety of the works, when
5 what in fact had been clarified was a financial issue.

6 Do you see, it says, "During these few days we are
7 working tight and hard on the suspecting technical
8 issue", not "financial issue" --

9 MR SHIEH: Yes.

10 CHAIRMAN: "... with Messrs Leighton and had reached
11 satisfactory understanding and full clarification, ie
12 the suspecting suspect has been cleared now and no
13 significant impact is retained."

14 Now, those are not words that you talk about in
15 terms of resolution of a contract, nor are they terms
16 you talk about in being paid large sums of money to
17 finish the contract. These are terms, it may be
18 suggested, that are to be read as meaning the reason for
19 contacting you, a matter of public importance, has now
20 been dealt with.

21 MR SHIEH: In fact, it is going to be a theme in our
22 submission that not only did Mr Poon not mention the
23 commercial background of all this in its communications
24 with the government, it has not been forthcoming with
25 this Commission, in Mr Poon's witness evidence, and from
26

1 the way the matter has been portrayed in the media, one
2 doubts whether the media know about it either. So, yes,
3 I wouldn't even say that a cynic might think -- I am
4 that cynic, and I would say there is every motive or
5 incentive for Mr Poon not to mention the clear
6 commercial incentive for him to raise these what I would
7 call completely groundless threats.

8 CHAIRMAN: All right. That then raises another question,
9 and that is that Mr Poon then entered into
10 a confidentiality agreement.

11 MR SHIEH: Yes.

12 CHAIRMAN: And did the confidential agreement say either you
13 are under an obligation to withdraw your complaint?

14 MR SHIEH: No. As I will be submitting --

15 CHAIRMAN: What was confidential?

16 MR SHIEH: Anything which came to the notice of the
17 contractor concerning the performance of the contract.
18 That will obviously be a matter -- I will come to the
19 question about --

20 CHAIRMAN: Yes. My concern at this juncture is that -- and,
21 you know, I haven't heard all the evidence; this is just
22 an initial stated concern on one piece of written
23 evidence -- and that is that it appears that what's
24 being said is, "Don't worry, Leighton and I have now
25 resolved my concerns about the diaphragm walls and the

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1 slab, a public safety issue, and so I'm happy, we are
2 making good progress, ie we are looking into it and we
3 are doing what perhaps has been -- we have reached
4 an agreement on how to make it safe so we are going to
5 avoid any unwanted impact."

6 Those are all terms that go to engineering and
7 safety issues.

8 MR SHIEH: That is a misleading impression created by that
9 email, and if Mr Chairman asks me whether the
10 confidentiality agreement somehow --

11 CHAIRMAN: That was my question.

12 MR SHIEH: -- stipulated as a quid pro quo that upon
13 resolving our commercial dispute can you withdraw any
14 complaint about safety? The answer is no.

15 CHAIRMAN: All right. Thank you. That was the thrust of my
16 question.

17 MR SHIEH: We say, at paragraph 74, that Mr Poon, in his
18 witness statements, omitted to mention the commercial
19 settlement. He mentioned the confidentiality agreement,
20 to make it sound as though it was intended to gag him
21 from revealing thread cutting.

22 Now, we say that is far from it. We can in due
23 course construe and look at the confidentiality
24 agreement, but the broad point I make is: it is part of
25 a commercial settlement. Anyone in the commercial world

26

1 would know, when two parties settle following a dispute,
2 it is common practice to insert a confidentiality
3 provision. Anyway, confidentiality provisions are
4 always overridden by requirement of law, and so any
5 supposed confidentiality which Mr Poon might regard as
6 inhibiting him from speaking out is long gone. We don't
7 accept that the confidentiality agreement had any
8 intended effect to stop him from speaking out.

9 But I am anticipating myself because I'm going to
10 talk about Mr Poon's excuse that he had been gagged so
11 far. He didn't act as a person who felt he was gagged.
12 That's my point. But I will come to that.

