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<p>1 Thursday, 25 October 2018 2 (10.02 am) 3 MR PENNICOTT: Good morning, sir. 4 CHAIRMAN: Good morning. 5 MR PENNICOTT: I think we had reached the point where 6 Mr Wilken going to cross-examine Mr But. 7 MR BUT HO YIN, IAN (on former affirmation in Punti) 8 (All answers given via simultaneous interpreter 9 except where otherwise specified) 10 CHAIRMAN: Yes. 11 Mr But, you are reminded that you are still under 12 your affirmation. This is a matter which I raised with 13 you yesterday. 14 A. Yes, understood. 15 Cross-examination by MR WILKEN 16 MR WILKEN: Good morning, sir, and good morning, Mr But. 17 Yesterday, when you were being led in 18 evidence-in-chief, you confirmed that you adopted what 19 you said to the police; do you remember that? 20 A. Yes. 21 Q. I want to ask you what you told the police and what you 22 told the Commission yesterday. Yesterday, you were 23 asked where you were working in October 2015. Do you 24 remember that? I can take you to the passage. It's 25 page 132, lines 2 to 7 of the transcript.</p>	<p>1 Q. That is not the question I asked you. Was it the upper 2 slab, as you told the police, or the lower slab, as you 3 told the Commission? 4 A. Perhaps when I was giving the statement there was 5 a typo, because the definition of the upper slab could 6 be the upper slab for the NSL. That's what I told the 7 police. Perhaps they left out a word or two there. 8 Q. You were on site. You know that the upper slab is the 9 East West Line, don't you? The NSL is the lower slab. 10 Correct? 11 A. Sorry, can I refer you to the drawing? For the NSL and 12 the EWL, that's the area A, in between there is indeed 13 a layer or a level. 14 Q. So your answer is that both are correct, is it? It's 15 a simple question. 16 A. I don't know what you mean by "both". 17 Q. Is it the upper or the lower slab? 18 A. Let me clarify again. When I gave the statement to the 19 police, I told them that for area A -- as mentioned, 20 area A upper level, I was not wrong, because between the 21 NSL and the EWL there was another level. So I told the 22 police I was at the upper layer of the NSL. 23 Q. I see. 24 Another point between what you told the Commission 25 and what you told the police. You told Mr Pennicott</p>
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<p>1 Scroll down, please. It must be before this, I'm 2 sorry. I think the transcript has altered overnight 3 because I noted this yesterday. Page up, please. 4 Page up, please. Here we are. Page up, please, to 130. 5 There you see, "it was in October" -- do you see 6 that at line 20? 7 "[In] the middle level of area A. 8 Question: ... do you mean the NSL as opposed to the 9 EWL, or do you mean something else? 10 Answer: It wasn't the EWL." 11 Question: It wasn't? So it was in the lower area, 12 the lower slab, the NSL; is that right? 13 Answer: Yes." 14 So that was your evidence yesterday. That's not 15 what you told the police, is it? I'm going to take you 16 to what you told the police. D2/921.5, paragraph 14, 17 and the Chinese is at page 921. It starts at 920; I'm 18 grateful to Mr Shieh. 19 You told the police that you were working on the 20 upper slab. Which one was it? Upper or lower slab? 21 A. In the police statement, it was mentioned area A. But 22 in fact, after I was assigned to area A, it was the same 23 as what I said in the police statement, at that point, 24 I did not see workers cutting the threaded bar. Again 25 that was the end of October.</p>	<p>1 yesterday, when you were talking about the red 2 machine -- do you remember talking about the red 3 machine? 4 A. Yes, we did talk about the red machine. 5 Q. And you did not know whether the red machine you saw on 6 two occasions was the same machine or not. Do you 7 remember telling Mr Pennicott that? 8 A. Yes, that was my evidence. 9 Q. That's not what you told the police. D2/921.5/15, and 10 in your version it will be 921 in Chinese, paragraph 15. 11 The third line: 12 "... (which was the red portable electrical machine 13 mentioned before) ..." 14 So you told the police it was the same machine, and 15 you told Mr Pennicott you didn't know whether it was the 16 same machine. Which is correct? 17 A. Let me say this again here. When I gave the evidence, 18 I said it was the red machine that I mentioned before. 19 Did I not say that? 20 Q. No. You said you didn't know whether it was the same 21 machine, and you confirmed that just ten lines ago: 22 "Yes, that was my evidence", you said at [draft] 23 line 16. 24 A. Well, let me say this again then. When I told the 25 police about it, I said it was the same portable</p>

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<p>1 electric machine mentioned before, but in the process 2 I did not actually explain to the police whether it was 3 the exact same machine used by the workers before. 4 Q. So the police have got it wrong again is your view? 5 A. That's not what I meant. I just said that it was the 6 same red machine I mentioned previously, but in the 7 statement I did not say whether it was the exact same 8 machine used by the workers previously. 9 Q. I see. Let's move on. 10 Now, your evidence is you arrived at Hung Hom in 11 mid-September; that's correct, isn't it? 12 A. Yes, indeed. 13 Q. You cannot, therefore, have seen any cutting of rebar in 14 early September; correct? 15 A. Yes, correct. 16 Q. And you cannot have told Mr Poon about any instance of 17 cutting rebar in early September; correct? 18 A. Correct. 19 Q. Can we go to D1, page 20, paragraph 35. 20 Here, Mr Poon says: 21 "In or about early September 2015, Mr But also 22 reflected to me that similar incidents occurred." 23 Mr Poon must be wrong there, mustn't he? 24 A. I don't agree, because it was in or about early 25 September.</p>	<p>1 COMMISSIONER HANSFORD: Thank you. 2 MR WILKEN: Which of you is correct, you or Mr Poon? 3 A. In which way, please? 4 Q. You say, in your statement, paragraph 11, "I did not 5 attempt to stop the workers"; Mr Poon says, in his 6 statement at paragraph 35, you did attempt to stop the 7 workers. Which one of you is correct? 8 A. Let me reiterate. I had no power to stop them. Now, 9 whether I attempted or whether I had the power, that's 10 two separate matters. 11 Q. I'm asking you a question. It's quite straightforward. 12 Which of you is correct? Mr Poon says you attempted; 13 you say you didn't. Which one? Which one of you is 14 correct? 15 A. I don't recall, remember. 16 Q. Okay. Let's go to the ... 17 CHAIRMAN: Sorry, but your evidence is that you were new to 18 the work, you stopped and you saw these people using the 19 machine and watched them for some time. Are you saying 20 now you don't remember if you tried to stop them from 21 doing the cutting, or are you saying something 22 different? Surely you would remember. This was your 23 very first time seeing it. 24 A. What I meant was I don't remember whether I attempted to 25 stop them or not.</p>
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<p>1 Q. Well, you have agreed with me that it is your evidence 2 that you arrived in mid-September. That is not early 3 September; correct? 4 A. Yes, correct, but just now you mentioned "in or about 5 early September" -- well, Mr Poon had a busy schedule. 6 He couldn't be that exact. 7 Q. I see. So when Mr Poon gives evidence, he is not being 8 precise; is that what you are saying? 9 A. No, I did not say that. I'm just saying "in or about". 10 We're referring to "in or about" here. 11 Q. All right, let's try another topic. Can we go to D2, 12 page 912, paragraph 11. Here, your evidence is: 13 "... I did not tell anyone nor did I stop them at 14 that time as these were not works that Chinat were 15 responsible for." 16 That's your evidence; correct? 17 A. Yes, it's my evidence. 18 Q. Can we go back to Mr Poon, paragraph 35, D1, page 20. 19 Here, Mr Poon says: 20 "He also attempted to stop those doing what they 21 were doing ..." 22 Which of you is correct? 23 COMMISSIONER HANSFORD: Sorry, which paragraph are we 24 looking at in this? 25 MR WILKEN: Paragraph 35, sir.</p>	<p>1 MR WILKEN: So your statement is wrong. I'll take you to 2 it. Bundle D2, page 912, paragraph 11: 3 "... I did not tell anyone nor did I stop them at 4 that time ..." 5 That's what you say in your statement. So that 6 statement is wrong? 7 A. I don't recall whether I attempted to stop them. 8 Q. Very well. 9 On the same incident, do you remember your evidence 10 yesterday -- and the chairman has just referred to it -- 11 you stood there, you said yesterday, for ten minutes, 12 yes, in September; correct? 13 A. About ten minutes. 14 Q. And you said the cutting was loud; correct? 15 A. Yes. There's this screeching noise. 16 Q. And your evidence yesterday was you thought it was like 17 building a collapsing cupboard; correct? You said that 18 twice. 19 A. Yes. 20 Q. But, again, looking at paragraph 11, you did not tell 21 anyone about it; correct? 22 A. Yes. 23 Q. At this stage, you've been in the industry, September 24 2015 -- you've been in the industry about a month; 25 correct?</p>

Page 9	1 A. Correct. 2 Q. You are new on site; correct? 3 A. Yes, I just arrived. 4 Q. Surely, if you thought this was wrong, you would tell 5 someone, wouldn't you? 6 A. Well, a new person in a new environment would not be 7 talking off the cuff or asking questions. I'm also 8 a bit of an introvert. 9 Q. You were working -- you were at least the superior of 10 Mr Li later, weren't you? He worked under you? 11 A. At a later period, he was my assistant. 12 Q. In January 2016? 13 A. Roughly during that period. 14 Q. So, by January, you had earned sufficient of Mr Poon's 15 confidence for you to be promoted to be in charge of 16 other people; correct? 17 A. It was mostly to assist Mr Poon to handle the work that 18 was assigned, to help complete the work that was 19 assigned. 20 Q. That's not an answer to my question. I will repeat it. 21 So, by January, you had earned sufficient of Mr Poon's 22 confidence for you to be promoted in charge of other 23 people; correct? 24 A. The company didn't have any promotion policy, but the 25 site foreman does manage its employees.	Page 11	1 Q. I have put the point fairly to you. I will move on. 2 Can we turn to file D2, page 914, paragraph 21. 3 Here, you set out your awareness of the inspection 4 system; correct? 5 A. Correct. 6 Q. And you say that if there were any defects, they had to 7 be remedied immediately; correct? 8 A. Correct. 9 Q. And there was a formal inspection by MTR before concrete 10 was poured; correct? 11 A. There was a cleaning inspection. 12 Q. You say here: 13 "... if the inspectors of MTR were not satisfied 14 with the works, representatives of Leighton would ask 15 the responsible sub-contractor to rectify the problem 16 immediately. The rectification works would continue 17 until inspectors of MTRC were satisfied with the 18 construction works." 19 That's your evidence; correct? 20 A. That is correct. 21 Q. If defective rebar was there in the reinforcement, it 22 could well be that the rebar would be remedied on 23 inspection; correct? 24 A. The remedy work -- if the threaded bar is cut off, then 25 it cannot be remedied.
Page 10	1 Q. So, in three months, you had gone from a complete 2 newcomer to site to site foreman; correct? 3 A. I was promoted from a new person in the site to 4 an assistant foreman. 5 Q. That's hardly the act of an introvert, is it? 6 CHAIRMAN: Well, perhaps you might rephrase that. You may 7 have a very efficient introvert who is recognised as 8 such. 9 MR WILKEN: I am grateful, sir. 10 In three months, you have sufficient knowledge of 11 the site to be promoted to assistant foreman; correct? 12 A. Well, I wouldn't call it a promotion. I was learning on 13 the job. 14 Q. You were learning on the job. In September, you see 15 people, you say, cutting rebar. You stand there for ten 16 minutes, it's loud, and you say nothing; correct? 17 A. Subsequently, in our regular meetings, we had ten or 18 eight colleagues sitting in the meetings, and I had 19 echoed the observations and I had mentioned that there 20 were such occurrences. 21 Q. Where is that in your statement? The simple answer is: 22 it is not. If you were being an honest witness to this 23 Commission, that is what you would say, wouldn't you? 24 A. If it's not in the evidence, then it was not mentioned 25 in the evidence, in the statement.	Page 12	1 Q. Yes, it can. You cut the rebar, you drill into the 2 D-wall, and you would put another bar in; correct? 3 A. You are correct, but I'm talking about the threaded 4 bar -- the threaded part cannot be remedied. 5 Q. Are you talking now as to what you know now or what you 6 knew in September 2015? 7 A. I have no supplement. I cannot recall whether, in 2015, 8 I had such knowledge to make such a comment. 9 Q. You know, it would be nice to get one straight answer. 10 Put another way, you cannot say that defective rebar 11 was not remedied before concrete was poured; correct? 12 A. I'm sorry, the translation didn't come across very 13 clear. 14 Q. Put another way, you cannot say that defective rebar was 15 not remedied before concrete was poured; correct? 16 A. I'm not sure. 17 Q. Very well. Let's turn to your third statement, file D2, 18 page 1005, paragraph 2. Here, you identify, or you say 19 you identify, two people: Law Chi Keung and Ah Tung; 20 correct? 21 A. Yes. 22 Q. Can we go to the photographs, please. The photographs 23 follow; it should be 1007. 24 Now, if you look at the bottom right-hand corner, 25 you will see a date stamp, 4 September 2015; correct?

Page 13	1 A. Yes, that's correct. 2 Q. You didn't take these photographs, did you? 3 A. That is correct. 4 Q. You didn't see these photographs being taken, did you? 5 A. That is correct. 6 Q. You weren't even employed at Hung Hom on 4 September 7 2015; correct? 8 A. Correct. 9 Q. You do not know where these were taken? 10 A. That is correct. 11 Q. You don't know on whose mobile phone they were taken? 12 A. That is correct. 13 Q. You looked at these photos on 4 October this year, 14 didn't you; that's your evidence? 15 A. Correct. 16 Q. Some three years after these photos were taken? 17 A. Correct. 18 Q. Now, 1007 -- you can't see anyone's face, can you? 19 A. Correct. 20 Q. Next page, please. 21 You can't see anyone's face here either, can you? 22 A. We can only see the silhouette of the figures. 23 Q. Correct. Next page, please. 24 And you can't see anyone's face here either, can 25 you?	Page 15	1 Q. Are you aware that Leighton used different coloured 2 helmets -- sorry, different coloured helmets were used 3 on site for different tasks? 4 A. Yes, I'm aware. 5 Q. And that a red helmet means someone is a banksman? 6 A. Yes. 7 Q. Ah Tung was not made a banksman until 30 September 2015. 8 That's what his statement says. You can see that in 9 paragraph 3. Do you accept that? 10 A. I'm not sure. 11 Q. That's his evidence. You can't deny it, can you? 12 A. (Chinese spoken). 13 MR SO: Sir, I think this question could be rephrased. In 14 any event, this witness cannot say how that witness's 15 evidence is correct or not, and that witness is 16 certainly subject to cross-examination, so I would 17 respectfully say this question would not be appropriate. 18 MR WILKEN: I'm afraid Mr So is wrong. I'm entitled to say 19 that this witness cannot deny that allegation. 20 CHAIRMAN: Yes. This witness either is in a position to 21 deny it or not deny it. 22 MR WILKEN: Correct. 23 CHAIRMAN: That's not an admission objectively of the 24 absolute truth of the statement. 25 MR WILKEN: Precisely, sir.
Page 14	1 A. Correct. 2 Q. Do you know that Law Chi Keung could not recognise 3 himself in these photographs? 4 A. I don't know that. 5 Q. I can take you to his witness statement. I'm not sure 6 precisely which file it's in, because the updating has 7 gone a bit awry. It's only been served very recently, 8 so it may well be bundle C33 or 32, but the page 9 reference is 25782. 10 MR PENNICOTT: It's C34. 11 MR SHIEH: C34. 12 MR WILKEN: I'm grateful to Mr Pennicott and Mr Shieh. 13 And it's paragraph 4. Here, he says: 14 "I cannot identify whether the person with a blue 15 helmet in the photos referred to ... by Jason Poon and 16 Mr But ... is me." 17 So he does not recognise himself. 18 A. That's what the statement says. 19 Q. And if we do the same for Mr Ah Tung, which is the same 20 volume, 25786, paragraph 4, he says: 21 "I cannot identify whether the person with a red 22 helmet in the photos referred to ... by Jason Poon and 23 Mr But ... is me." 24 That's what he says. 25 A. That's what the statement says.	Page 16	1 So you cannot deny that this witness says that he 2 was appointed a banksman on 30 September 2015; correct? 3 "Yes" or "no"? 4 A. I cannot deny what he said, but from the pictures I can 5 only identify the relevant people, and I think that is 6 two separate issues. 7 Q. No, because the person you identify as Ah Tung is 8 wearing a red helmet, isn't he? 9 A. Correct. 10 Q. And a red helmet means he's a banksman; correct? 11 A. Yes, red helmet means banksman. 12 Q. And he says he wasn't a banksman until 30 September; 13 correct? 14 A. This is what the statement says. 15 Q. These photographs were taken on 4 September; correct? 16 A. It is dated 4 September. 17 Q. So he could not have been wearing a red helmet on 18 4 September; correct? 19 A. I beg to differ, because within the work site, sometimes 20 the workers may grab someone else's helmet to wear. 21 There may be other reasons. 22 Q. I see. Are you speculating there? 23 A. No. 24 Q. You cannot say that on 4 September, Ah Tung took someone 25 else's helmet, can you? So you are speculating.