13 Mr Chairman, the last occasion, the final occasion
14 when Mr Poon made any allegations was May this year. By
15 this time, it is no longer a matter of surprise -- in
16 fact, you would expect that there is another dispute
17 between Mr Poon and Leighton. That is because Mr Poon
18 had a joint venture with another company, doing
19 a project for Leighton, and that contract was
20 terminated.

21 Can I ask the Commission to look at bundle C12, at
22 8071. This is a letter from Leighton dated 24 April
23 2018 to FEWA Chinat Construction Ltd. That is the name
24 of a joint venture in which Mr Poon's company, China
25 Tech, was a party. So this joint venture which China
26

1 Tech is part of had a contract with Leighton, in
2 relation to what is called a "lian tang" project. The
3 heading is, "Termination of contract". Leighton says:

4 "We refer to our letter referenced ... dated
5 18 April ... following notices of your default ...

6 Our letter reference ... dated 24 January ...
7 specifically advised that your performance of the
8 sub-contract works had fallen sub-contract
9 requirements ..."

10 Going to the very end, 8072:

11 "Due to your continued default of your obligations
12 under the sub-contract, and pursuant to GCS clause 21.1
13 we hereby and without prejudice to any other rights and
14 remedies, give you written notice of termination of your
15 sub-contract agreement ... with immediate effect."

16 So that was a termination of a contract with
17 Mr Poon's joint venture.

18 CHAIRMAN: Another contract, unrelated to the contract on
19 the Hung Hom --

20 MR SHIEH: Unrelated with Hung Hom.

21 CHAIRMAN: In fact I think this was placed somewhere on the
22 border, is it?

23 MR SHIEH: Yes, it is.

24 So the parties couldn't reach any agreement about
25 termination payment, and that's why the contract was
26

1 terminated by this notice.

2 Now, this time, Mr Poon actually went public. Can
3 I take you, Mr Chairman and Mr Commissioner, to some
4 rather revealing threat by Mr Poon. C12/7679. I don't
5 think I need 7679, sorry. 8074. I should say 8074.

6 This is an email dated 28 May 2018, from Mr Poon to
7 Mr Zervaas. The subject, there are six Chinese
8 characters. It wouldn't surprise you, Mr Chairman and
9 Mr Commissioner, the six Chinese characters read
10 "(本地話) 蘋果日報查詢", an enquiry by none other
11 Apple Daily, "URGENT! Chinat's feedback to an enquiry
12 from a local news agency)".

13 We can all read the Chinese name of the local news
14 agency.

15 "Dear Mr Anthony Zervaas,

16 Without prejudice, a sudden email we received this
17 3.45 pm as follows from a local news agency ..."

18 If I may remind the Commission, this is not the
19 first time Mr Poon made reference to an email. Remember
20 on an earlier occasion Mr Poon suddenly sent that email,
21 a rather ominous email, saying, "This afternoon some
22 media is coming for an interview", so there is a habit
23 of courting the media.

24 "... as follows from a local news agency and
25 an agreement of confidentiality we made at our final
26

1 account stage in project SCL1122 are both referred.

2 Pursuant to the agreement, we report hereby our
3 company, our staff and our agent did not release any of
4 our documents and information to any 3rd party, however
5 certain information seem being obtained by the new
6 agency and therefore asking us to make response."

7 Can I go off script? There's an old Chinese saying
8 that someone will stop on the road, he immediately said,
9 "I didn't keep 300 taels of silver", "(本地話)此地無銀三百兩",
10 is completely self-conscious. He said, "A media
11 approached me"; he said, "Sorry, I didn't leak anything,
12 they just came to me.

13 "We do not accept any damage on our goodwill due to
14 any possible public news, especially it is Leighton's
15 negligence on the relevant malpractice and
16 mismanagement. We shall therefore feedback the news
17 agency at 10 am tomorrow. We had drafted hereby our
18 reply as follow while we had not disclosed any
19 confidential information according to the agreement. If
20 we do not receive any adverse comment from you by 10 am
21 May ... we will send it out as our formal response.