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<p>1 A. That's what I meant. I'm merely talking about what 2 happens in general on site. 3 Q. Yes. You give a lot of evidence of generalities. I'm 4 trying to get to the specifics. 5 Are you aware that neither Law Chi Keung nor Ah Tung 6 fixed rebar? 7 A. I'm not sure. 8 Q. Are you aware that they both said they didn't cut 9 threaded bars? 10 A. The question again, please. 11 Q. Are you aware that they both said they did not cut 12 threaded bars? 13 A. Just now, I saw Ho Hiu Tung's statement. That's what it 14 says. 15 Q. And you cannot deny that, can you? 16 A. I don't think I have the right to deny somebody else's 17 statement, do I? 18 Q. No, you don't. 19 CHAIRMAN: Well, you can deny it. You can say something to 20 the effect of, "I used to see him every single day doing 21 it over a period of six weeks", or something like that. 22 But would it be correct to say that you have nothing 23 in your knowledge which would enable you to deny it? 24 They have said they did not cut threaded bars. Are you 25 in a position to say that they must be wrong in that</p>	<p>1 Q. You tell us, in paragraph 4 of your first statement -- 2 that's D3 at D910 -- you tell us there: 3 "I have had the opportunity to read the witness 4 statement and the supplemental witness statement of 5 Mr Poon dated 3 September 2018 and 14 September 2018 6 respectively." 7 Do you see that statement? 8 A. Yes. 9 Q. That's true, is it? You did in fact read those witness 10 statements? 11 A. The lawyer, the counsel, explained this to me in 12 Chinese. 13 Q. I'll put the question again. Did you in fact read those 14 witness statements, Mr But? 15 A. The counsel explained to me whilst reading it. 16 Q. So you did read those statements, did you? 17 A. Yes, I have. 18 Q. Thank you. You say: 19 "I" -- "I" being Mr But -- "agree that the facts 20 deposited to therein are true." 21 Do you see that statement? 22 A. Yes. 23 Q. I wonder if we could have a little look at Mr Poon's 24 statement together, please, Mr But. 25 Could you be given Poon's first witness statement.</p>
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<p>1 regard, because of what you yourself have seen? 2 A. Let me put it this way. In the photo, in the two 3 photos, when I looked at them, I wasn't working at this 4 site. What they were doing in the photo, it doesn't 5 show they were actually cutting into the threads. In 6 the subsequent dates, whether they did so, I'm not sure; 7 I cannot deny it. 8 CHAIRMAN: Thank you. 9 MR WILKEN: Mr Chairman and Commissioner, I have no further 10 questions. Thank you for your patience, Mr But. 11 CHAIRMAN: Thank you. 12 MR WILKEN: I imagine Fang Sheung may be next. 13 MS CHONG: I have no questions for this witness. 14 CHAIRMAN: All right. 15 Cross-examination by MR BOULDING 16 MR BOULDING: Good morning, Mr But. 17 A. Good morning. 18 Q. You tell us that you were an assistant foreman back on 19 the Hung Hom Station in 2015; correct? 20 A. That's correct. 21 Q. You told the learned Commissioner and Prof Hansford 22 yesterday that you began working at the Hung Hom Station 23 construction site in mid-September 2015. Do you 24 remember giving that evidence? 25 A. That's correct, sir.</p>	<p>1 It's bundle D1, pages 19 to 20. Do you have it? 2 A. Pages 19 to 20, yes. 3 Q. Right, and do you see on page D19 the heading "C1. 4 Incidents in August 2015"? 5 A. Yes. 6 Q. And if you would be kind enough to look through 7 paragraphs 30 to 34, you would agree with me, wouldn't 8 you, that in those paragraphs, Mr Poon is talking 9 exclusively about events which occurred in August 2015; 10 correct? 11 A. Could this be translated for my benefit, please? 12 Because when I was reading it, I had this explained to 13 me in Chinese. 14 Q. So you want all that to be translated to you, four or 15 five paragraphs translated to you, in Chinese; is that 16 what you want? 17 A. If you will, please. 18 Q. I'm not the right person to do that. But perhaps 19 someone who's far more qualified in these fields than 20 I am could translate the heading, "C1. Incidents in 21 August 2015". I don't know whether you could do that. 22 MR PENNICOTT: If you read it out, they will translate it. 23 MR BOULDING: "C1. Incidents in August 2015", and then 24 paragraph 30: 25 "In mid-August 2015, I and 12 other staff" -- the</p>

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<p>1 "I" being Mr Poon -- "of Chinat had an internal meeting 2 at Chinat's temporary offices in the Hung Hom Station 3 construction site. Mr Leung reported to me orally that 4 he saw in late July 2015 someone cutting the threaded 5 rebars using cutting/grinding machines at bay 2 and 6 bay 4 of area C1. At the same time, Mr Chu also 7 corroborated with what was said by Mr Leung and told me 8 that he also witnessed similar incidents happening." 9 Are you still with me? 10 A. (Nodded head). 11 Q. Paragraph 31: 12 "I asked Mr Leung and Mr Chu as to who was/were the 13 person(s) cutting the threads. Both Mr Leung and Mr Chu 14 told me that they were staff member(s) of Leighton. 15 32. I suggested to Mr Leung that he should report 16 the matter to MTRC for record purposes. Sometime later, 17 Mr Leung and Mr Chu told me that they had reported the 18 matter to MTRC. 19 33. In or about August 2015, I visited area C1 of 20 the Hung Hom Station construction site for site 21 inspection purposes. At a position between bay 2 and 22 bay 3, I witnessed three male persons ('the persons') 23 wearing reflective safety vests of Leighton using 24 a grinding machine to cut the threaded rebars one after 25 another. The surrounding environment was clear and</p>	<p>1 paragraphs, but what I'm suggesting to you is that they 2 relate exclusively to matters which occurred in August 3 2015. You did not turn up on site until mid-September 4 2015. In those circumstances, it is impossible for you, 5 is it not, to agree that the facts in those paragraphs 6 are correct? 7 A. I'm not sure. 8 Q. That cannot be right, Mr But. I'm asking you about your 9 evidence which you've given on affirmation, and the 10 proper answer, I suggest, Mr But, is, "Mr Boulding, you 11 are right. I cannot possibly agree or confirm that the 12 facts in paragraphs 30 to 34 are correct." That's the 13 right answer, isn't it, Mr But? 14 A. Yes, I know. 15 Q. Thank you. I'm glad we got there in the end. 16 Now, if we look on, we see that in paragraphs 35 and 17 following, "C2. Reporting the incidents to Leighton in 18 September 2015". Do you see that heading, page D20? 19 A. Yes, I do. 20 Q. You've been asked a couple of questions about 21 paragraph 35 already, but I will persist, if I may. It 22 says: 23 "In or about early September 2015, Mr But also 24 reflected to me that similar incidents occurred. He 25 also attempted to stop those doing what they were doing,</p>
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<p>1 bright. I was around 30 to 40 metres away from the male 2 persons and can see them clearly without any 3 obstructions whatsoever in front of me." 4 Then finally at paragraph 34: 5 "I approached the persons who were using the 6 grinding machine to cut the threaded rebars to install 7 them to the couplers on the diaphragm wall. I attempted 8 to stop them from doing what they were doing, but it was 9 in vain as they ignored me." 10 A. I heard that. 11 Q. Splendid. We can see there, can we not, Mr But, that 12 Mr Poon is talking about matters which occurred in 13 August 2015; correct? 14 A. In the statement paragraphs 30 to 34, that's what 15 happened in August, yes. 16 Q. Well, you didn't turn up on the site until mid-September 17 2015, did you? 18 A. Correct. 19 Q. So how can you possibly, Mr But, tell the learned 20 Commissioner and Prof Hansford that the facts deposed to 21 by Mr Poon in these paragraphs are true? You can't, can 22 you? 23 A. I read these paragraphs. 24 Q. Mr But, I know a lot gets lost in translation, but 25 I will put the question again. You read these</p>	<p>1 namely cutting the threaded rebars but, again, to no 2 avail." 3 You have read that, have you? Do you understand 4 that? 5 A. Yes, I do. 6 Q. Again, this is another paragraph, Mr But, that you say 7 you agree is true? That's a question. This is another 8 paragraph, is it not, which you say is true? 9 A. Yes. 10 Q. But I've got to suggest to you, Mr But, that it would 11 have been impossible for you, would it not, to reflect 12 on events in or about early September 2015 to Mr Poon 13 when you did not start until mid-September. That's 14 correct, is it not, Mr But? 15 A. I started at the Hung Hom site in mid-September. 16 Q. Quite. And he's talking about in or about early 17 September, which I suggest relates to a period before 18 mid-September, and if that's right, you cannot possibly 19 have reflected on anything to him in that period, could 20 you, Mr But? 21 A. Before I arrived at site, no, I couldn't. 22 Q. Thank you. We're finally getting there. 23 And reading on, if I may, again: 24 "He" -- that's Mr Poon; please listen -- "also 25 attempted to stop those doing what they were doing,</p>

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<p>1 namely cutting the threaded rebars" --</p> <p>2 CHAIRMAN: No, I think that's wrong.</p> <p>3 MR BOULDING: Sorry, Mr But. You're absolutely right. Sir,</p> <p>4 thanks for pulling me up.</p> <p>5 Then Mr Poon says:</p> <p>6 "He also attempted to stop those doing what they</p> <p>7 were doing, namely cutting the threaded rebars but,</p> <p>8 again, to no avail."</p> <p>9 So Mr Poon is saying that you, Mr But, tried to stop</p> <p>10 the workers cutting the bars, but it was to no avail, it</p> <p>11 didn't work; they didn't take any notice of you.</p> <p>12 Now, again, according to your evidence, Mr But,</p> <p>13 given yesterday, that statement simply cannot be true,</p> <p>14 can it?</p> <p>15 A. No, it's not that it's impossible. It's just that</p> <p>16 I don't remember whether I managed to do it or not.</p> <p>17 Q. Well, we'll all look at the transcript, Mr But, but my</p> <p>18 recollection is that that's rather different from what</p> <p>19 you said yesterday. But let's move on, for the sake of</p> <p>20 expedition.</p> <p>21 Paragraph 36:</p> <p>22 "In September 2015, I reported the incidents in ...</p> <p>23 2015 to Mr So Yiu Wai, the then superintendent of</p> <p>24 Leighton, and Mr So's superior Mr Khyle Rodgers, the</p> <p>25 then senior superintendent of Leighton. I indicated to</p>	<p>1 Now, Mr But, it's correct, is it not, that you were</p> <p>2 not involved in the meeting between Mr Poon, Mr So and</p> <p>3 Mr Rodgers? That's correct, is it not?</p> <p>4 A. Yes.</p> <p>5 Q. And, similarly, you were not one of the "three of us",</p> <p>6 to quote paragraph 39, one of the "three of us" who</p> <p>7 attended the site inspection; that's correct, isn't it?</p> <p>8 A. Yes, you could put it that way.</p> <p>9 Q. Well, I do put it that way, Mr But, and I'm going to</p> <p>10 have to suggest that in those circumstances, you cannot</p> <p>11 possibly confirm the accuracy of what Mr Poon says about</p> <p>12 his meetings with So and Rodgers, can you?</p> <p>13 A. Of course, in terms of the accuracy, I wouldn't be sure</p> <p>14 about that, but I just know that from Mr Poon's witness</p> <p>15 statement, that's what he said, so I just repeat what he</p> <p>16 said there.</p> <p>17 Q. Mr But, I'm sorry to be pedantic but sometimes lawyers</p> <p>18 need to be. In paragraph 4 of your statement, that you</p> <p>19 have affirmed to, you say, by reference to Mr Poon's</p> <p>20 first and second witness statements, "I agree that the</p> <p>21 facts deposed to therein are true." That's your</p> <p>22 evidence, isn't it, Mr But?</p> <p>23 A. Yes.</p> <p>24 Q. And that is simply incorrect, is it not, Mr But?</p> <p>25 A. In what way it is incorrect?</p>
<p>Page 26</p> <p>1 Mr So and Mr Rodgers that staff members of Leighton were</p> <p>2 cutting the threaded rebars.</p> <p>3 37. Both Mr So and Mr Rodgers told me that they had</p> <p>4 no knowledge of any staff members of Leighton doing such</p> <p>5 acts. They also reassured me that they would inform</p> <p>6 their staff members not to do such acts again and</p> <p>7 reassured me that no similar incidents would occur again</p> <p>8 in the future.</p> <p>9 38. That said, in mid-September 2015, I myself</p> <p>10 again saw staff members of Leighton once again, cutting</p> <p>11 the threaded rebars.</p> <p>12 39. Between 15 to 20 September 2015, I invited both</p> <p>13 Mr So and Mr Rodgers for a site inspection. During the</p> <p>14 inspection, all three of us saw one staff member of</p> <p>15 Leighton cutting the threaded rebars using a hydraulic</p> <p>16 disc cutter.</p> <p>17 40. I immediately approached that person and tried</p> <p>18 to stop him from cutting the threaded rebars.</p> <p>19 Nonetheless, Mr So stopped me and asked, rhetorically,</p> <p>20 'why would it be a problem to cut the threaded rebars?'</p> <p>21 Mr So, in front of me, asked that staff member to</p> <p>22 continue with what he was doing, namely cutting the</p> <p>23 threaded rebars. I (secretly) took out a Huawei mobile</p> <p>24 phone, which belongs to Chinat, and took 2 photographs</p> <p>25 and a video clip of approximately 10 odd seconds."</p>	<p>Page 28</p> <p>1 Q. It's incorrect because we've established that you are</p> <p>2 telling the learned Commissioner on oath that events</p> <p>3 that Mr Poon refers to, when you were simply not on site</p> <p>4 or not at the meeting in question, are true. You are</p> <p>5 not in a position to do that, are you, Mr But?</p> <p>6 That's a question, Mr But.</p> <p>7 A. I couldn't be involved in that.</p> <p>8 CHAIRMAN: Sorry, Mr But, if you said to me that you went</p> <p>9 for dim sum with three people yesterday, and I was not</p> <p>10 there, I can't confirm on oath or on affirmation that</p> <p>11 your statement is correct, can I? I wasn't there.</p> <p>12 I don't know if you had dim sum or not. All I can say</p> <p>13 is I was told by you that you had dim sum with three</p> <p>14 people. That's all I can say. Would you agree with</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 CHAIRMAN: So you're not in a position to confirm one way or</p> <p>18 the other whether what Mr Poon did in September, when</p> <p>19 you were not present, is true or not? All you can see</p> <p>20 is he told me this is what he did, or I learnt that this</p> <p>21 is what he said he did?</p> <p>22 A. Yes.</p> <p>23 CHAIRMAN: Thank you.</p> <p>24 MR BOULDING: I'm grateful for your intervention, sir. Just</p> <p>25 one or two more instances, because credibility is</p>

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<p>1 an important matter in this Inquiry.</p> <p>2 CHAIRMAN: Yes.</p> <p>3 MR BOULDING: I wonder if we can go to Mr Poon's second</p> <p>4 statement, which is another statement you say you've</p> <p>5 read and you confirm the contents are true.</p> <p>6 If you would please go to D889. He says:</p> <p>7 "In paragraph 80 of the first witness statement,</p> <p>8 I said:</p> <p>9 'At or about 0930 hours, I was brought to a meeting</p> <p>10 room of MTRC Hung Hom Station office. There was a total</p> <p>11 of 10 persons present, which included: ...</p> <p>12 80.6. Mr Ian Pennicott SC ..."</p> <p>13 I take it, Mr But, that you do not say you were at</p> <p>14 the meeting held on 13 June which Mr Poon is talking</p> <p>15 about here; that's correct, is it not?</p> <p>16 A. Yes.</p> <p>17 Q. So, by saying "yes", you are agreeing with me, are you</p> <p>18 not?</p> <p>19 A. Yes, I was not at the meeting.</p> <p>20 Q. So, again, I have to put it to you, Mr But, it's</p> <p>21 absolutely impossible for you, is it not, to say that</p> <p>22 what Mr Poon tells the learned Commissioner about this</p> <p>23 meeting is accurate? You simply cannot do that, can</p> <p>24 you, Mr But?</p> <p>25 A. You -- well, I just use the same analogy used by</p>	<p>1 persons involved in the cutting of the threaded rebars</p> <p>2 were staff members of Leighton. I told them that staff</p> <p>3 members of Leighton can easily be identified from staff</p> <p>4 of other sub-contractors by their uniforms. As staff</p> <p>5 members of Leighton were all addressed with Leighton</p> <p>6 T-shirts and reflective vests, on the other hand, staff</p> <p>7 of Fang Sheung were all rebar fixers and their uniforms</p> <p>8 were heavily contaminated by sweat and rust in dark</p> <p>9 brown colour."</p> <p>10 Sounds awful, but dark brown uniforms heavily</p> <p>11 contaminated by sweat and rust.</p> <p>12 Again, if we can go back to paragraph 4 of your</p> <p>13 witness statement, this is another matter where you</p> <p>14 confirm the accuracy of what Mr Poon says, is it not?</p> <p>15 A. Yes.</p> <p>16 Q. So who's right? Did they have any form of uniform? You</p> <p>17 say they didn't. Or did they have a brown uniform?</p> <p>18 Who's right?</p> <p>19 A. What he meant was the uniforms, there's no specific form</p> <p>20 of uniforms, but they were contaminated by the rust so</p> <p>21 that's why they became all brown all over them.</p> <p>22 CHAIRMAN: All right. So you're not really in a position to</p> <p>23 give evidence as to what Mr Poon meant. You are saying,</p> <p>24 as I understand it, that their clothing, not uniforms,</p> <p>25 were contaminated by sweat and rust; is that right?</p>
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<p>1 His Honour, it's the same answer.</p> <p>2 Q. That will do for my purposes, Mr But.</p> <p>3 I could go on at some length, but I'm just going to</p> <p>4 have one more go at you speaking to the accuracy of what</p> <p>5 Mr Poon says. I wonder if you would be kind enough to</p> <p>6 cast your mind back yesterday to I think it was</p> <p>7 Mr Pennicott's questions on the uniforms worn by various</p> <p>8 members of staff on the site. Do you remember</p> <p>9 Mr Pennicott asking you questions about that?</p> <p>10 A. Yes, he asked about clothing.</p> <p>11 Q. This is a matter which you helpfully deal with in</p> <p>12 paragraph 5.3 of your first statement.</p> <p>13 MR PENNICOTT: D911.</p> <p>14 MR BOULDING: D911. Thank you very much indeed.</p> <p>15 In paragraph 5.3, you tell the learned Commissioner</p> <p>16 and Prof Hansford:</p> <p>17 "Workers of Fang Sheung did not wear any form of</p> <p>18 uniforms ..."</p> <p>19 Do you see that?</p> <p>20 A. Yes, they didn't wear any form of uniforms or specific</p> <p>21 uniforms.</p> <p>22 Q. Right. If we could go, please, to D1, page 37, and if</p> <p>23 we could look, please, at paragraph 86 on page D36:</p> <p>24 "Representatives of the MTRC then asked me if I may</p> <p>25 produce any further information proving that those</p>	<p>1 A. Yes, correct. Correct.</p> <p>2 MR BOULDING: Well, I need to persist just a little bit,</p> <p>3 Mr But. Please forgive me.</p> <p>4 Look at what Mr Poon says:</p> <p>5 "On the other hand, staff of Fang Sheung were all</p> <p>6 rebar fixers and their uniforms ..."</p> <p>7 Do you see the word "uniforms"?</p> <p>8 A. Yes.</p> <p>9 Q. He goes on to say:</p> <p>10 "... their uniforms were heavily contaminated by</p> <p>11 sweat and rust in dark brown colour."</p> <p>12 So the uniform was dark brown, but it was</p> <p>13 contaminated, and I've got to put the question again</p> <p>14 because credibility is important here: who's right? Did</p> <p>15 Fang Sheung have no uniform, as you say, or a dark brown</p> <p>16 uniform, as Mr Poon says? Who's right, please?</p> <p>17 A. Could you clearly translate again that sentence of</p> <p>18 Mr Poon about the dark brown colour?</p> <p>19 Q. I will read it so it can be translated to you:</p> <p>20 "On the other hand, staff of Fang Sheung were all</p> <p>21 rebar fixers and their uniforms were heavily</p> <p>22 contaminated by sweat and rust in dark brown colour."</p> <p>23 So, Mr But, who is right? You say they had no</p> <p>24 uniforms at all. Mr Poon says that they had dark brown</p> <p>25 uniforms. Who's right?</p>