22 Draft feedback.

23 To whom it may concern."

24 I'm not going to read out, because the Chinese
25 questions are on the right-hand side. Someone obviously

26

1 leaked to the questioner, Apple Daily, some emails of
2 6 and 7 of January, also 15 September, from China Tech
3 to Leighton. Now, given the only parties to those
4 emails are China Tech and Leighton, I don't know how
5 Apple Daily got those.

6 Anyway, references were made to those emails and
7 a number of questions were asked about the allegations,
8 and Mr Poon's draft reply is at 8074:

9 "Your allegations concerning the works of rebar
10 coupler is noted and would like to feedback without
11 prejudice as follows:

12 We are not able to ascertain the contents of your
13 aforementioned email(s)."

14 We are not able to ascertain the contents of your
15 aforementioned emails? That's my question.

16 "However as a responsible contractor it is our due
17 diligence in ensuring the quality our works. Our
18 company was never responsible for the construction of
19 the extent of the concerned rebar coupler, neither
20 covered in our original contract, nor involved in any of
21 our variation orders. When we observe persisting
22 malpractice by others and something beyond our control,
23 reporting the issue to a higher level of management is
24 a responsible and reasonable action.

25 We had been alerted that there is certain agreement
26

1 being made between ... Leighton ... and our company
2 concerning confidentiality and non-disclosure. We are
3 sorry that we are not able to answer any enquiry
4 concerning the issues of the rebar coupler, unless
5 otherwise the enquiry or instruction is required for
6 accounting purposes, ordered by court, law or
7 regulation ...

8 We are sorry that we are facing same pressures on
9 confidentiality and thus unable to disclose any opinion
10 or information.

11 We are again sorry that we are facing same pressures
12 on confidentiality and thus unable to disclose any
13 opinion or information. However it is our normal
14 practice to make use casual discussions to resolve
15 problems and avoid serious conflict."

16 Hint, hint. I don't know to whom, but "normal
17 practice to make casual discussions to resolve problems
18 and avoid serious conflict".

19 "We will only write when something serious really
20 persisting and out of our control.

21 We are also unable to answer this question due to
22 the pressures on confidentiality and non-disclosure."

23 Leighton immediately replied at 8077, so Mr Zervaas
24 has this pattern of immediately responding and setting
25 out for the record. At 8077, Mr Zervaas said:

26

1 "With respect to your email enquiry below, Leighton
2 are not aware of any malpractice in relation to the
3 matters raised."

4 So we say the inference is compelling, and I don't
5 think I need to say anything more about it.

6 Paragraph 79 of my opening: insofar as the
7 Commission's fact-finding Commission turns on assessing
8 Mr Poon's credibility -- for example, we know we only
9 have five photographs, so in the absence of hard
10 photographic evidence, we have to depend on Mr Poon's
11 credibility to assess the allegation of systemic thread
12 cutting -- his credibility must be tested against these
13 undisputed facts.

14 We also say that the Commission must bear in mind
15 that none of this commercial background has been raised
16 by Mr Poon in his evidence up to now. We say they
17 should have been. It doesn't reflect well on Mr Poon
18 that he hasn't raised these matters.

19 We say it is particularly telling that even in
20 Mr Poon's latest round of responsive witness statements,
21 after he had seen Leighton's evidence on this commercial
22 background, Mr Poon did not address or explain why he
23 made those threats at those points in time, when he was
24 in commercial conflict with Leighton, and why he had not
25 disclosed those background matters to the Commission in

26

1 his earlier statements.

2 In the media, so far, Mr Poon has tried to paint
3 himself as a conscientious whistleblower, to assess
4 whether this is indeed the case and that he is therefore
5 telling the truth, or whether the Commission would like
6 to take the view that he was just a commercially
7 disgruntled sub-contractor out for revenge and vengeance
8 and on a mission for self-aggrandisement and building up
9 his heroic self-image, we have to bear in mind what
10 I have said already, and also my next few points.

11 We say, and these are repeating what I have said
12 earlier about credibility, if he were honest and
13 conscientious, he would have spoken out long ago, but he
14 waited until January and September. On both occasions,
15 he wanted money from Leighton.