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1 A. I think it wasn't the dark brown uniform. I think he
2 was saying that the uniform was made dirty and it was
3 dark brown. I don't think he was referring to a dark
4 brown uniform. It was just contaminated by that colour.
5 Q. Well, Mr But, I think I've made my point. I'll move on.
6 If we could have a look, please, at paragraph 9 of
7 your first statement.
8 MR PENNICOTT: 912.
9 MR BOULDING: Is it 912? Yes, 912.
10 Here you are talking, are you not, about the
11 incident that occurred, allegedly occurred, in 2015,
12 near area C1; do you see that, Mr But?
13 A. Yes.
14 Q. And yesterday you will recall, will you not, telling
15 Mr Pennicott that it was around area C1, but you
16 couldn't recall whether they were cutting at the top or
17 bottom level; do you remember giving that evidence?
18 A. I did give evidence.
19 Q. Do you remember giving the evidence I've just related to
20 you, Mr But? Namely that you said it was around the
21 area of C1 that you saw the cutting, but you couldn't
22 recall whether they were cutting at the top level or the
23 bottom level; do you remember giving that evidence?
24 A. Yes.
25 Q. And you tell us in paragraph 9:

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1 "At that time, I was about 8 metres apart from the
2 workers and could see precisely what they were doing."
3 That's your evidence, is it not?
4 A. Correct.
5 Q. Now, I would estimate that I'm about 4 metres from you.
6 Does that seem about right?
7 A. Roughly 4 metres, yes.
8 Q. So you were looking at workers allegedly cutting bars
9 twice the distance between us; that's how far they were
10 from you, correct, approximately?
11 A. Double, yes.
12 Q. Okay.
13 Then you tell us in paragraph 10 -- you refer in
14 paragraph 10 to your "training and knowledge in the
15 construction industry"; do you see that?
16 A. (Nodded head).
17 Q. You go on to say -- I pick up the third sentence:
18 "According to what I saw, I estimated that the
19 workers had cut about 6 centimetres of the threaded
20 rebars and about 2 centimetres of the threaded rebars
21 remained on the threaded bars."
22 Do you see your evidence there, Mr But?
23 A. Yes.
24 Q. I've really got to suggest to you, Mr But, that if you
25 were standing where I am now and the workers in question

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1 were doing what you say they were doing, twice the
2 distance that you are from me, it would be impossible
3 for you to estimate to that degree of accuracy --
4 2 centimetres, 6 centimetres -- exactly what they were
5 doing; that's correct, isn't it?
6 A. I disagree. We could still estimate the proportion.
7 Q. From 8 metres?
8 A. There is a proportion.
9 Q. I've got to suggest to you that that's simply fantastic,
10 Mr But, that you say you could do that from 8 metres
11 away. It's not possible, is it?
12 A. I disagree.
13 MR BOULDING: Sir, I see the time. I've got a bit more to
14 do. If that would be a convenient moment for you?
15 CHAIRMAN: Yes, thank you.
16 I just want to ask one thing. Mr But, if you go to
17 paragraph 9, and if you look at the last sentence, it
18 says -- and that will be translated to you:
19 "I saw the workers cutting approximately 10 threaded
20 rebars and screwing them into the couplers on the
21 diaphragm wall."
22 Do you see that?
23 A. Yes.
24 CHAIRMAN: I may have misunderstood you yesterday, but my
25 very firm impression yesterday was that according to

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1 you, in your evidence, you did not see anybody actually
2 screwing these cut rebars into the couplers.
3 A. I don't recall that.
4 CHAIRMAN: Well, I may be wrong, and no doubt counsel who
5 are here will look that up, but I have a very clear
6 impression of you distancing yourself, that is not being
7 prepared to say that you actually saw these shortened
8 rebars, with the thread cut away, being screwed into
9 couplers. What is your memory of what you saw at the
10 time? Did you actually see it happen or not?
11 A. I saw them cutting, but I cannot recall whether they had
12 screwed it into the diaphragm wall.
13 MR BOULDING: Sir, you are absolutely right and that's why
14 I didn't seek to challenge that point. I'll give you
15 the precise transcript reference when I come back after
16 the coffee, because, as Mr Wilken said, the transcript
17 he's working from and what I'm working from was hot of
18 the press yesterday, so we don't have the correct
19 references.
20 The exchange was, a question by Mr Pennicott:
21 "So you've got the EWL slab, Mr But, we know it's
22 got rebar towards the top of the slab and some more
23 rebar at the bottom. Did you see this cutting going on
24 at the top or the bottom?
25 Answer: I don't remember.

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<p>1 Question: With regard to these alleged cut rebars, 2 did you see any workers attempting to screw them into 3 the couplers on the diaphragm wall? 4 Answer: I didn't. I didn't see it." 5 CHAIRMAN: Yes. Thank you. We'll adjourn now for 6 15 minutes. Thank you very much. 7 (11.29 am) 8 (A short adjournment) 9 (11.48 am) 10 MR BOULDING: Good morning again, Mr But. I fear I've got 11 a few more questions for you. 12 But before I start, if I can just tell the learned 13 Commissioner that the extract from the transcript that 14 I read from immediately before the coffee break was 15 Day 3, page 133, line 23, to page 134, line 6. 16 CHAIRMAN: Thank you. 17 MR PENNICOTT: Sir, that's right, and Mr Boulding is right 18 to point out that that's what the witness said there, 19 but can I just caution, because I don't want anybody to 20 be misled, I was actually asking the witness questions 21 not about paragraph 9 but a later paragraph in his 22 witness statement. So if that's absolutely clear: this 23 was not by reference to paragraph 9. 24 MR BOULDING: Sir, I didn't mean to suggest it was, but our 25 submission will be that the answer is the answer and</p>	<p>1 was wrong. The reason was, even if you assemble 2 a wooden cupboard at home, if you cut a thread in half, 3 your wooden cupboard is likely to collapse. When I saw 4 the bars being cut, I thought it was problematic." 5 Do you remember giving that answer? 6 A. Yes. 7 Q. So you used a couple of terms -- "problematic", 8 "wrong" -- do I assume that you realised that it had the 9 potential to cause a safety issue? Is that something 10 you realised at the time, that you thought about at the 11 time? 12 A. Yes. 13 Q. And, according to your evidence, Mr But -- and we ought 14 to say we don't accept all of it for a moment -- but 15 according to your evidence, the cutting of rebar 16 appeared to be quite frequent because, by mid-September, 17 you had witnessed cutting through threaded rebars 18 occurring twice. Do you recall your evidence to that 19 effect: in September, you had seen it twice already? 20 A. Correct. 21 Q. So you thought it was wrong, you thought it was 22 problematic, you thought it could cause a safety issue; 23 correct? 24 A. Yes. 25 Q. So why didn't you report the matter to Leighton?</p>
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<p>1 there we are. But I'm grateful to my learned friend for 2 pointing that out. 3 Now, Mr But, I'd like to ask you a few questions, if 4 I may, about the seriousness of the cutting of rebar. 5 Do you remember being asked about this yesterday by 6 Mr Pennicott? 7 A. What question? 8 Q. Well, there were quite a few questions, but it will do 9 for my purpose if I can read out an exchange which took 10 place in the wake of Mr Pennicott's questioning, when 11 the chairman got involved, and I'm reading from 12 transcript Day 3, page 129, line 8. The chairman says 13 to you, Mr But: 14 "Sorry, if I may just ask one question, Mr But. 15 At that time, on the first occasion, when you saw 16 this happening, you had only been there a short time and 17 in the industry a short time. Did you think yourself 18 that what they were doing was in any way wrong, or were 19 you there just to watch the machinery in action?" 20 Do you remember the chairman, Mr Hartmann, asking 21 you that question? 22 A. Yes. 23 Q. Then the transcript records that you say -- this is 24 page 129, line 14: 25 "I will try to explain this, Chairman. I thought it</p>	<p>1 A. At that time, I was a new worker on that particular 2 site. I wasn't familiar with all the hierarchy of 3 Leighton. So I didn't report this to Leighton. 4 Q. Well, it might have been a new site for you, you might 5 not have been too familiar with it, but in circumstances 6 where it was bad, it was a safety concern, can I not 7 suggest it was simply the obvious thing to do, Mr But? 8 It was obvious, wasn't it? 9 A. There wasn't any risk of death. I would like to 10 reiterate that I was there for a couple of days. 11 I wasn't familiar with the Leighton staff. So I didn't 12 report it. 13 Q. Okay. I hear what you say about Leighton. But why 14 didn't you at least report these two alleged incidents 15 immediately to your boss, Mr Poon? Why didn't you do 16 that, Mr But? 17 A. Well, first of all, Mr Poon, during lunchtime, would 18 turn up at the site for regular meeting, but I do have 19 time at the regular meeting to report it to him. My 20 boss is very busy and I cannot ring him up too often. 21 Q. Come, come, Mr But. It might be the case that no one is 22 going to die, but you're the person who said it was 23 wrong. You're the person who said it was a safety 24 issue. It doesn't take more than 30 seconds, does it, 25 to pick up a mobile phone and ring your boss and say,</p>

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<p>1 "Look, Jason, look, Jason Poon, do you know what's going 2 on on this site?" That was the obvious thing to do, if 3 it really occurred, wasn't it, Mr But? 4 A. I would like to stress once again that during lunchtime 5 every day, we would have a lunchbox meeting, and during 6 this lunchbox meeting we could report or we could 7 explain everything that happened on the site to the 8 boss, and the boss is very busy, he doesn't take the 9 call all the time. So for these things we would 10 normally leave them until the lunchbox meeting, unless 11 there are accidents, fatal accidents, that occur; that's 12 another matter. 13 Q. So do I understand that because your boss was so busy, 14 you say you took the opportunity to report these two 15 September incidents to him during the course of the 16 lunchtime meetings in September; is that your evidence 17 before the tribunal now? 18 A. Yes, we can report this at the lunchbox meeting. 19 Q. Well, I know you can report them, but is your evidence 20 that you actually reported these two incidents to 21 Mr Poon at the lunchtime meetings in September? Is that 22 your evidence, Mr But? 23 A. Not according to the statement. This morning, 24 I supplemented that during the lunchbox meeting, Mr Poon 25 mentioned that and I echoed that myself. I said that</p>	<p>1 mates at the September lunch meetings, or you didn't 2 tell anyone? What's right? 3 CHAIRMAN: I think this is the always difficulty of 4 translation, of course, but there is the phrase "at that 5 time", and it becomes a question of does that refer back 6 to telling or not? Because he says, "I did not tell 7 anyone nor did I stop them at that time". 8 MR BOULDING: You have heard what the learned chairman said, 9 Mr But. I will put the point that so far as we can see, 10 the evidence that you're giving now appears to depart 11 yet again, unfortunately, from what you've said in your 12 witness statement. Is that fair comment? 13 A. Which paragraph has departed? 14 Q. I am suggesting that paragraph 11 has departed from what 15 you told the chairman you had done just a few moments 16 ago. 17 A. I am not sure. 18 Q. Okay. If I could move on to another matter but still in 19 the same vein -- I wonder if we could go to 20 paragraphs 24 to 26 of your witness statement, please, 21 your first witness statement. That's D915. Just so 22 that I can read them to you, so that they can be 23 translated, paragraph 24: 24 "In or about early February 2016, I saw on two 25 separate days that workers wearing Leighton uniforms</p>
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<p>1 I knew about it. 2 Q. So your evidence now is that you knew about it and by 3 the phrase "echoing it" you are saying, are you, that 4 you told Mr Poon about these two incidents in the 5 lunchtime meetings in September? Is that your evidence 6 now? 7 A. Yes, I said I knew about it. I echoed what he said. 8 It's not me who raised it. 9 Q. Well, I've got to take you back to your statement again, 10 Mr But. Please could you go back to your statement. 11 It's D909. That's the beginning of the statement. If 12 we could go, please, to D912, here you say, in 13 paragraph 11: 14 The incidents I observed as stated in paragraphs 9 15 to 10 hereinabove happened on two occasions in September 16 2015. Although I found the cutting of threaded rebars 17 abnormal, I did not tell anyone nor did I stop them at 18 that time as these were not works that Chinat were 19 responsible for." 20 I concentrate upon your words, your signed words, 21 that you have confirmed as being accurate on 22 affirmation: 23 "Although I found the cutting of the threaded rebars 24 abnormal, I did not tell anyone ..." 25 So what's right? You told Mr Poon and your lunch</p>	<p>1 were holding a cutting/grinding machine to cut the 2 threaded rebars. The cutting/grinding machine was the 3 same as the one that I had observed the workers using in 4 September 2015: see paragraph 9 hereinabove. The 5 workers cut threaded rebars 2 to 3 times on each of 6 those two days. 7 25. On one of those occasions, I saw a worker 8 approaching an area in C1 where there was a large 9 polyethylene cloth. When this worker flipped over the 10 polyethylene cloth, I saw about 20 threaded rebars lying 11 on the floor. 12 26. In a lunch meeting in or about February 2016, 13 Mr Ngai mentioned to Mr Poon that he saw similar 14 incidents happening. Mr Poon indicated that he would 15 inform senior officials of MTRC about this matter." 16 Now, against that background, you tell us, in 17 paragraph 13 of your witness statement: 18 "[Mr Poon] asked all foremen to report the matters 19 to MTRC frontline officers should we see similar 20 incidents in the future." 21 That's something Mr Poon actually said, was it not, 22 Mr But? 23 A. Yes. 24 Q. And according to your evidence, you'd seen on two 25 separate days Leighton workers cutting threaded rebars,</p>

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<p>1 and that 20 threaded rebars were found lying on the 2 floor; correct? That's your evidence? 3 A. Yes. 4 Q. What I don't understand, Mr But, is if that had really 5 occurred, why didn't you report the matter to the MTR 6 frontline staff, as you had been instructed to do by 7 your boss? Why didn't you do that? 8 A. I did not do so. 9 Q. So you were, for want of a better term, disobeying 10 orders? 11 A. No, you can't describe it that way. I forget whether 12 I did so then, maybe I could put it this way. 13 Q. Well, I think you say that Mr Poon told you that if 14 incidents of the kind you described occurred again, you 15 were to report them to MTR frontline staff, and it's 16 really an evasive answer to say, "I forget whether 17 I disobey, maybe I could put it this way." That doesn't 18 answer my question at all, Mr But. Why didn't you do 19 what Mr Poon told you to do? 20 A. Sorry, let me answer again. I forgot whether I did so 21 or not. 22 Q. So you've got wrongs going on, you've got potential 23 safety concerns, you see something twice in a couple of 24 days, 20 threaded rebars on the floor, your boss tells 25 you, "If you see that again, But, you make sure MTR</p>	<p>1 It's not as though you take photos on the street, if 2 someone holds a phone on the street and takes photos -- 3 you might become emotional." So you were the person who 4 was saying there were people around. That's your 5 answer. And I'm asking you whether those other people 6 will have seen what you're telling the learned 7 Commissioner about: 20 cut bars, I think you said 8 yesterday they were about 2 metres long, lying on the 9 floor. Those other people would have seen those, would 10 they, Mr But? 11 A. Sorry, perhaps I didn't put it well. I said there were 12 other people there. They were doing other work. They 13 were holding the threaded bars, people in that area, not 14 others who passed by. Sorry if I didn't make myself 15 clear earlier on. 16 Q. Well, you certainly didn't make yourself clear earlier 17 on, but what I am reminded of -- 18 A. My apology. 19 Q. Accepted -- what I'm reminded of is that earlier on in 20 your evidence, you said that everyone was taking 21 photographs all of the time at the site; do you remember 22 giving that evidence? We'll give a transcript reference 23 in due course. Do you remember giving that evidence: 24 "everyone was taking photos all of the time at the 25 site"?</p>
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<p>1 frontline staff know about it", and your answer is you 2 forgot whether you did that? Is that really your 3 answer? 4 A. Yes. 5 Q. Not credible, Mr But. It's not credible, is it? You're 6 not telling the truth, are you? 7 A. I've never not told the truth. 8 Q. There's a first time for everything, Mr But. 9 These two separate instances, 20 threaded rebars 10 lying on the floor, why didn't you take any pictures of 11 the cutting or of all of these bars lying on the floor? 12 Why didn't you do that? It was the obvious thing to do, 13 wasn't it, Mr But? 14 A. At the time, there were people around. It's not like if 15 you go on the street, if someone holds a phone taking 16 photos of you -- you would become emotional; right? And 17 obviously this is a work environment where everybody was 18 working. 19 Q. So you say that lots of other people also saw, do you, 20 these 20 bars lying on the floor, bars being cut on 21 separate days? Lots of people saw this, did they? 22 That's a question, Mr But. 23 A. Can you repeat your question? Where did it say there 24 were many people who saw it? 25 Q. Well, you said, "At the time there were people around.</p>	<p>1 A. Sorry, can I read the complete questions and answers 2 before you I answer this question? 3 Q. Well, someone will look that up for me, but what I'm 4 suggesting, Mr But, is that if there had been such 5 an incident on the site -- 20 threaded rebars lying on 6 the floor -- the obvious thing to do would have been to 7 have taken a picture of it. You can do that in 8 a second. Boom, as simple as that. That's the obvious 9 thing to do, isn't it, Mr But? 10 A. I don't think I can take a clear picture in one second. 11 Q. Well, I've got to suggest, Mr But, that the reason you 12 didn't report the matter to the MTR frontline staff, as 13 Jason Poon had told you to do, and the reason you didn't 14 take any pictures of all this rebar lying on the floor, 15 is that it's a figment of your imagination; you're 16 making it up. 17 A. Let me say this once. I said I don't recall whether 18 I did so. Why is it that I didn't inform the MTRC's 19 frontline staff? Because I don't remember whether they 20 were there, because often I didn't see them there. So 21 that's it. 22 Q. Mr But, the excuses are coming long and fast. If you 23 had really seen this and you realised it was wrong and 24 you realised there were safety issues, and you had been 25 told by your boss, Mr Poon, to tell the MTR frontline</p>