16 Paragraph 85: an honest person would have disclosed
17 as a matter of fairness the undisputed commercial
18 background to his threats or his so-called revelation of
19 threats of rebar cutting. He had not, and he had not
20 replied to our evidence about the commercial background.
21 One is entitled, we say, to infer that he was concealing
22 all of this in order to mislead the Commission as to his
23 credibility and also the purity of his motives. We are
24 entitled to ask whether he had likewise concealed these
25 matters from the media and the politicians so far, and

26

1 thereby misleading them as well.

2 I now come to gagging. Mr Poon says that in some
3 way he has been gagged by the confidentiality agreement
4 from speaking further. As late as this morning, a local
5 media, I won't name which, on its popular online portal,
6 had this cartoon of Mr Poon sweating and saying Mr Poon
7 had always wanted to reveal more, but then there is
8 a reference to a confidentiality agreement, seemingly
9 suggesting that Mr Poon wanted to speak out more but was
10 gagged by the confidentiality agreement.

11 That is wrong, W-R-O-N-G, "(本地話)錯" in Chinese. The
12 confidentiality agreement, as I said, is a common
13 arrangement whenever people settle a dispute. It is not
14 with a view to gagging anyone from revealing any
15 wrongdoing. More importantly, Mr Poon did not feel
16 gagged at all if we look at his behaviour. In June, he
17 spoke liberally to the media. China Tech issued
18 statements alleging wrongdoing and cutting of rebars.
19 So he did not feel gagged, when it suited his purpose,
20 to talk about cutting. But when it comes to revealing
21 more, he says, "No, I can't, I was gagged." If he were
22 gagged, he would shut up, but he didn't. Nor can
23 confidentiality agreement bar or prevent disclosure to
24 this Inquiry, because he is required by law.

25 So even if confidentiality applied, that

26

1 confidentiality is lifted in this Commission. But
2 Mr Poon has not produced any hard evidence of any
3 widespread cutting of rebars or further photographs,
4 and, I repeat, his witness statements only put forward
5 five photographs, and I must repeat one ignores the
6 reference to the 40,000 photographs because by China
7 Tech's own counsel, Mr Poon is not relying on 40,000.
8 So that should get rid of that soundbite of 40,000.

9 In our submission, the so-called gagging which
10 Mr Poon had been mentioning in some media is but
11 an excuse, a pretext on the part of Mr Poon, to justify
12 his inability to produce any further or concrete
13 evidence of unauthorised threaded rebar cutting. He
14 wasn't gagged at all.

15 So paragraph 88 summarises our position before this
16 Inquiry. There is no evidence that there had been
17 widespread cutting of thread -- China Tech's evidence
18 didn't go that far;

19 There is no evidence that Leighton had given
20 instructions or allowing anyone to cut;

21 There is no evidence in the order of 1,000 defective
22 connections;

23 To the extent that any thread was cut, they were
24 identified and spotted and rectified; and

25 Mr Poon is not credible and his evidence should be
26

1 rejected.

2 I now come to "The change in construction detail".
3 To put the matter in simplistic terms, sometime during
4 the course of construction, Leighton realised that the
5 design at the junction between the EWL slab and the OTE
6 slab could be improved, and instead of using couplers,
7 continuous rebars could be used, passing from one slab
8 through to the other. Leighton's position is that the
9 design was actually simplified and resembled an earlier
10 design. We say -- and there is a good deal of technical
11 documents about it; I'm not going to spend time going
12 through those -- the change in detail was discussed with
13 Atkins, known to MTR, and there was a design submission
14 which was known to MTR, in fact given to MTR, who then
15 forwarded the submission to the Buildings Department on
16 29 July 2015.

17 The same process was repeated on 21 and 23 March,
18 relating to a different area, but the same exercise was
19 proposed in the design submission, and the Buildings
20 Department signed off and approved the change.

21 So that, in substance, was what happened.

22 There were some what I would call discussions or
23 evidence as to, in terms of paperwork, what formally
24 ought to have been done, whether it ought to have been
25 done by way of some submission on change in permanent

26

1 works. But Leighton's position is that, as a matter of
2 substance, MTRC knew about it, MTRC approved it; MTRC
3 passed the change to the Buildings Department, who knew
4 about it, and signed it off.

5 So that's in terms of who knew what.

6 In terms of actually what is it about the change, we
7 simply make a few very short points, because we don't
8 want to get into overly technical details at this stage.
9 On a high level of generality, one must not fall into
10 the trap of thinking that the higher the number of
11 couplers the better, or it's a good idea to use a lot of
12 couplers.

13 In layman terms, couplers are used to facilitate the
14 connection of one end of a rebar to another, or
15 connecting one end of a rebar to another structure, such
16 as a diaphragm wall. So, if you have a diaphragm wall,
17 into which you want to fix a rebar, you can use couplers
18 and you screw the threaded end of the rebar into the
19 couplers on the wall and achieve that connection.

20 But that is on the basis that you are joining two
21 structures. That is on the basis that you have to join
22 the rebar to a D-wall. But if the structure can be made
23 a continuous structure, there is no need to use couplers
24 to join two structures, because there are no two
25 structures to be joined in the first place. In fact,

26

1 Leighton has witness testimony to the effect that the
2 fewer the number of joints, in general, it's better, in
3 terms of load-bearing, and we say that is what happened
4 here.

5 Simplistically -- and I know MTR may be showing some
6 things diagrammatically -- but put simply, the top part
7 of the diaphragm wall is trimmed down to a certain
8 level. So, for that bit which was trimmed down, there
9 was no more couplers; there was no D-wall in the
10 trimmed-down part. But it doesn't mean that it's
11 unsafe, because continuous reinforcement bars are used
12 which extend straight into the area formerly occupied by
13 the trimmed-down part of the diaphragm wall.

14 So instead of having a diaphragm wall and a coupler
15 and you screw a rebar into it, you knock down that bit
16 of the diaphragm wall for a bit, you put a rebar
17 straight through, and you pour concrete on top of it
18 all, to create one continuous structure. That really
19 was what had been done: instead of having two structures
20 and then having to join them with coupler, there is one
21 continuous structure and concrete poured on top of it.

22 So that really is, in layman terms, what happened.
23 We say no one so far has suggested that it actually is
24 in any way an inferior design to the earlier one.

25 My conclusions are at paragraphs 110 to 114, but
26

1 I can't end my opening without my endnote. Hopefully,
2 it is readily apparent from the materials I have shown
3 this Commission that there is always more than meets the
4 eyes. To echo what has been said earlier by counsel for
5 the Commission, the dangers of a trial by a sensational
6 media are amply borne out by what one has seen this
7 afternoon, hopefully this morning too.

8 So far, Leighton has not entered the fray or the
9 arena to deal with the many and varied ways in which
10 falsehoods or half-truths had been spun or twisted. In
11 the current climate in Hong Kong, or maybe anywhere in
12 the world, it would be counter-productive for Leighton
13 to engage in a war or trial through media. We look
14 forward now to the opportunity of presenting our case in
15 front of an independent and judicial Commission of
16 Inquiry.

17 Unless I can assist any further, that is what
18 Leighton wishes to say by way of opening.

19 CHAIRMAN: Can I ask one thing: on this second point, namely
20 the change in construction detail, my understanding of
21 your opening is that there was a change, it was
22 considered to be a better design, all in all; that the
23 MTRC knew about it, and that the Buildings Department
24 was also told about it.

25 MR SHIEH: Yes.

26

1 CHAIRMAN: Do you go so far as to say that the Buildings
2 Department was not simply told about it but agreed to
3 it?

4 MR SHIEH: Well, it approved the design submission that was
5 put in at the time. One can debate, as a matter of
6 legal niceties and the building regime in Hong Kong,
7 what status that signing-off had, whether or not it
8 amounted to consultation within the terms of the
9 prevailing regime, et cetera. But the terms of the
10 signing-off was that it approved of the design
11 submission.