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<p>1 staff, you could have found an MTR representative, if 2 you had wanted to. They were there all the time, 3 weren't they, Mr But; that's correct, isn't it? 4 A. If your question is whether I saw MTRC representatives, 5 I can tell you I honestly do not remember, perhaps 6 because I didn't see them often on site. 7 Q. You're suffering from a lot of amnesia, Mr But. 8 Thank you very much. 9 WITNESS: Thank you. 10 MR PENNICOTT: Sir, before anybody else asks any questions, 11 I wouldn't do this unless it was quite important. 12 Neither Mr Boulding or I will be able to help us with 13 this but those assisting me have. At the transcript at 14 [draft] page 42, line 8, I am told that a rather 15 important word is missing. That word is "not", which 16 rather makes it important. 17 CHAIRMAN: I don't know the context in which that single 18 word appears. 19 MR PENNICOTT: Sir, if somebody could just -- the answer 20 Mr But gave was this: 21 "Well, first of all, Mr Poon, during lunchtime, 22 would turn up at the site for regular meeting, but I do 23 have time at the regular meeting to report it to him." 24 I'm told the answer was: 25 "Mr Poon, during lunchtime, would turn up at the</p>	<p>1 MR BOULDING: No. I'm content with that clarification, sir. 2 Thank you very much. 3 CHAIRMAN: Thank you. 4 MR KHAW: Mr Chairman, if I may, I have some questions for 5 Mr But. 6 CHAIRMAN: Yes, of course. 7 Cross-examination by MR KHAW 8 MR KHAW: Mr But, we know that you first joined China Tech 9 in August 2015, and you left China Tech in November 10 2017; is that right? 11 A. Correct. 12 Q. Immediately after you left China Tech in November 2017, 13 did you join a company in Chinese called 14 (Chinese spoken), Tak Lee Construction Ltd? 15 A. No, I did not say that. I did not say that I joined 16 immediately in my statement. 17 Q. So, after you left China Tech in 2017, where did you 18 work? 19 A. In November 2017, when I left China Technology, all the 20 way up until I made my statement, which was between July 21 and August, I joined Tak Lee in April, and there were 22 some personal reasons I did not work. 23 Q. Can you tell us why you left China Tech in November 24 2017? 25 A. In November 2017, China Tech was working on the</p>
<p>1 site for regular meeting, but I do not have time at the 2 regular meeting to report to him." 3 So that's the context in which the word "not" has 4 been omitted, I am instructed. And I'm told there's 5 a Chinese transcript that will have the word "not" in 6 it, I imagine, and we need it to be looked at on the 7 English transcript. 8 COMMISSIONER HANSFORD: Could we ask him the question again? 9 Questioning by THE COMMISSIONERS 10 CHAIRMAN: Yes. 11 You said, Mr But, that you would have your lunchbox 12 meetings. Matters would be discussed at those meetings. 13 You have said that Mr Poon was a very busy man. Did you 14 have time to report to him about what you had seen at 15 one or more of those meetings or not? 16 A. Well, let's talk about the wording first. I don't 17 remember using words like "I don't have time to report." 18 I don't recall using such words. 19 CHAIRMAN: All right. Well, let me start again. 20 Did you report, at the lunchtime meetings, what you 21 had seen? 22 A. I did not raise them. It's only when Mr Poon raised it, 23 I echoed that I saw it. 24 CHAIRMAN: Do you wish to take that any further, 25 Mr Boulding?</p>	<p>1 Guangzhou-Zhuhai-Macau Bridge and I was directly 2 managing the roundabout area work, and at the time the 3 roundabout work was almost complete and I knew that 4 China Tech would not have a lot of work ahead, I decided 5 to take a break. I resigned and took a break. 6 Q. And you rejoined China Tech in August this year; is that 7 right? 8 A. That is correct. 9 Q. Before you rejoined China Tech in August this year, you 10 were still working for Tak Lee; is that right? 11 A. The beginning of August I was still working at Tak Lee. 12 Q. Is there any reason why you then decided to transfer 13 from Tak Lee to China Tech again? 14 A. The reason was, looking at the Sheung Shui waterworks 15 project, there is a large turnover of staff and Mr Poon 16 gave me a call and asked me to come back to work. 17 Q. Did you find the offer, the terms that China Tech gave 18 you, better than the terms that you had when you worked 19 for Tak Lee? 20 A. Well, as a salaryman, that of course would be one factor 21 to consider. 22 Q. Fair enough. Thank you. 23 CHAIRMAN: I think the question was: were the terms that 24 were offered to you better? 25 A. The daily salary was higher than Tak Lee.</p>

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1 MR KHAW: Would you say that Mr Jason Poon trusted you
2 a lot, as his staff?
3 A. Well, I think Mr Poon recruited me back to the company,
4 he would definitely have some level of trust.
5 Q. Did he ever praise you, or praise your work, like, "Hey,
6 you are smart, you did a good job", "(Chinese spoken)",
7 things like that? Did he ever praise you?
8 A. I have known Mr Poon for some three years, from 2015.
9 Mr Poon is very stern and in the last three years all
10 the praise I ever got from him, you could count it on
11 your fingers; it's very limited.
12 Q. So you found him a strict and fierce boss; is that how
13 you would describe him as a boss?
14 A. Can my boss hear my comments?
15 Yes, you are correct.
16 Q. Do you respect him?
17 A. Well, essentially we should respect everybody.
18 Q. Are you afraid of him?
19 CHAIRMAN: I think the question here is a specific question:
20 do you respect him as a professional and as a good boss?
21 MR KHAW: Thank you.
22 A. I respect his professionalism.
23 Q. Are you afraid of him as a boss?
24 A. Not particularly afraid. I just need to do a good job.
25 Q. And so you would -- am I right in saying that you would

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1 try your best to comply with his orders or his
2 instructions?
3 A. Well, in the construction or engineering business, that
4 is necessary.
5 Q. So your answer to my question is "yes"?
6 A. Well, I can't give you a blanket "yes". I'm just
7 limiting my answer to engineering or construction.
8 Q. So your answer to my question is that as far as work is
9 concerned, you would try your best to comply with orders
10 or instructions; is that right?
11 A. Yes, of course. Sometimes, if he makes a mistake,
12 I will mention that. It's not just one way.
13 Q. You remember you made a statement to the police in July
14 of this year?
15 A. Correct.
16 Q. Can you tell us who asked you to make this statement to
17 the police?
18 A. The police gave me a call.
19 Q. So the police called you and asked you to make a visit
20 to the police station; is that right?
21 A. Yes.
22 Q. Was it the first time ever that you were required to
23 make a statement to the police?
24 A. That's correct.
25 Q. Were you scared at that time, when you were asked by the

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1 police to make a statement?
2 A. Well, I wasn't afraid. At the time, the police made
3 an appointment with me over the phone and they mentioned
4 what it was about. It was about the Shatin to Central
5 Link and I didn't do anything against my conscience so
6 there wasn't anything to be afraid about if I was to
7 give a statement.
8 Q. Did they tell you -- I mean, when the police called you,
9 did they tell you what information they would need from
10 you?
11 A. Well, let me relate roughly what they said. It has been
12 quite a while. So they told me that, "Mr But, could you
13 cooperate with us and attend a meeting in the police
14 station and tell us -- help us make a statement about
15 the Shatin to Central Link? We need a statement from
16 you." So they just gave me a rough idea of what the
17 meeting was all about.
18 Q. So they did not tell you during the phone call what
19 exactly were the incidents that they were looking at in
20 relation to this project?
21 A. Well, I cannot recall; I'm not sure.
22 Q. How long after this conversation, this telephone
23 conversation -- sorry, I will rephrase the question.
24 After this telephone conversation, did you go to the
25 police station on the same day?

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1 A. I cannot recall.
2 Q. Before you went to the police station, did you do any
3 preparation work in order to equip yourself with
4 information that you might need to supply to the police?
5 A. I didn't do any preparation for the statement.
6 Q. Did you talk to anyone that, "Ah, the police are now
7 asking me to make a statement"? Did you talk to anyone
8 about this before you actually made your statement to
9 the police?
10 A. I told my wife.
11 Q. Did you talk to Mr Poon about the fact that you would be
12 required to make a statement to the police?
13 A. Well, let me put it this way. Starting from November
14 2017 all the way to August, when I went back to
15 Sheung Shui waterworks, I did not have direct phone
16 conversation with Mr Poon. Would that clear it up?
17 Q. During this period, did you see him?
18 A. I did not meet with him.
19 Q. In your statement to the police, you provided certain
20 details, including time, regarding what actually
21 happened. For example, September 2015, et cetera.
22 A. Yes.
23 Q. When you were in the police station, you were able to
24 remember such detail immediately, ie detail regarding
25 what happened about three years ago; is that right?

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<p>1 A. The statement took 13-14 hours, the first statement. It 2 took some time. 3 Q. So it took such a long time for you to recall the 4 details, including the dates, as to the dates regarding 5 when a particular incident happened; is that right? 6 A. Yes, I did spend some time. 7 Q. On another issue, just very briefly -- you told us that 8 when you started to work in the project in Hung Hom 9 Station, you were following a person called Ah Lam; is 10 that right? 11 A. That's correct. That's correct. 12 Q. Ah Lam was a "sifu"; right? 13 A. Yes, you can describe him that way. 14 CHAIRMAN: Sorry, what's a "sifu"? 15 MR KHAW: Your master. 16 CHAIRMAN: Thank you. 17 MR KHAW: Sorry. Like a pupil master. 18 So he showed you, when you first started at work 19 there, he showed you and taught you what to do; is that 20 right? 21 A. Ah Lam mostly taught me how to do levelling work, how to 22 ascertain the levels in a construction site, and he told 23 me to pay attention to other people's work and take it 24 step by step. 25 Q. Can I say that you worked with him closely most of the</p>	<p>1 English version for the one question I have. 2 Do you have the Chinese version there, Mr But? 3 You made this statement on 12 July 2018; do you see 4 that, towards the top? 5 A. Yes, I see it. 6 Q. And the time is recorded at 8.15 in the evening; do you 7 see that, 2015? 8 A. Yes. 9 Q. Is that the end of the interview or the beginning of the 10 interview? 11 A. It was the beginning. 12 Q. And you told Mr Khaw that the interview lasted quite 13 a few hours; was it 12 to 14 hours, you said? So did it 14 last all night? 15 A. I might have made myself not very clear. That included 16 the time that I went home. That included the time 17 I went home. 18 Q. Could you just explain when did you arrive at the police 19 station, when did you go home, when did the interview 20 finish? 21 A. It was 7 am that I returned home, 7 the next day. 22 Q. Right. So it did last all night, this interview, it was 23 throughout the evening and into the night? 24 A. Almost like that, yes. 25 MR PENNICOTT: Thank you very much.</p>
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<p>1 time on the site; is that right? 2 A. Yes, you can describe what happened on the construction 3 site. 4 Q. In September, where you said you saw this bar cutting 5 incident, were you with Ah Lam at that time? 6 A. I'm sorry, which month were you referring to? 7 Q. September 2015. 8 A. Yes, in September, yes. 9 Q. Were there any workers of China Tech who were with you 10 at that time? 11 CHAIRMAN: Just to avoid any ambiguity, the question is: 12 were there any workers of China Tech, including Ah Lam, 13 who were actually accompanying you at the time when you 14 saw the events that you have described in September? 15 MR KHAW: Thank you. 16 A. I'm not sure. 17 MR KHAW: I have no further questions. 18 CHAIRMAN: Thank you. 19 MR PENNICOTT: Sir, I wonder if I might be permitted to ask 20 one question arising out of Mr Khaw's cross-examination. 21 CHAIRMAN: Of course. 22 Examination by MR PENNICOTT 23 MR PENNICOTT: I wonder if the witness could be shown the 24 police statement. The Chinese version is at D917. 25 I guess that's D2. We probably don't need to go to the</p>	<p>1 Re-examination by MR SO 2 MR SO: If I may, sir, I have some re-examination. 3 Just that we are now still with the Chinese witness 4 statement that you have given to the police, Mr But -- 5 for the record, it's D2, page D917. 6 This is the police witness statement that Mr Khaw 7 and my learned friend Mr Pennicott have just referred 8 you to. Can I just trouble you to go to D920, at 9 paragraph 13. 10 I'm grateful to my learned friend Mr Pennicott. 11 It's D921.4, paragraph 13. 12 Probably for the benefit of you, Mr But, probably 13 I will read the Chinese that you have written in the 14 witness statement. I refer to the second-last sentence 15 that you have mentioned in that paragraph. You said 16 this: 17 "(Via interpreter) Mr Poon said he saw workers from 18 Leighton at area C1 upper part. The exact location 19 I don't remember. They were cutting the threads of the 20 rebars. Once they are done with it, they screw them 21 into the D-wall, and I, Ah Kam, Man Kwan separately 22 mentioned the fact that they saw similar things 23 happening. After the meeting, Mr Poon mentioned that he 24 would verbally report back to the MTRC", et cetera. 25 You will recall this morning, Mr But, that my</p>

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<p>1 learned friends Mr Wilken and Mr Boulding have both 2 mentioned with you whether you have mentioned the 3 incidents that you have seen to Mr Poon. You have, in 4 your evidence, said you echoed with others. 5 I wonder whether the translation would be 6 "(Chinese spoken)". 7 Regarding the paragraph that I have just shown you 8 in your police witness statement, can I just clarify 9 whether you did tell the police about the echoing 10 incident? 11 MR BOULDING: Sir, I understood that the normal Rules of 12 Evidence applied as much to this Commission of Inquiry 13 as would apply in the High Court and that's one of the 14 most leading questions I have heard for a long, long 15 time. 16 MR SO: I do apologise. I don't intend to lead, but I just 17 jog the memory of the witness regarding showing that 18 witness statement. I do apologise if I have crossed the 19 line that I should have kept within my boundaries. I'm 20 just trying to give an open-ended question and 21 an opportunity for Mr But to comment regarding that 22 paragraph of the witness statement. 23 CHAIRMAN: In which case, it should be presented by way of 24 a question that's not leading. 25 MR SO: I do apologise. I will rephrase it.</p>	<p>1 8 metres apart from the workers and could see precisely 2 what they were doing. I saw the workers cutting 3 approximately 10 threaded rebars and screwing them into 4 the couplers on the diaphragm wall." 5 Just help us, insofar as we understand, this is one 6 of the incidents you have observed? 7 A. Yes, correct. 8 Q. Can I bring you to another paragraph of the witness 9 statement, paragraph 24. 10 CHAIRMAN: Sorry, I'm not quite sure what to -- leaving 11 aside the niceties of evidence, which are of course 12 imperative, it doesn't help me, because that's 13 a statement that has been prepared with the assistance, 14 clearly, of somebody who's able to put it into proper 15 order. The witness has now extensively explained what 16 happened, and has said, for example, that he didn't see 17 certain things or can't remember seeing certain things 18 which he has stated in that statement. 19 So I think just to go back to it and say "is that 20 correct" is not assisting me at all. 21 MR SO: I understand, Mr Chairman. 22 CHAIRMAN: I would rather deal with the words from him, 23 given in this Commission, by way of questions put by the 24 various counsel. 25 MR SO: I do understand that, sir. What I am building up to</p>
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<p>1 Mr But, anything you want to say about that? 2 CHAIRMAN: I'm not quite sure. The sentence seems to read, 3 in English, at least, reasonably self-evidently, so it's 4 difficult for a witness to know, if you say "Do you want 5 to know anything about it?" 6 MR SO: Okay. I will move to the next topic in that case. 7 CHAIRMAN: It presents the witness with a difficulty as to 8 how to reply. 9 MR SO: I see. I do apologise. 10 Can I just refer you back to your witness statement, 11 the first witness statement, Mr But. 12 CHAIRMAN: This is the statements made for the purposes of 13 these proceedings? 14 MR SO: For this Commission. 15 For page D912, bundle D2, can I bring you to 16 paragraph 9, Mr But. 17 A. Yes. 18 Q. I wonder if this could be translated to Mr But too. 19 I will read that out, paragraph 9: 20 "I recalled that in September 2015 near area C1, 21 I saw 2 to 3 workers of Leighton wearing reflective 22 safety vests using a cutting/grinding machine to cut the 23 threaded rebars of the steel threads. The 24 cutting/grinding machines were red in colour and about 25 30cm times 50cm in size. At that time, I was about</p>	<p>1 do, I would say the process of building up to do, is 2 part of the evidence that he has given in this 3 Commission regarding two different incidents. 4 Therefore, I wish to clarify whether he meant, in 5 a particular part, what he said in a witness statement 6 was actually contradictory to what he said in this 7 Commission is actually some misunderstanding. So that 8 is trying to clarify those parts. 9 CHAIRMAN: I'm not happy with you doing that by direct 10 reference to these written statements. If you feel that 11 you can bring him to a portion of his evidence where he 12 said one thing and ask him whether or not he wishes to 13 comment on that in the light of other things he may have 14 said, that's different. 15 MR SO: Of course. I do apologise, sir. 16 In that case, can I trouble the officers of the 17 Secretariat to bring Mr But to the transcript at Day 3. 18 I wish to bring you, Mr But, to page 131, at line 8. 19 This is the part of the examination that Mr Pennicott 20 has brought you to when discussing your witness 21 statement yesterday. Do you recall that? 22 A. Yes, I do. 23 Q. At line 8, he was talking about February 2016, as we can 24 see; correct? 25 A. Yes.</p>

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<p>1 Q. And then he brought you to paragraph 19 of your witness 2 statement; correct? 3 A. Yes. 4 Q. Then, when being questioned at line 22, you were asked: 5 "And so was the installation of the rebar going on 6 at that time in those areas when you arrived?" 7 A. Yes. 8 Q. And your answer is that: 9 "At that moment, they were not installed, but going 10 forward, the next step, they have to be installed." 11 That's your answer? 12 A. Yes. 13 Q. Can I invite you to the next page, page 132. At 14 line 14, the learned chairman has made an enquiry with 15 you, and I quote: 16 "Sorry, I'm still a bit uncertain of your evidence 17 in this regard. Are you saying that when you were 18 working alongside your boss, Mr Ngai, you saw that 19 rebars were being screwed into couplers on the diaphragm 20 walls, or not, or that you don't remember?" 21 And your answer was: 22 "I didn't witness workers screwing the steel bars 23 into the couplers." 24 Can you tell us whether this answer applies 25 generally or whether it refers to February 2016?</p>	<p>1 because with the greatest of respect it has muddied 2 things a little bit in my mind. 3 My understanding of your evidence is that you cannot 4 now recall any occasion when you saw workers cutting the 5 screws off rebars and then putting them -- and then 6 inserting the rebars into couplers. Is that in fact the 7 case? 8 A. Well, according to the statement, that's what happened. 9 Maybe I was too nervous yesterday. 10 CHAIRMAN: I'm not interested in the statement. What I'm 11 interested in is for you just to tell me -- I understand 12 your evidence, you saw people using machinery to cut 13 rebars, but my understanding is you've never seen 14 anybody putting these rebars that have been cut into 15 couplers or securing them against couplers. Is that 16 your evidence? 17 A. No. I did say it, but my memory has faded a little bit. 18 It's not like the machinery that was red in colour that 19 I remember more vividly, but yesterday I was too 20 nervous; I said I didn't see it. 21 CHAIRMAN: I don't understand you now either, I'm very 22 sorry. With the greatest of respect, to use an English 23 term, you are going around in circles. Do you have 24 a clear memory of seeing any worker either cut off the 25 thread from a rebar and then insert it into a coupler or</p>
<p>Page 66</p> <p>1 A. Yes, it was with reference to February. 2 Q. Just a little more questions, Mr But. You told this 3 Commission that you were the assistant foreman in China 4 Technology. Could you please tell this Commission who 5 was your direct superior? 6 A. My direct supervisor is Mr Ngai and then the boss. 7 Q. Right. So between Mr Poon and yourself is Mr Ngai? 8 A. Correct. 9 Q. So far as you understand -- tell us if you don't -- 10 China Technology is a sub-contractor? 11 A. Correct. 12 Q. Do you know who is the contractor? 13 A. Leighton. 14 Q. And above Leighton, do you know anyone actually awarded 15 the contract to Leighton? 16 A. MTR. 17 Q. So, between you and MTR, just to clarify, is Mr Ngai, 18 Mr Poon and then Leighton and then MTR? 19 A. Yes, layer by layer. 20 Q. Just a last question. Is it your first time giving 21 evidence in court or any judicial proceeding? 22 A. Correct, first time in court. 23 MR SO: I have no other questions, sir. 24 Questioning by THE COMMISSIONERS 25 CHAIRMAN: Sorry, I just want to clear something up now,</p>	<p>Page 68</p> <p>1 not, at any time? 2 A. To put it simply, yes, I did. 3 CHAIRMAN: You did, but you say now that you were too 4 nervous yesterday to actually recall that fact? 5 A. Yes, I was too nervous. 6 CHAIRMAN: And when did you see this? Was this in 7 September, when you were fresh on the site, or was it at 8 a later stage? 9 A. It was September. It was September -- I shouldn't say 10 reported -- I echoed that. 11 CHAIRMAN: You didn't see -- you saw it in September but at 12 no later time? 13 A. Yes. In February, I didn't see them unscrewing the 14 bars. In February, they disappeared. 15 CHAIRMAN: All right. Does anything arise from that that 16 compels anybody? 17 Good. Thank you very much indeed. 18 Thank you, Mr But. Your evidence is complete now. 19 You can go. But remember you may have to be recalled, 20 should there be any need. 21 WITNESS: Thank you so much. 22 CHAIRMAN: Thank you. 23 (The witness was released) 24 It's 1 o'clock. I didn't attempt to engineer that, 25 I can assure you. That's happenstance. Yes, 2.15.</p>

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<p>1 Thank you very much. 2 (1.00 pm) 3 (The luncheon adjournment) 4 (2.16 pm) 5 MR PENNICOTT: Sir, I think the next witness is Mr Ngai. 6 Over to Mr So. 7 MR NGAI LAI CHI, THOMAS (affirmed in Punti) 8 (All answers given via simultaneous interpreter 9 except where otherwise specified) 10 Examination-in-chief by MR SO 11 MR SO: Mr Ngai, may I take you to bundle D2, page D960. 12 This is the witness statement that you have provided to 13 this Commission. Is that so? 14 A. Yes. 15 Q. Mr Ngai, may I invite you to go to D963. There is 16 a signature there, under the date. That is your 17 signature? 18 A. Correct. 19 Q. This is a witness statement dated the 27th day of 20 September 2018? 21 A. Correct. 22 Q. Do you wish to confirm that you would wish to adopt this 23 witness statement as part of your evidence before this 24 Commission? 25 A. Yes, I can.</p>	<p>1 Q. If I provide you with photographs of those, would you be 2 able to recognise those? 3 A. I will try. I will try to recognise them. 4 Q. May the witness be taken to bundle C1, page C38. 5 Can you tell this Commission what is in the photo? 6 A. It should be the threaded portion of the rebar. 7 MR SO: Thank you very much, Mr Ngai. I have no further 8 questions. 9 Examination by MR PENNICOTT 10 MR PENNICOTT: Mr Ngai, good afternoon. Thank you very much 11 for coming along to give evidence to the Commission. 12 I am counsel for the Commission and I've got some 13 questions for you, and there may be some others who want 14 to ask you some questions as well in a moment. 15 Mr Ngai, you mentioned in an answer to Mr So just 16 a moment ago that you had brain surgery. As 17 I understand it, that took place in January of this 18 year. Is that right? 19 A. No. It was January this year. 20 Q. I thought that's what I said. 21 Can I ask you, please, to go, so that everybody is 22 aware of this, into your police witness statement, which 23 you will find -- the Chinese version is at bundle D2, 24 page 937, and the English version is at D2/939.1. 25 Mr Ngai, I think you have been given the right page</p>
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<p>1 Q. Mr Ngai, I just have a few questions for you. The first 2 question is: can you tell this Commission your current 3 employment status? 4 A. I am semi-retired, because in January I had a brain 5 surgery. 6 Q. And as a result of the brain surgery, that leads to the 7 current employment status of yours? 8 A. Correct, because after the surgery, for instance, my 9 memory became worse, and also I have tinnitus and also 10 I couldn't eat as well. Also, I couldn't raise my arms. 11 Q. Thank you, Mr Ngai. 12 Can I bring you to paragraph 4 of your witness 13 statement. So you were the superintendent of China 14 Technology prior to your current status as partly 15 retired? 16 A. Yes, correct. 17 Q. Thank you. 18 Can I then bring you to paragraph 9 of your witness 19 statement. There you mentioned that: 20 "The threaded rebar on the steel thread were about 21 7 to 8cm long and in silver colour. The two male 22 workers cut about 3 to 4cm of the silver threaded rebar 23 away." 24 Is that so? 25 A. Yes, correct.</p>	<p>1 already. I'm reading the English. But let's just look 2 at the last couple of sentences, three sentences, in 3 paragraph 1. 4 It says here: 5 "In early January 2018, I had a brain surgery as 6 there was a blood tumour in my brain, and I rested at 7 home for half a year afterwards. I only resumed work in 8 early July 2018 and continued to be a construction site 9 superintendent at China Technology. This caused my 10 memory to fade, and I may not be able to remember things 11 which took place many years ago." 12 So the Commission recognises that that's the 13 position, Mr Ngai. 14 A. Correct, yes, it should be the case. 15 Q. And you are in reasonably good health now? 16 A. I am slowly recovering, but I still suffer some 17 problems. 18 Q. Understood, Mr Ngai. 19 Now, you tell the Commission that you started 20 working at the Hung Hom Station site in October 2015; is 21 that correct? 22 A. Correct, yes, October. 23 Q. From records that we've been supplied with by Leighton, 24 we understand that you did your induction course, safety 25 induction course, on 2 October 2015. Does that sound</p>

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<p>1 about right to you? 2 A. Yes, it should be before I went to the site. 3 Q. Right. So is it the situation, Mr Ngai, that workers 4 like yourself turning up at the site, were not allowed 5 to actually go and do any work on the site, until the 6 safety induction had taken place? 7 A. Correct. Correct. 8 Q. And we understand from your evidence that you continued 9 working at the site until 7 April 2016; is that correct? 10 A. Yes, correct. 11 Q. I want to focus on the year 2016. You are absolutely 12 sure that 2016 is the correct year? So you were there 13 just for a period of about six months; is that correct? 14 A. Yes, correct. 15 Q. I wonder if you could be shown on the screen, please, 16 D1/224. The bottom of the page, 224, that's it, 17 Mr Ngai. This is an actual site organisation chart 18 prepared by Mr Poon and is annexed to his witness 19 statement. Have you seen it before? 20 A. Yes, I see it. 21 Q. Now, you are right slap-bang in the middle of this. You 22 will see the line that comes down from Mr Poon's box, as 23 it were, to you; do you see that? 24 A. Yes, I see it. 25 Q. And in the details it says, "Thomas Ngai,</p>	<p>1 a very large area. It's broken down into areas C1, C2 2 and C3. Are you able to narrow this down for us as to 3 precisely where you were at that time that you've 4 mentioned? Was it C1, C2, C3, or are you unable to 5 recollect? 6 A. I couldn't recollect. 7 Q. You go on to say: 8 "[You] saw two male workers (I forget what uniforms 9 they were wearing at that time) using a grinder/cutter 10 to cut the threaded rebar." 11 Mr Ngai, are you able to describe the 12 grinder/cutter, its colour, how it looked, its 13 configuration? Can you explain? Can you remember? 14 A. I remember part of that. For this grinder/cutter, the 15 handle, I think it was red, and there were two 16 flywheels, sort of flywheels, small ones, about 400-500 17 long. 18 Q. Could I ask you, please, to be shown a photograph, at 19 bundle D1/228. 20 Is this the sort of cutter or grinder that you saw, 21 Mr Ngai, or is it something different? 22 A. It should be this type. 23 Q. Thank you very much. 24 Mr Ngai, on your six-month stretch at the site, did 25 you see many of these cutters? Just a few? Just one?</p>
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<p>1 superintendent, 5 October 2015 to 7 April 2017", not 2 2016, Mr Ngai. 3 So is this wrong? 4 A. Yes, this is wrong. It should be 2016. 5 Q. I just wanted to make sure that that is the case, 6 Mr Ngai. You can put that away. Thank you very much. 7 Mr Ngai, in paragraph 5.3 of your witness 8 statement -- not your police witness statement but the 9 statement you've given to the Commission; that's at 10 page D2/961 -- you say at 5.3: 11 "Workers of Fang Sheung did not have any specific 12 type of uniform. They wore safety reflective vests 13 incorporating their company's name." 14 A. Some bore the company's name, some did not. 15 Q. Right, I see. Because a couple of the Fang Sheung 16 witnesses that we're going to be hearing from next week, 17 I imagine, Mr Ngai, say that they were issued with 18 uniforms by Leighton. Were you aware of that? 19 A. I'm not aware of that. 20 Q. All right. 21 In paragraph 9 of your witness statement, you say: 22 "On a day in December 2015 at or about 1900 hours, 23 I was at area C of the Hung Hom Station construction 24 site ..." 25 Just pausing there, Mr Ngai, area C, we know, is</p>	<p>1 Have you any recollection of that? 2 A. I didn't pay notice how many such cutters there were. 3 CHAIRMAN: I think the question is not whether you remember 4 exactly how many, but did you see a cutter only on this 5 one occasion that you have spoken about, or did you tend 6 to see them from time to time? 7 A. In actual fact, China Technology would not have this 8 type of machine. My guess is only the bar benders would 9 own such machine, or the bar bending company would own 10 such machines. That's why I wouldn't pay notice all the 11 time of other people's machinery. 12 MR PENNICOTT: Did you form any impression, Mr Ngai, as to 13 whether there was just one cutter/grinder or whether 14 there might have been a number? Do you have any 15 impression at all? 16 A. I don't remember. 17 Q. Okay. 18 Going back to paragraph 9 of your witness statement, 19 you say that they were -- you saw the grinder/cutter 20 cutting the threaded rebar. You say: 21 "The threaded rebar on the steel thread were about 22 7 to 8 centimetres long and in silver colour. The two 23 male workers cut about 3 to 4 centimetres of the silver 24 threaded rebar away." 25 Now, when you saw this happening, Mr Ngai, how far</p>

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<p>1 away from the cutting operation were you; do you recall?</p> <p>2 A. In my recollection, it was about 6 or 7 metres.</p> <p>3 Q. And I don't suppose you took a photograph of this?</p> <p>4 A. I did not take photographs.</p> <p>5 Q. And you say the two male workers cut about 3 to</p> <p>6 4 centimetres of silver threaded bar away. So</p> <p>7 approximately about half of the thread; would that be</p> <p>8 about right?</p> <p>9 A. Well, it would be roughly a half, because I was some</p> <p>10 6-7 metres away, and it's also based on my memory. So</p> <p>11 that response is from my memory.</p> <p>12 Q. Okay. You say that this is the only occasion that you</p> <p>13 witnessed threaded rebars being cut in your six months</p> <p>14 on the site?</p> <p>15 A. That's correct.</p> <p>16 Q. Did you ever see anybody, at any time in the six months,</p> <p>17 take a cut rebar and attempt to screw it into a coupler</p> <p>18 on the diaphragm wall?</p> <p>19 A. No.</p> <p>20 MR PENNICOTT: Thank you very much. I have no further</p> <p>21 questions.</p> <p>22 CHAIRMAN: Thank you.</p> <p>23 Cross-examination by MS CHONG</p> <p>24 MS CHONG: Mr Ngai, I represent Fang Sheung.</p> <p>25 In paragraph 5.3, you stated that the workers of</p>	<p>1 helmets with their company logo. Logo.</p> <p>2 A. I didn't take note of that.</p> <p>3 Q. Please turn to D1/228, the photo. Take a look at the</p> <p>4 safety helmet. Now, was that a sticker, "Strive for</p> <p>5 life", that is the sticker bearing the logo of Leighton?</p> <p>6 A. Correct.</p> <p>7 Q. And, in your paragraph 6, you stated that workers of</p> <p>8 MTR/Leighton would wear safety helmets with their logo</p> <p>9 on.</p> <p>10 So may I take it that is it the worker in D1/228 was</p> <p>11 a worker of Leighton, if the helmet indeed bears the</p> <p>12 logo of Leighton? Just turn to page --</p> <p>13 A. No, you can't, because after taking the safety course,</p> <p>14 Leighton safety staff would issue them with stickers to</p> <p>15 stick on their helmets. So everybody who had taken the</p> <p>16 course, their helmet would have that sticker.</p> <p>17 Q. Yes, but that was after taking the safety course. When</p> <p>18 was that safety course held? Do you still remember?</p> <p>19 A. I cannot recall, because there were a lot of new</p> <p>20 employees, so every day they will hold safety courses.</p> <p>21 CHAIRMAN: I'm not suggesting that it's necessarily correct,</p> <p>22 but my impression is that you weren't allowed actually</p> <p>23 on to site in order to work on site until you had taken</p> <p>24 a safety course.</p> <p>25 MS CHONG: Yes.</p>
<p>Page 78</p> <p>1 Fang Sheung did not wear any specific type of uniform.</p> <p>2 Is it the case that whenever you encountered Fang Sheung</p> <p>3 workers on the site, they were usually in their own</p> <p>4 clothing and not in uniform?</p> <p>5 A. Most of the time, yes.</p> <p>6 Q. What about other times? What kind of clothing were they</p> <p>7 in?</p> <p>8 A. Well, my intention is the majority of the times that</p> <p>9 I observed them, they were not wearing a formal uniform.</p> <p>10 Some of them were only wearing the reflective vest.</p> <p>11 They weren't even wearing a T-shirt.</p> <p>12 Q. Have you ever encountered them in Leighton uniform?</p> <p>13 A. I didn't take note of that.</p> <p>14 Q. So, when you encountered them, either them in their own</p> <p>15 clothing or in reflective vest incorporating their</p> <p>16 company name, that is Fang Sheung; is that the case?</p> <p>17 A. Some of them had the company logo or company name.</p> <p>18 Q. But some of them do not have any company names, but just</p> <p>19 their own clothing; was that the case?</p> <p>20 A. Correct.</p> <p>21 Q. That was the reason you formed the opinion that they did</p> <p>22 not have any specific type of uniform; is that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. In your paragraph 6, you said that, regarding the safety</p> <p>25 helmets, workers of Leighton, MTR would wear safety</p>	<p>Page 80</p> <p>1 But in your paragraph 6, you stated that the safety</p> <p>2 helmets of Fang Sheung did not bear any logo of the</p> <p>3 company name. Is that the case?</p> <p>4 A. That is correct.</p> <p>5 Q. In paragraph 9 of your witness statement, you saw the</p> <p>6 workers cutting the rebars on that night, and the</p> <p>7 workers, you forgot what uniform they were wearing at</p> <p>8 that time.</p> <p>9 So, to your impression, at that time, they were</p> <p>10 indeed wearing uniforms, but you could not remember the</p> <p>11 company name of the uniform? Was that the case?</p> <p>12 A. Correct.</p> <p>13 Q. So may I suggest to you that it was someone not from</p> <p>14 Fang Sheung who was cutting the rebars, because</p> <p>15 Fang Sheung workers did not wear uniforms? That's what</p> <p>16 you told in your paragraph 5.3. Do you agree?</p> <p>17 A. Well, I remember that not all of Fang Sheung workers did</p> <p>18 not wear uniform. The majority of them wore uniform.</p> <p>19 I won't say whether it was Fang Sheung workers or other</p> <p>20 workers that had cut the threaded bars.</p> <p>21 Q. Yes, but according to what you say here in paragraph 9,</p> <p>22 it was someone who wore uniform who was cutting the bars</p> <p>23 on that night.</p> <p>24 A. What I meant was the uniform -- I cannot recall which</p> <p>25 company's uniform they were wearing.</p>