12 CHAIRMAN: As it was then?

13 MR SHIEH: Yes. There was obviously a good deal of debate
14 going on about the status of that signing-off or
15 approval.

16 COMMISSIONER HANSFORD: Yes. In your paragraph 98, you make
17 reference to this, and you also make reference to two
18 documents.

19 MR SHIEH: Yes.

20 COMMISSIONER HANSFORD: Would it be convenient to be taken
21 to those two documents at this point?

22 MR SHIEH: Yes. In fact, the design submission can be found
23 at C17, page 11952. That is MTR sending to the
24 Buildings Department a set of design reports.

25 One has to remember that in the overall structure of

26

1 the contractual framework, we, Leighton, are not the
2 entity dealing with consultation aspects with the
3 Buildings Department. It was MTRC.

4 CHAIRMAN: The contractor.

5 MR SHIEH: Yes. It was MTRC which was responsible for what
6 I would call the interface with the Buildings
7 Department. So this was MTRC sending a report to the
8 Buildings Department.

9 The relevant part is 12008, "Construction sequence",
10 and, in the middle of the page, there is that part
11 coloured in yellow:

12 "The top of diaphragm wall panel will be trimmed to
13 the lowest level of top rebar ...

14 The top rebar of EWL slab at the D-wall panel will
15 then fix to the top rebar of OTE [overhead track
16 exhaust] slab to achieve full tension lapse.

17 The EWL slab and OTE slab will be casted
18 concurrently with temporary openings around the existing
19 columns and pile caps."

20 Then a similar process was gone through in March in
21 relation to another area but in the same terms.

22 So this was what was given to the Buildings
23 Department. The Buildings Department then approved the
24 change, and can I ask the Commission to look at
25 C24/17998:

26

1 "The structural proposal has been vetted in
2 accordance with category 2 ... This acceptance" -- so it
3 was an acceptance -- "is subject to conditions and/or
4 requirements given in appendices I and II attached."

5 So there were some questions raised or some
6 conditions raised by the Buildings Department. At
7 page 18002, the Buildings Department raised this:

8 "It is noted that reinforcement details of permanent
9 slab of the station have been included in this temporary
10 works design submission. In order to avoid ambiguity,
11 it is recorded that the said reinforcement details were
12 submitted for information only and you are required to
13 ensure the corresponding permanent station structure
14 submission are fully compatible with this ELS design
15 submission."

16 And MTRC actually gave that reassurance. At
17 bundle B8 --

18 COMMISSIONER HANSFORD: Sorry, just before we move, it
19 wasn't clear to me that this was -- sorry, can I have
20 a look at that letter again, the note you were referring
21 to?

22 MR SHIEH: 15.

23 COMMISSIONER HANSFORD: 15. It wasn't clear to me that this
24 was a temporary works design submission. I thought this
25 was --

26

1 MR PENNICOTT: (Unclear words).

2 COMMISSIONER HANSFORD: Right, but are you not referring to
3 a permanent change?

4 MR PENNICOTT: No.

5 COMMISSIONER HANSFORD: Maybe we can pick that up at a later
6 stage.

7 MR PENNICOTT: I don't want to interrupt Mr Shieh, but if
8 you look at the whole of design submission of 29 July,
9 it's prefixed with "TWD", which means temporary work
10 design, but within the body of the submission is the
11 part that Mr Shieh has taken you to, and sure enough
12 there is a heading, "Permanent design", albeit it within
13 an overall temporary works design submission.

14 I imagine that Mr Khaw for the government will be
15 telling you what the government think about this point
16 tomorrow.

17 COMMISSIONER HANSFORD: Yes. Thank you.

18 MR SHIEH: Anyway, we can debate what the words actually
19 mean in that request, what people understood that
20 document to encapsulate, but Buildings Department
21 somehow said, "Please ensure the corresponding permanent
22 station structure are fully compatible", and MTRC
23 actually gave a response at B8, page 4993. Point 15,
24 referring on the left-hand side to the comment of the
25 Buildings Department; on the right-hand side:

26

1 "The corresponding permanent station structure
2 submission is fully compatible with this ELS design
3 submission."