Page 81	1 Q. So is it fair to say that you could not tell which 2 company's workers were indeed cutting the rebars on that 3 night? 4 A. I did not specify which company's workers are cutting 5 the rebars. 6 Q. Now, are you aware of two types of rebars being used on 7 the site, namely type A and type B? 8 A. I'm not aware. 9 Q. Is it because you had no knowledge about bar 10 reinforcement skills or techniques, so you could not 11 know what kind of rebars were used by other 12 sub-contractors such as bar fixing companies? 13 A. First of all, the steel bar work is not China Technology 14 work, so I don't need to investigate what kind of work 15 they are doing. 16 Second, I do have a steel bar licence, but I don't 17 need to supervise other people's work. I have plenty of 18 work on my own plate; I don't need to take on extra 19 responsibilities. 20 Q. For what you witnessed in December 2015, in paragraph 9, 21 can you tell whether they were cutting type A or type B 22 rebars on that occasion? 23 CHAIRMAN: Sorry -- 24 A. I cannot identify which bar. 25 CHAIRMAN: Again, I might have that wrong. I don't know	Page 83	1 type B couplers. Is that going to the same point? It 2 is. 3 MR LAM: (Unclear words). 4 COMMISSIONER HANSFORD: So that's a type A coupler with its 5 rebar thread. 6 MS CHONG: Yes. 7 COMMISSIONER HANSFORD: I will presumably get there 8 eventually. 9 And that is a type B coupler with its rebar thread. 10 So you are referring to the difference between this and 11 this? 12 MS CHONG: Yes. 13 COMMISSIONER HANSFORD: Thank you. 14 CHAIRMAN: Thank you. The two rebars -- 15 COMMISSIONER HANSFORD: Does anybody have a ruler? 16 MS CHONG: We can measure the actual length. 17 CHAIRMAN: The two rebars drawn out of the couplers, one is 18 almost double the length of the other. 19 MR BOULDING: Sir, I don't know whether it helps to point 20 out that in the witness statement of Kobe Wong, there is 21 indeed, at paragraph 28 -- that's B426 -- a lengthy 22 explanation of the difference. I just draw that to the 23 tribunal's attention. 24 CHAIRMAN: Thank you very much. That's helpful. 25 COMMISSIONER HANSFORD: Thank you.
Page 82	1 that they are rebars. 2 COMMISSIONER HANSFORD: I don't understand what you mean by 3 type A rebar and type B rebar. 4 MS CHONG: For type A threaded rebars, they are shorter, the 5 threads, with fewer threads; but for type B, they are 6 longer, in terms of the threads. 7 COMMISSIONER HANSFORD: Thank you. 8 MS CHONG: That's why I -- 9 CHAIRMAN: Thank you. I wasn't aware of that. 10 COMMISSIONER HANSFORD: Nor was I. 11 MS CHONG: So my question is whether -- what kind of 12 types -- what types of threaded rebars were being cut 13 according to his observation. 14 COMMISSIONER HANSFORD: Thank you. 15 CHAIRMAN: Thank you. Sorry, could you help us here -- 16 perhaps you can; if not, please forgive us -- what is 17 the difference between a type A and a type B rebar? 18 I appreciate the thread is longer on one, but how much 19 longer? 20 MS CHONG: My understanding is that for type B threaded 21 rebars, the threads are two times of those threads in 22 type A, but I -- 23 CHAIRMAN: So type B, it's double the length? 24 MS CHONG: Yes. We can take a look at the exhibit. 25 COMMISSIONER HANSFORD: I have in front of me type A and	Page 84	1 CHAIRMAN: I think the difficulty perhaps this witness may 2 have -- I'm not trying to be overprotective of him -- 3 but if he wasn't aware there were type A and type B 4 there, it's difficult for him to say whether what was 5 being cut was a type A or a type B. 6 MS CHONG: Mr Chairman, may I just clarify with him whether 7 he was aware of this type A and type B? 8 CHAIRMAN: Certainly. 9 MS CHONG: Because he actually told us he had this bar 10 bending qualification. 11 CHAIRMAN: Yes. 12 MS CHONG: Were you aware of two types of rebars, being 13 type A and type B, being used on that site? 14 A. I didn't know that. 15 Q. So you could not tell whether, on that occasion, in 16 December 2015, what was being cut was type A or type B? 17 Was that the case? 18 A. That's correct. You can say that. 19 Q. You had been working on this site for how many months, 20 from October -- 21 CHAIRMAN: I think he was there for six months. 22 MS CHONG: For six months, yes. 23 You were there for six months and you worked there 24 full-time; right? 25 A. Correct.

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<p>1 Q. And that was the only occasion you witnessed about bar 2 cutting; is that the case? 3 A. Correct. 4 MS CHONG: I have no further questions. 5 CHAIRMAN: Thank you. 6 MR SHIEH: Mr Chairman, may I ask some questions on behalf 7 of Leighton? 8 CHAIRMAN: Of course. 9 Cross-examination by MR SHIEH 10 MR SHIEH: Mr Ngai, do you understand English, written 11 English? 12 A. I can read 60-70 per cent. 13 Q. Good. Can I ask you to look at -- so when you signed 14 your witness statement, did you provide a draft yourself 15 or did you provide instructions to some lawyers and they 16 drafted it and you then reviewed the contents? Which 17 one is it? 18 A. Which statement are you referring to, the Chinese or 19 English? 20 Q. Your witness statement that is submitted for the purpose 21 of this Inquiry. If I may ask you to look at bundle D2, 22 page 960. 23 A. The police -- this was converted from the police 24 statement by the lawyers, so when I went to the law 25 firm, they had already drafted it, they read it out to</p>	<p>1 Q. Can I ask you to look at bundle D1, page 10. This is 2 a document called, "Witness statement of Mr Poon Chuk 3 Hung, Jason"; do you see that? 4 A. Yes. 5 Q. Can you turn to page 22, paragraph 42. Here, Mr Poon 6 said: 7 "In September 2015, Mr Thomas Ngai told me that he 8 still saw staff members of Leighton cutting the threaded 9 rebars and/or pretending they had properly installed the 10 threads into the couplers. Nonetheless, these practices 11 were no longer done in the morning and/or the afternoon. 12 Rather, they were done at night." 13 This is what Mr Poon said, and I've just read it out 14 for you. Do you understand that? 15 A. Yes, I do. 16 Q. So Mr Poon could not have been right in saying that you 17 told him about seeing rebar cutting in September 2015; 18 do you agree? 19 A. Yes. I think Mr Poon probably misremembered the month. 20 Q. And Mr Poon said you told him you still saw staff 21 members of Leighton cutting threaded rebars. So Mr Poon 22 made it sound as if you had previously told him that you 23 saw Leighton cutting rebars, and in September you still 24 saw staff members of Leighton cutting rebars. Do you 25 understand the point that he was making?</p>
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<p>1 me and explained it to me. 2 Q. Thank you. 3 Can I draw your attention to paragraph 3 of your 4 witness statement, which is bundle D2, page 961. 5 Can you read that out so it goes on the record: 6 "I have had the opportunity to read the witness 7 statement of Mr Poon dated 3 September ... and the 8 supplemental witness statement of Mr Poon dated 9 14 September ... I agreed that the facts deposed therein 10 are true. I wish to supplement the followings." 11 Can you see that? 12 A. Yes. 13 Q. You understand what you've said there? 14 A. Yes. 15 Q. You have told us that during your six-month stay at the 16 Hung Hom job, you only saw one incident of the threaded 17 end of the rebar being cut; correct? 18 A. Correct. 19 Q. And that was in December 2015; correct? 20 A. Correct. 21 Q. Not in September 2015; correct? 22 A. It wasn't. 23 Q. In fact, you only started work at the Hung Hom site in 24 October 2015; correct? 25 A. Correct.</p>	<p>1 A. Yes. I do understand the question. 2 September, I think Mr Poon might have got it wrong. 3 I think it was December that I told him about it. Also, 4 also at the lunchbox meeting, Mr Poon mentioned the 5 issue of rebar cutting, and I told him that there were 6 still people cutting the bars. 7 Q. This is your speculation as to what Mr Poon has in his 8 mind; yes? 9 A. In fact, I saw what happened in December, so for sure 10 Mr Poon probably got the month wrong. 11 Q. Okay. Next, can I ask you to look at your police 12 statement. Bundle D2, page -- the Chinese is at 942; 13 the English is 942.3. And the paragraph number I want 14 is paragraph 6. 15 I wish to read the second part of this paragraph to 16 you. You can see, in the Chinese version: 17 "(Chinese spoken)." 18 The English version is: 19 "During my work when I inspected the rebars which 20 had already been fixed, I have never seen rebars which 21 were not fully screwed into the couplers on the wall, 22 and I have never seen anyone screw a rebar with 23 a shortened silver threaded head into a coupler on the 24 wall; however, I could not tell whether a rebar which 25 was fully screwed into a coupler had been cut short or</p>

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<p>1 not." 2 Do you see that is what you said? 3 A. Yes, that's right. 4 Q. Can I then ask you to look at what Mr Poon said in his 5 witness statement. Bundle D1, page 22. This is the 6 same paragraph we looked at just now. 7 According to Mr Poon, you told him, subject to the 8 date, that you "saw staff members of Leighton ... 9 pretending they had properly installed the threads into 10 the couplers." 11 Do you see that? 12 A. Yes. 13 Q. So that's not correct; do you agree? You did not tell 14 Mr Poon that you saw people pretend they had properly 15 installed the threads into the couplers? 16 A. I didn't say that. 17 Q. Thank you. Can you look at your own witness statement: 18 bundle D2, 962, paragraph 8. Here you said: 19 "It is also a practice for me to attend meetings (on 20 behalf of China Tech) in the offices of Leighton every 21 day at or about 4 to 5 pm. Representatives of Leighton, 22 including Mr So Yiu Wai and a representative of 23 Fang Sheung would attend." 24 Do you see that, paragraph 8? 25 A. Yes.</p>	<p>1 same bundle, 962, paragraph 10. You said: 2 "As China Tech was not responsible for works related 3 to the threaded rebars, I did not pay much attention at 4 the time. I also did not take any photographs. I did 5 mention the matter in the lunch meetings and so that 6 Mr Poon can handle and resolve it." 7 Do you see that? 8 A. Yes. 9 Q. This paragraph is not correct; right? 10 A. I don't quite remember on what occasion I talked to 11 Mr Poon about the rebar cutting incident, was it at the 12 lunchbox meeting or other occasion. 13 Q. But in your police statement, you were pretty definite. 14 You said you did not disclose what you saw in the lunch 15 meetings; yes? So you were definite? 16 A. Because in the police statement, they raised the issue 17 for me to answer. So there was a bit of discrepancy 18 there. 19 Q. So what are you trying to say? The police got it wrong? 20 They should not have written down, "I did not disclose 21 what I saw in the lunch meetings"? 22 A. Yes, I think the police probably got it wrong. 23 Q. So what -- are you intending to say now, that you may or 24 may not have told -- 25 A. Well, at that time I don't remember on what occasion</p>
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<p>1 Q. At these meetings, can you confirm, you did not raise 2 any question or complaint about workers cutting the 3 threaded ends of rebar? 4 A. Never, never did that. 5 Q. Thank you. 6 Can you look at your police statement, bundle D2, 7 page 939. The Chinese is 939, paragraph 8. The English 8 is 939.4, paragraph 8. Here, you are talking about what 9 you did after witnessing the incident of threaded rebar 10 cutting. 11 Can you look at the third line from the end in the 12 Chinese, and fifth line from the end in the English. 13 The Chinese part says: 14 "(Chinese spoken)." 15 In English, it says: 16 "Afterwards, I did not disclose what I saw above in 17 the lunch meetings, but I do not remember whether I told 18 Jason Poon or other foremen about this on other 19 occasions. 20 During my time of working at MTRC Shatin to Central 21 Link, I witnessed only one occasion ..." 22 Do you see that part of your police interview? 23 A. Yes. 24 Q. Can I ask you to look at your witness statement prepared 25 for the purpose of this Commission of Inquiry, in the</p>	<p>1 I talked to Mr Poon about what I saw regarding rebar 2 cutting incident. 3 Q. But, Mr Ngai, there is a Chinese version of this 4 statement at 939, paragraph 8, and you signed on that 5 page. Can you see "939" in the bottom right-hand 6 corner? Is that your signature? 7 A. Yes, it is, correct. 8 Q. So you confirmed the accuracy of what you said in the 9 police interview; correct? 10 A. Let me give you the background when the statement was 11 taken at the police station. West Kowloon criminal 12 unit, a Mr Lee, police officer, rang me many times, but 13 I didn't take the call because I wouldn't take any call 14 from anybody I don't know. Probably China Tech, 15 somebody from China Tech, rang me, and I took the call 16 and I was told that I had to give a statement to the 17 police. 18 When I worked on a new site, I was terribly busy, 19 and I told him that I didn't have any time for the 20 statement. However, I was persuaded to help out and 21 give the statement. It was at night-time, 7 or 8ish pm, 22 that the statement was taken at the Tuen Mun police 23 station. I was very tired after work and I spent two 24 nights giving the statement. One night, I left at 25 midnight, and the other night, I left at 1 am.</p>

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<p>1 But this criminal investigation division, they 2 shouldn't have taken so much time, but they spent quite 3 a lot of time polishing the language. I didn't say too 4 much and they spent so much time polishing the language. 5 Eventually, I was so exhausted, the next day, by 1 am, 6 I signed the statement and I didn't pay particular 7 attention to every single word I said. I trusted the 8 police wouldn't set a trap for me to fall into. So 9 I just signed my name on the dotted line and went home 10 to sleep and had to work the next morning and I wasn't 11 in good health. 12 Q. In your experience at the Hung Hom site, are you 13 familiar with certain paperwork or documentation called 14 NCRs, non-conformance reports? 15 A. Well, I assigned work on site. As regards documentation 16 and paperwork, somebody else from China Tech would do 17 it. 18 MR SHIEH: Thank you very much, Mr Ngai. I have no further 19 questions for you. 20 Cross-examination by MR BOULDING 21 MR BOULDING: Good afternoon, Mr Ngai. 22 A. (In English) Thank you. 23 Q. Mr Shieh has already asked you about some of the matters 24 that I was going to discuss with you, but I nevertheless 25 have a few further matters I'd like to raise.</p>	<p>1 first witness statement. I'd invite your attention, 2 please, to page D19. You told Mr Shieh that you 3 understood something like 60-70 per cent of written 4 English, so please could you read to yourself, in the 5 interests of time, from paragraphs 30 through to 34, 6 under the heading, "C1. Incidents in August 2015". 7 Have you read that? 8 A. I'm reading it. 9 Q. Tell me when you've finished. 10 A. What would you like to know? 11 Q. I'm coming to that. 12 You will see, having read it, that all of those 13 paragraphs -- paragraphs 30 through to 34 -- relate to 14 alleged incidents in August 2015; correct? 15 A. Correct. 16 Q. All incidents occurred at a time before you were even on 17 the site, did they not? 18 A. Correct. 19 Q. So you have no way of knowing, do you, whether or not 20 what Mr Poon says about those incidents is correct, do 21 you? 22 A. I believe in my boss, Mr Poon. I don't think there is 23 a need for him to tell such lies. That's why I believe 24 in him. 25 Q. You may well believe in Mr Poon and whether or not he is</p>
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<p>1 You were taken by Mr Shieh to paragraph 3 of your 2 witness statement. It starts at D960. You had that 3 read to you, and you confirmed, did you not, that you 4 understood what you'd said in paragraph 3; correct? 5 A. What did I say? 6 Q. Well, you say in your witness statement: 7 "I have had the opportunity to read the witness 8 statement of Mr Poon dated 3 September 2018 and the 9 supplemental witness statement of Mr Poon dated 10 14 September 2018." 11 Correct? 12 A. Yes, correct. 13 Q. Then you go on to say, very importantly for present 14 purposes: 15 "I agreed that the facts deposed therein are true." 16 You're saying that what Mr Poon says in both of his 17 witness statements are true; correct? 18 A. Correct. 19 Q. Just to set the scene, you were kind enough to tell 20 Mr Shieh, by reference to the organisation chart, that 21 you started work at the Hung Hom Station on 5 October 22 2015. That's correct, isn't it? 23 A. Correct. 24 Q. Now, against that background, I wonder whether we can 25 just look at one or two other paragraphs in Mr Poon's</p>	<p>1 telling lies is a matter that will be investigated over 2 the course of the next day or so. But I will put my 3 question to you again, Mr Ngai. All of those incidents 4 occurred in August 2015. You were not on the site at 5 the time, and you do not know whether or not Mr Poon is 6 correct when he says they occurred; you do not know, do 7 you? 8 A. I was at another site. Mr Poon mentioned that to me. 9 So that is why I believe this is correct, because there 10 is no need for us to lie. There is no need for us to 11 start this all up for no reason. 12 Q. Well, in your paragraph 3, you say that you've read the 13 statements. You don't say anything about Mr Poon having 14 told you about these events. You simply say, "I agree 15 that the facts deposed to therein are true", and what 16 I am suggesting is that you do not know from your own 17 knowledge, one way or another, whether they are true. 18 That's right, isn't it, Mr Ngai? 19 A. Yes, you could put it that way. 20 Q. Thank you very much. You will have got the point by 21 now, but if you would be kind enough to read on in 22 Mr Poon's first witness statement, under the heading, 23 "Reporting the incidents to Leighton in September 24 2015 -- just cast your eyes, please, over paragraphs 35 25 to 41, because Mr Shieh dealt with paragraph 42, but if</p>