4 Now, again one could have a debate as to what this
5 meant, but on one view the Buildings Department wished
6 to have some reassurance, and the MTRC said it is fully
7 compatible. And as far as Leighton is concerned, there
8 is a design report, MTRC knew about it, MTRC being the
9 interface with the Buildings Department, and Leighton
10 acted on the strength of MTRC's judgment and decision.

11 Sir, really that is what I wish to say on behalf of
12 Leighton. Thank you very much.

13 CHAIRMAN: Thank you.

14 MR PENNICOTT: Sir, I think it's MTRC next, but given the
15 time -- I can see it's nearly 4.50 -- I know Mr Boulding
16 has indicated he's going to be an hour and a half or so,
17 so it may be best to draw stumps now.

18 CHAIRMAN: Mr Boulding, you would be better to start
19 tomorrow afresh, would you?

20 MR BOULDING: I am very much in your hands, sir. I can give
21 it ten minutes, if you would like. Alternatively, as
22 you say, sir, I can start afresh tomorrow.

23 CHAIRMAN: If we had a full half-hour or 45 minutes, I would
24 say let's go now because we don't want to waste time,
25 but ten minutes is the introduction, isn't it, and

26

1 then --

2 MR BOULDING: At best.

3 CHAIRMAN: At best, yes. No, I think we'll start tomorrow.

4 MR BOULDING: Okay.

5 CHAIRMAN: Mr Pennicott has indicated to me, at least on his
6 initial scouting expedition, that 9.30 does not fill
7 those who appear in this room with gladness.

8 I think what we will do is -- we seem to be making
9 quite good progress -- I will reserve that, just the
10 same as I will reserve Saturday mornings if necessary
11 and that sort of thing. So we can use those times
12 flexibly to make sure we don't fall behind; or, if
13 there's any particular witness who we do need to get rid
14 of without the matter dragging on too much, then we can
15 use extra time.

16 I hope that's satisfactory to you, but I think
17 that's necessary.

18 So, at the moment, we will be starting at 10 am.
19 Thank you very much.

20 MR SHIEH: Mr Chairman, there is one point I wish to raise,
21 and that is the situation in the meeting room, because
22 there is a TV room next door, but in terms of the
23 backroom support team actually working, like having
24 a work station and following, because the TV room has no
25 work station, no table, and we are told it will be

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1 difficult to actually install tables there, so my
2 learned junior, one of my instructing solicitors, is
3 actually sitting in almost like an auditorium watching
4 television but finding it difficult to actually do any
5 work with computers in front of them.

6 In the meeting room, we have all the work stations
7 but they can't actually see what's happening here,
8 because there is no TV feed.

9 So if I may respectfully ask whether it is
10 technically feasible to have a TV feed or streaming, or
11 whatever, which would enable those in the meeting room
12 to see what's happening, because following things on the
13 transcript is a poor cousin to actually seeing who is
14 standing up and saying what; because, Mr Chairman, you
15 understand the situation in the TV room is like
16 an auditorium where people watch TV.

17 CHAIRMAN: Yes, I appreciate that.

18 MR BOULDING: Sir, I have just been told to support my
19 learned friend's application.

20 MR PENNICOTT: I'm not sure it's either a matter for me or
21 you, but it's rather for the Secretariat.

22 CHAIRMAN: Yes, it's more one for the team, the backup team.

23 So you do have tables; you just don't -- they're
24 either in the wrong place or you need to stream the
25 video of these proceedings to where the tables are?

26

1 MR SHIEH: Yes.

2 CHAIRMAN: All right. Let me see what can be done. I'll
3 certainly -- I can understand why it's very necessary,
4 and we will see what can be done.

5 Thank you very much. It's 10 o'clock tomorrow
6 morning.

7 (4.52 pm)

8 (The hearing adjourned until 10.00 am the following day)

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