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<p>1 you would look at paragraphs 35 to 41, please, and then 2 I'm going to ask you another question. 3 A. Can someone translate these paragraphs for me? Because 4 some of the words I don't quite understand. 5 Q. Well, I was hopeful it wasn't going to take this long, 6 Mr Ngai, but if we've got to do that, we've got to do 7 that. I will read them slowly and they will be 8 translated to you: 9 "35. In or about early September 2015, Mr But also 10 reflected to me that similar incidents occurred. He 11 also attempted to stop those doing what they were doing, 12 namely cutting the threaded rebars but, again, to no 13 avail." 14 Do you see that? 15 A. Yes. 16 Q. Now, that event occurred in or about early September 17 2015, according to Mr Poon, didn't it? 18 A. Yes. 19 Q. And that is, what, about a month before you started work 20 on the site; that's correct, isn't it? 21 A. Yes, correct. 22 Q. So you simply do not know one way or another whether or 23 not that part of Mr Poon's statement is true, do you? 24 A. I believe in my boss. I believe in Mr Poon that this is 25 true.</p>	<p>1 Q. 14 September, I think you will find. 2 A. Yes. Because I saw it for myself that they were cutting 3 the threaded rebars, so that's why, when Mr Poon made 4 this statement in September 2018, it was true. That's 5 all. 6 Q. You're being evasive, Mr Ngai. You saw one occurrence, 7 I think in December 2015, that's correct, isn't it, with 8 your own eyes? 9 A. December 2015. 10 Q. That's what I said. That's the one occurrence of rebar 11 cutting that you saw with your own eyes, isn't it, 12 December 2015? 13 A. Yes. That's why, by 2018, I believe that this witness 14 statement of Mr Poon is true. 15 Q. I'll give you one last opportunity, Mr Ngai, but I'm 16 going to submit ultimately that you are a very evasive 17 witness, but I will give you one last opportunity. You 18 do not know from your own knowledge, do you, whether 19 what Mr Poon says about what Mr But reflected to him in 20 September 2015 is true or untrue; that's correct, isn't 21 it? 22 A. I do not know, but I believe in Mr Poon's words. 23 Q. I think we finally got there, Mr Ngai. 24 I don't want to take a long time over the matter, 25 but looking through paragraphs 38 to 39 -- and perhaps</p>
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<p>1 Q. But from your own personal knowledge, you do not know 2 whether or not Mr Poon is correct when he makes that 3 statement there, do you? All you can say is that that's 4 possibly what Mr Poon told you and therefore you believe 5 him, but you don't know from your own knowledge, do you? 6 A. I believe in what Mr Poon said. There is no need for 7 him to lie to me. Now, I wasn't even at the site yet. 8 Q. I agree you were not at the site yet, and whether or not 9 there was a need for Mr Poon to lie to you, from your 10 own knowledge you do not know whether or not what he 11 says there is true, do you? 12 A. But afterwards, in December, I saw it for myself that 13 there was cutting of rebar, so I believe even more in 14 what Mr Poon said. 15 Q. Mr Ngai, please do not be evasive. Listen to my 16 questions, please. From your own knowledge, you do not 17 know whether or not, in or about early September 2015, 18 Mr But reflected to Mr Poon that similar incidents had 19 occurred, and that Mr But also attempted to stop those 20 doing what they were doing, namely cutting the threaded 21 rebars but again to no avail -- you do not know from 22 your own personal knowledge whether or not that's true, 23 do you? 24 A. Now, Mr Poon prepared this witness statement in 2018 -- 25 was it 2018?</p>	<p>1 I can read them quickly because I don't want you to be 2 under any sort of disadvantage at all -- paragraph 38 3 says: 4 "That said, in mid-September 2015, I myself" -- 5 that's a reference to Poon -- "saw staff members of 6 Leighton once again, cutting the threaded rebars. 7 39. Between 15 to 20 September 2015, I invited both 8 Mr So and Mr Rodgers for a site inspection. During the 9 inspection, all three of us saw one staff member of 10 Leighton cutting the threaded rebars using a hydraulic 11 disc cutter. 12 40. I immediately approached that person and tried 13 to stop him from cutting the threaded rebars. 14 Nonetheless, Mr So stopped me and asked, rhetorically, 15 'why would it be a problem to cut the threaded rebars?' 16 Mr So, in front of me, asked that staff member to 17 continue with what he was doing, namely cutting the 18 threaded rebars. I (secretly) took out a Huawei mobile 19 phone, which belongs to Chinat, and took 2 photographs 20 and a video clip of approximately 10 odd seconds." 21 41. On 22 September 2015, I, again, saw staff of 22 Leighton cutting the threaded rebars with hydraulic disc 23 cutter. I (secretly) used my ... Huawei mobile phone to 24 take 7 photographs. Amongst those 7 photographs, 2 of 25 which were random photographs I took in order not to</p>

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1 alert the staff of Leighton."
2 Then he goes on to produce the photographs.
3 Now, we can see, can we not, Mr Ngai --
4 A. Yes, I see that.
5 Q. I haven't asked you what we can see yet, but we can see,
6 can we not, that all of those events relate to the
7 period September 2015; correct?
8 A. Yes, correct.
9 Q. A time before you were even on the Hung Hom Station
10 site; correct?
11 A. Correct.
12 Q. And you'll know what's coming next: what I suggest to
13 you is that you do not know from your own knowledge
14 whether what Mr Poon says about the incidents is true or
15 false, do you?
16 A. Correct.
17 Q. Thank you.
18 A. But please do not forget this. In December 2015, I saw
19 it for myself that they cut the threaded rebars. That
20 experience convinced me that what Mr Poon said was true.
21 That's why, in September 2018, I signed or I read the
22 statement and I believe it's correct. If I have never
23 seen someone cutting the rebars, then I might doubt,
24 that Mr Poon could be lying, but I saw it for myself
25 that someone cut the rebars. That's why I believe what

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1 Mr Poon said was true.
2 Q. I hear what you say, Mr Ngai, and I've got the answer
3 I need from you on the transcript. Thank you very much.
4 I will move on, if I may. But again it's to discuss
5 with you something that Mr Poon says about some of the
6 workers on site.
7 Now, you were asked earlier today, I think by
8 counsel for Fang Sheung, about the uniforms, the various
9 uniforms, if any, that the workers wore on site; do you
10 remember that? Do you remember that line of
11 questioning? It was the young lady in the row in front
12 of me. Do you remember that?
13 A. Yes, I remember that.
14 Q. And you were questioned to the effect of whether or not
15 Fang Sheung were issued uniforms by Leighton. Do you
16 remember being asked that question?
17 A. Yes.
18 Q. And the answer in the transcript was to the effect of,
19 "Most of the time they were in their own clothing, most
20 of the time they had no uniform, not even a T-shirt, and
21 they would only wear a reflective vest." Do you
22 remember giving evidence to that effect?
23 A. I said that they did not wear T-shirt but they wore the
24 reflective vest.
25 Q. Right.

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1 Now, I wonder whether we can have a look at what
2 your boss, who you believe so much, says in his witness
3 statement. D1/37, paragraph 86.
4 Can you read paragraph 86 to yourself or is it
5 something that I need to have translated for you,
6 Mr Ngai?
7 A. Better to translate it for me.
8 Q. Okay:
9 "Representatives of the MTRC then asked me if I may
10 produce any further information proving that those
11 persons involved in the cutting of the threaded rebars
12 were staff members of Leighton. I told them that staff
13 members of Leighton can easily be identified from staff
14 of [all] other sub-contractors by their uniforms. As
15 staff members of Leighton were all dressed with Leighton
16 T-shirts and reflective vests. On the other hand, staff
17 of Fang Sheung were all rebar fixers and their uniforms
18 were heavily contaminated by sweat and rust in dark
19 brown colour."
20 So you now understand what Mr Poon, your boss, is
21 saying? You understand it, do you, paragraph 86?
22 A. I think Mr Poon was referring to some of the Fang Sheung
23 rebar fixers.
24 Q. Oh, really? Well, if he was referring to some, why
25 didn't he say that in his statement, Mr Ngai?

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1 MR PENNICOTT: I'm not sure Mr Ngai can answer that.
2 MR BOULDING: Well, you are speculating, aren't you,
3 Mr Ngai? Mr Poon doesn't say that. What Mr Poon says
4 is that, "On the other hand, staff of Fang Sheung were
5 all rebar fixers and their uniforms" -- his word, not
6 mine -- "their uniforms were heavily contaminated by
7 sweat and rust in dark brown colour."
8 Now, who's right and who is wrong? Did they wear
9 dark brown colour uniforms, which unfortunately were
10 a bit sweaty, a bit rusty, or on the other hand did
11 they, as you say, wear no uniforms at all, just
12 reflective vests?
13 A. (Chinese spoken).
14 INTERPRETER: Is the translation coming through now? Okay
15 MR PENNICOTT: Start from the beginning.
16 A. Let me continue. I didn't say that all of them were not
17 wearing clothes and only wore reflective vests. Some of
18 them, when they go to work, they might have worn
19 T-shirts, but because they were so sweaty they might
20 have taken off their T-shirt and only wore their
21 reflective vest to work. I think the construction
22 workers, what they wear, will not affect the Commission,
23 in how to determine the truth of what occurred in this
24 incident.
25 MR BOULDING: I'm not suggesting for a moment that the

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<p>1 colour of uniform will affect the outcome of the 2 Commission's decision on its terms of reference. 3 What I'm testing, Mr Ngai -- and let there be no 4 doubt about this -- I'm testing the credibility of your 5 evidence, because you tell the learned Commissioner and 6 Prof Hansford, in paragraphs 3 and 4 of your witness 7 statement, that you deposed to on affirmation, that what 8 Mr Poon, your boss, says is accurate and that you agree 9 with it. 10 And here, Mr Poon is saying "staff of Fang Sheung 11 were all rebar fixers and their uniforms were heavily 12 contaminated by sweat and rust in dark brown colour". 13 Is that something you agree with or disagree with? 14 A. I agree. 15 Q. So you are now agreeing with that? 16 A. I agree. 17 Q. Right. Now, in paragraph 9 of your statement, you deal 18 with the one incident of rebar cutting that you saw 19 during your six or seven months on site, do you not? 20 That's page D962. Correct? 21 A. Yes, correct. 22 Q. Thank you. As I understand it, a grinder or a cutter 23 was being used to cut the threaded rebar, and it had 24 a red handle; correct? 25 A. Correct.</p>	<p>1 see roughly the 6-7 centimetres or 3-4 centimetres 2 length that was being cut. 3 Q. So, Mr Ngai, you were asked specifically by my learned 4 friend Mr Pennicott how far you were away from the 5 cutting when it happened, and the transcript records 6 that you said 6 to 7 metres away, you said that twice, 7 and you said, "That's my response from memory." You 8 said absolutely nothing about the fact that that 9 distance of 6 to 7 metres, further away from where you 10 are to me now, was reduced because you were apparently 11 walking towards the cutting incident. Is that your 12 evidence now? 13 A. Well, when you asked me how far I was when I observed 14 the incident, I was 6, 7 metres, maybe even 8 metres, 15 but I was walking towards them. You didn't ask whether 16 I was standing there statically or whether I was walking 17 towards them. 18 So my response was, when I first became aware of the 19 incident, I was 6 or 7 metres, and then as I walked 20 closer I could see even clearer. And I didn't stop, 21 I was just passing by; I did not stop. So, when 22 I approached them closer, I could see roughly they had 23 cut 3-4 centimetres of threaded bar. 24 Q. Well, can I suggest that that would have been the 25 accurate answer that you ought to have given my learned</p>
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<p>1 Q. And you told the learned Commissioner, in your earlier 2 evidence today, that you were about 6 or 7 metres away 3 from the cutting when you saw it; do you remember giving 4 that evidence? 5 A. Correct. 6 Q. And you also say, in paragraph of your statement, that 7 the threaded rebar on the steel thread were about 7 to 8 8 centimetres long and silver in colour, and that 9 roughly half of that, 6 or 7 centimetres, was cut away. 10 Do you remember giving that evidence? 11 A. That is correct. 12 Q. Well, what I have to suggest to you, Mr Ngai, is that in 13 circumstances where you would be further away from me 14 than you are now, probably half the distance again, how 15 can you be so sure, in construction site conditions, 16 that it was that amount which was being cut away? You 17 simply couldn't see from that distance, I suggest to 18 you. 19 A. Well, actually, at the time, I had passed by that 20 location, so I was roughly some 6-7 metres away, and as 21 I continued walking I would get closer to them and 22 I could see very clearly what was happening. I wasn't 23 standing there statically, watching them. I was 24 working, I was walking past that area. I didn't stop 25 and observe. So, as I was walking towards them, I could</p>	<p>1 friend Mr Pennicott if indeed that's what really 2 occurred. He was specific. He said, "How far were you 3 away from the cutting when it happened?", and you said 4 6 to 7 metres. 5 I've got to suggest to you that this new invention 6 of walking towards it and seeing it from close-up is 7 something which has occurred to you subsequently, ie 8 today, this afternoon. That's right, isn't it? 9 (Allegedly mis-translated). 10 A. You can say that's the case. 11 Q. So far as this cutting is concerned, did you ever 12 enquire as to what purpose it was to serve? Did you 13 ever enquire why they were cutting, why they were doing 14 the cutting they were doing? 15 A. No. 16 Q. You tell us that you didn't take any photographs. Why 17 was that? Why was that, Mr Ngai? 18 A. At the time, I wasn't prepared to take pictures. I was 19 just passing by. I didn't think that I should have 20 taken pictures, because I was on my way to my working 21 site to instruct my workers of some modifications and 22 I did not stay to take pictures. 23 Q. Did you have a camera with you at the time? 24 A. Yes, I had a mobile phone. 25 Q. Had it been as noteworthy as you now apparently regard</p>

<p style="text-align: right;">Page 109</p> <p>1 it, can I suggest that if you really saw it, it would 2 have been the obvious thing to do, to take a picture of 3 it; that's right, isn't it? 4 A. Let me repeat. At the time, I was passing by and 5 approaching my work location to urge my workers to do 6 their job, so I wasn't there watching other people work, 7 so I didn't think about taking pictures. If I were to 8 take pictures up close, I'm not sure what kind of 9 reaction that would provoke and I didn't want to provoke 10 any adverse reaction from them. 11 Q. Well, it certainly didn't stop you from taking pictures 12 most of the time. 13 If we can just have a look at your police witness 14 statement, at D2/942.3. That's in English, for my 15 purposes. You will presumably want to go to your 16 Chinese version, which I take to be at D969, and it's 17 paragraph 7 that I'd like to look at. Sorry, 942 is the 18 Chinese version. But once you are at paragraph 7, it 19 says: 20 "During my work every day, I often needed to use my 21 mobile phone to take photos of the work progress, so 22 that I could report to Jason Poon. I would take around 23 20 to 30 photos every day, and each file showed the date 24 and time at which the photo was taken. Every day after 25 work I would upload the photos taken on that day to the</p>	<p style="text-align: right;">Page 111</p> <p>1 actually raised the matter nor could I recall who 2 actually attended the lunch meeting at that time. 3 15. In another lunch meeting in November 2015, 4 Mr Poon again mentioned that cutting threaded rebars 5 were still ongoing. He said he would report the matter 6 to Leighton again for follow-up. He also reminded all 7 foremen of Chinat to take photographs and report the 8 matter to him if we saw anyone cutting the threaded 9 rebars. As the matter was so long ago, I could not 10 recollect who actually attended the lunch meeting[s] at 11 that time." 12 Now, you attended the lunch meetings, didn't you? 13 A. Yes. 14 Q. And these lunch meetings -- October, November -- would 15 have taken place when you were on the site, would they 16 not, Mr Ngai? 17 A. That's correct. 18 Q. So you would have been present, would you not, Mr Ngai? 19 A. Yes, I would be present. 20 Q. And you can see what your boss, the boss you believe 21 in -- you can see what he's telling everyone, can't you? 22 A. I cannot recall this, because the lunchbox meetings, 23 they were just conducting oral discussions about the 24 work progress on the site. There weren't any records or 25 minutes, and I don't recall my boss saying these things.</p>
<p style="text-align: right;">Page 110</p> <p>1 company's cloud server on Dropbox, so that Jason Poon 2 could inspect those photos." 3 So what's different about this occasion, Mr Ngai? 4 You are ignoring your own custom, are you not? 5 A. First of all, we are not responsible for supervising the 6 bar benders. So bar benders have no relationship with 7 China Technology. It's not part of China Technology's 8 work. Why would I need to take pictures of them? 9 I made it very clear, the pictures I took were only 10 related to our works, they were only related to our work 11 progress. We are not taking pictures on behalf of other 12 people. 13 Q. Let's see what another one of the Chinat witnesses says 14 about that. Perhaps if we could go to -- I'll need the 15 English translation, but it's D2/974. And here, in 16 paragraphs 14 and 15: 17 "In one of the lunch meetings in October 2015, 18 Mr Poon mentioned that he saw someone cutting the 19 threaded rebars. He said he would report the matter to 20 Leighton. He also asked all foremen of Chinat to take 21 photographs and report the matter to him if we saw 22 anyone cutting the threaded rebars. I recalled that 23 around 1 or 2 foremen attending the lunch meeting did 24 mention that they also saw similar incidents. As the 25 matter was so long ago, I could not recollect who</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. How convenient, Mr Ngai. What I've got to suggest is 2 that not only did Mr Poon say this, but in circumstances 3 where you saw your one occurrence the following month, 4 if you really saw that, what you ought to have done was 5 take a photograph of it, as Poon had told you. That's 6 fair comment, isn't it? 7 A. You can say that, but I don't have any recollection of 8 this incident. 9 MR BOULDING: Thank you, Mr Ngai. 10 MR PENNICOTT: Sir, I imagine it's tea break. 11 CHAIRMAN: Yes, all right. 12 MR PENNICOTT: Sir, before you rise, can I just mention 13 this, that I am told that at transcript [draft] 14 page 111, lines 3 to 6, the question Mr Boulding asked 15 at that reference was incorrectly interpreted and 16 invited the answer that the witness gave. That is, "You 17 can say that's the case", and I think probably 18 Mr Boulding wants to put that question again when we 19 come back, because it does rather create, I would have 20 thought, an incorrect impression. 21 CHAIRMAN: Yes, certainly. 22 MR PENNICOTT: Secondly, I have a ruler, if you are 23 interested. 24 COMMISSIONER HANSFORD: I have found a ruler, and I've 25 measured the thread.</p>

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<p>1 MR PENNICOTT: Thank you, sir. 2 CHAIRMAN: Good. Ten minutes. Thank you. 3 (3.53 pm) 4 (A short adjournment) 5 (4.09 pm) 6 MR BOULDING: Sir, I am in your hands as to whether you want 7 me to put that line of questioning again as a result of 8 Mr Pennicott's intervention, or whether you are content 9 that we leave it as it is and argue about it in due 10 course. 11 MR PENNICOTT: Sir, it's just one question and I am told 12 that what happened was that Mr Boulding used the word 13 "invention", quite important in the emphasis, and the 14 word that was translated for "invention" was in fact 15 "supplement". So the question being put by Mr Boulding 16 was, "This is something that you have invented this 17 afternoon", whereas what was translated to the witness 18 was, "This is something you have supplemented this 19 afternoon", which is a rather important difference. 20 CHAIRMAN: Very big difference. 21 MR PENNICOTT: That's what I'm told, sir. 22 CHAIRMAN: Strangely, I have actually -- I wouldn't like to 23 argue the matter later, Mr Boulding, because I think it 24 is, from many years of experience of, although not 25 speaking Cantonese, hearing translations of the way</p>	<p>1 roughly cut off half the thread. I was 6 to 7 metres 2 away, and that's my response from my memory." 3 Do you remember giving evidence to that effect, 4 Mr Ngai? 5 A. I remember, yes. 6 Q. What I suggested to you is that from such a distance, 7 a distance which is substantially further away from you 8 to me, 6 or 7 metres, it would not have been possible 9 for you to have seen, really, what was going on in terms 10 of what was being cut off. 11 Then you said to me, "Ah, Mr Boulding, but I started 12 off 6 or 7 metres away, but I was walking towards it, 13 I was walking past it, and I got closer." Do you 14 remember telling me that? 15 A. Yes, correct. 16 Q. But you never told Mr Pennicott that, did you, when he 17 asked you how far away you were during the course of his 18 questioning earlier this afternoon? You never mentioned 19 that to Mr Pennicott, did you? 20 A. Well, he asked me how far I was when I saw it. 21 Q. Well, what I suggest to you, Mr Ngai, is that it would 22 have been a material fact, material evidence, for you to 23 have told Mr Pennicott, and it was something you made 24 up -- 25 MR SO: Sir, I do apologise, I think the translation is not</p>
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<p>1 questions are put in this jurisdiction and answers are 2 sometimes given, I am aware of the fact there can 3 sometimes be misunderstandings in this type of area. 4 MR BOULDING: Yes. 5 CHAIRMAN: So it's absolutely for you, of course. 6 MR BOULDING: Perhaps we ought to have been having this 7 discussion without the witness being present, but I will 8 put the questions again. I fear it will need a bit of 9 a run-up. 10 Mr Ngai, we were talking about paragraph 9 of your 11 witness statement, when you were talking about the one 12 occurrence in December 2015 when you saw the rebar being 13 cut. 14 Do you remember us discussing that? 15 A. It was December, actually, not September. 16 Q. I thought I said December. I'm sorry. 17 But you remember us discussing that before we had 18 our tea break, do you? 19 A. Yes. 20 Q. I reminded you that when you were questioned by my 21 learned friend Mr Pennicott, he said, "Well, how far 22 away from the incident were you when you saw it?", and 23 the transcript records that you gave evidence to the 24 effect of, "I was about 6 to 7 metres away from the 25 cutting when it happened", and then you said, "They</p>	<p>1 -- in Chinese it's not (Chinese spoken); (Chinese 2 spoken) would be a more appropriate translation for 3 that. 4 CHAIRMAN: That does not help me one little bit, I'm afraid. 5 MR SO: I do understand that. 6 CHAIRMAN: That's my weakness, not yours. 7 MR SO: I do apologise. But I would say the interpretation 8 of that would be more accurate in terms of "material". 9 CHAIRMAN: I just don't know what the interpretation should 10 be because I don't speak Cantonese. I apologise. 11 MR SO: I do apologise. 12 MR BOULDING: Well -- 13 CHAIRMAN: So let's have that translated again, shall we? 14 MR BOULDING: What I've got to suggest to you, Mr Ngai, is 15 that the elaboration of your evidence, that you were 16 initially 6 to 7 metres away, but then you were walking 17 closer towards it so you could see what was happening, 18 that's something which you have made up for the first 19 time this afternoon. That's what I'm suggesting to you. 20 A. How could I have made it up? It's a fact. 21 MR BOULDING: Thank you very much, sir. 22 MR KHAW: No questions. 23 CHAIRMAN: Thank you. 24 Re-examination by MR SO 25 MR SO: Just one very short re-examination.</p>

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<p>1 Just to pick up what my learned friend Mr Boulding 2 has asked you, Mr Ngai -- you told this Commission that 3 you were walking at that time when you saw the cutting; 4 is that correct? 5 A. Correct. 6 Q. So, at the closest with that cutting, that place, how 7 far was that between yourself and the person cutting it, 8 the shortest distance, when you were closest to them? 9 A. About 3 metres or so. 10 MR SO: Thank you. I have no further questions. 11 CHAIRMAN: Good. 12 Thank you very much indeed. 13 WITNESS: (In English) Okay. 14 CHAIRMAN: Yes, you are completed. It may be possible to 15 call you back to assist the Commission, I doubt it, but 16 thank you for your help and I wish you the very best of 17 health going forward. 18 WITNESS: (In English) Okay. Thank you. 19 MR PENNICOTT: Sir, the next witness is Mr Li. I presume 20 he's here. 21 MR SO: Good afternoon, Mr Li. I saw you have just put on 22 your headphones from the interpreting service. 23 MR LI RUN CHAO (affirmed in Puntì) 24 (All answers given via simultaneous interpreter 25 except where otherwise specified)</p>	<p>1 Chinese version of the police witness statement that you 2 have provided on the 7th day of August 2018. 3 A. Yes. 4 Q. As I can see, there was a time next to it. It was 5 0945 hours. That's in the morning; correct? 6 A. Yes, yes. 7 Q. Was that the time that you first started to give this 8 witness statement, or is it the end of the time of 9 giving the witness statement? 10 A. This was the start. 11 Q. Do you recall at what time you finished giving this 12 witness statement? 13 A. Around 4 pm. 14 MR SO: Thank you. I have no further questions. 15 Examination by MR PENNICOTT 16 MR PENNICOTT: Good afternoon, Mr Li. 17 A. (In English) Hello. 18 Q. I am counsel for the Commission and I've got a few 19 questions to ask you. Thank you for coming to give 20 evidence to the Commission today. 21 You tell us, Mr Li, that you first arrived at the 22 Hung Hom Station on 11 January 2016; is that right? 23 A. Correct. 24 Q. Mr Li, this is very important, so please listen very 25 carefully to my questions. Are you sure, 100 per cent</p>
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<p>1 Examination-in-chief by MR SO 2 Q. Thank you, Mr Li. Can I bring you to bundle D2, 3 page 922. This is the first witness statement you have 4 provided to this Commission; correct? 5 A. Correct. 6 Q. Can I bring you to page D927. In that page, you have 7 signed your name under the date? 8 A. Yes. 9 Q. This is the witness statement dated the 19th day of 10 September 2018? 11 A. Yes. 12 Q. Can I then take you to D951. This is the second witness 13 statement that you have provided to the Commission. 14 A. Yes. 15 Q. Can I bring you to the next page, D952. Again, you have 16 signed your name under the date? 17 A. Yes. 18 Q. And this is the witness statement dated the 28th day of 19 September 2018? 20 A. Yes. 21 Q. Mr Li, do you confirm that you wish to adopt the 22 contents of these two witness statements as part of your 23 evidence? 24 A. Agreed. 25 Q. Mr Li, can I bring you to page D928. This is the</p>	<p>1 sure, that it was 11 January 2016 that you first started 2 work? 3 A. Yes. 4 Q. How do you know that? What are you relying on? Have 5 you got any particular document that you have referred 6 to? Just your recollection? What is it that leads you 7 to say it was 11 January 2016? 8 A. Because that was an easy day to remember, 11 January. 9 Q. Easy for you, perhaps. Why is it easy to remember 10 11 January as opposed to 5 September, which is my 11 birthday so I can remember? Why is 11 January 12 particularly remarkable to you? 13 A. Three ones. 14 Q. All right. Did you attend the Leighton safety induction 15 course? 16 A. Yes, I did. 17 Q. We have heard from Mr Ngai, the previous witness, that 18 you are not allowed to start work on the site until you 19 have done that safety induction course. First of all, 20 do you agree with that? 21 A. I agree. 22 Q. What date did you take the Leighton safety induction 23 course? 24 A. Well, that I don't remember. 25 Q. We have records that have been supplied to us, Mr Li,</p>

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1 from Leightons. They tell us, those records, that you
2 did the safety induction course on 12 January 2016. Are
3 you able to dispute that?
4 A. Well, you know, Leighton they have this big class and
5 a small class, and after we took the big class, then we
6 went to the site and we would take the small class.
7 Q. That's not an answer to my question. Let's look at, so
8 the Commission can see it, bundle C8, page 5670.
9 Sorry, if you go back, please -- if we flick back to
10 page 5662 -- unfortunately, this is the only page that
11 has the headings on at the top -- and you will see that
12 the safety induction columns start to the immediate
13 right of where you see lots of words in pink
14 highlighting, headed "refresh".
15 If we then go to page 5670, helpfully, Mr Li, your
16 name appears right at the top, the first line; do you
17 see that?
18 A. Yes, I see it.
19 Q. If you go to the column to the right of "refresh", that
20 is why I'm suggesting to you -- I know it's got a line
21 through it; there are lines through lots of dates here
22 and no doubt Leighton will explain why there are lines
23 through it -- but our understanding is you did that
24 safety induction course on 12 January 2016, and
25 therefore, by definition, could not have started work

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1 until 13 January, at the earliest. Am I right?
2 A. Well, I could start work on 12 January too.
3 Q. But you didn't, did you? You started on the 13th?
4 A. Yes.
5 Q. We know that because Mr Jason Poon, your boss, has
6 supplied us with the site organisation chart. Can we
7 have a look at that. That's at D224.
8 Mr Li, you will find your name on the second row
9 from the bottom and the second box in from the right.
10 Do you see your name there, "Li Run Chao" -- do you see
11 that? Have you got that?
12 A. Yes.
13 Q. You are assistant foreman; yes?
14 A. Yes.
15 Q. And this time, unlike with Mr Ngai, Mr Poon's got it
16 right that you started work on 13 January 2016. So do
17 you accept that?
18 A. Yes.
19 Q. With that in mind, Mr Li, could we then look at your
20 witness statement.
21 A. Yes.
22 Q. In particular, please go to paragraph 8. It's at
23 page D2/924.
24 A. (In English) Okay.
25 Q. In paragraph 8 you say:

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1 "Since 11 January 2016, I was assigned to work at
2 the upper deck (ie the EWL slab) of area B."
3 In the light of the questions I just asked you and
4 the answers you gave, are you content to change that
5 date to 13 January?
6 A. Yes, I will do that.
7 Q. Now, that may not seem very important to you, Mr Li, but
8 I can assure you it is, for this reason. You say that
9 you were assigned to the upper deck of area B, now you
10 say on 13 January 2016. We know, Mr Li, that the last
11 bay to be concreted in area B, indeed the last area to
12 be concreted in area A, B or C, was bay 4 and bay 5 in
13 area B, that took place on 12 January 2016, the day
14 before you started work. Do you remember that? Was
15 that the situation when you turned up on 13 January?
16 A. At the time I arrived at area B, there was still bar
17 bending and fixing; it wasn't yet concreting.
18 Q. According to the records we've got -- and we may have to
19 look at the records, Mr Li -- but we know that the rebar
20 in the area to which you were assigned had been
21 completed by about 10 or 11 January and had been
22 inspected, and there are forms to indicate that it was
23 inspected, but more importantly, Mr Li, there are
24 concreting records that show that the area was concreted
25 on 12 January 2016, and that was the last area on the

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1 area B slab -- as I say, on the area A, B and C slab --
2 to be concreted.
3 So what you are saying, Mr Li, with respect, can't
4 be right.
5 A. I don't agree.
6 Q. So where do you say precisely that you saw this rebar
7 fixing going on? Are you sure it was area B and not
8 somewhere else?
9 A. It's area B, because before, there was a place where we
10 do the welding. It's there.
11 Q. And you specifically say that it was the upper deck, ie
12 the EWL slab. Mr Li, are you not getting confused; are
13 you sure it wasn't the NSL slab perhaps that you were
14 assigned to?
15 A. Yes, EWL, East West.
16 Q. Let me just go on in your witness statement to see what
17 else we can -- make of what you are saying. You say --
18 this is paragraph 9:
19 "On a day in January 2016, Mr Poon reported in the
20 lunch meeting that he saw some workers in area B cutting
21 the threaded rebars of the steel threads."
22 Now, Mr Li, presumably the very first lunch meeting
23 that you could have attended was on 13 January; is that
24 right?
25 A. Yes.

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<p>1 Q. The day after the area B, bay 4-5, had been concreted? 2 A. At that time, I was told that the concrete had not been 3 poured. 4 Q. Well, on 13 January, when you turned up, did you go and 5 have a look? 6 A. Yes. 7 Q. Was the concrete there on 13 January? All those records 8 that show that it was laid on 12 January, they are all 9 wrong, are they? 10 A. The day I turned up to work, turned up for work, the 11 concrete had already been poured. 12 Q. It had been poured? 13 A. It had not been poured. 14 MR TO: I think it's a mistake. 15 MR PENNICOTT: Another "not"? Okay. 16 Then you say this: 17 "As I and fellow colleagues of Chinat were scheduled 18 to pour concrete that night in area B, Mr Poon asked me 19 to pay attention as to whether any workers were cutting 20 the threaded rebars." 21 So what night are you talking about, Mr Li? Are you 22 talking about the 11th, the 12th, the 13th; which night 23 are you talking about? 24 A. I cannot recall which specific night it was, and that 25 night we were working in area C, not area B.</p>	<p>1 joining China Technology. 2 CHAIRMAN: Okay. Let's do it this way. From the best of 3 your recollection, how many days must it have been after 4 you had completed the Leighton safety induction course? 5 A. About a day. 6 CHAIRMAN: All right. 7 MR PENNICOTT: Thank you, sir. 8 Mr Li, I'm going to show you a few documents which 9 I appreciate you may not have seen before, but just so 10 that the Commissioners understand the points that I'm 11 trying to address with you. 12 Could we please see H1/336. Can you see that on the 13 screen, Mr Li? And I think you are being handed a hard 14 copy. 15 Mr Li, as I say, I anticipate that this is not 16 a document you will have seen before. Would I be right 17 about that? 18 A. Correct. 19 Q. What it is, it's -- what happens is when Leighton think 20 that a piece of work is completed and they are ready to 21 move to the next stage, they ask MTR to come and inspect 22 the works, and this is what's called a request for that 23 inspection, just so you understand the context. Do you 24 understand? 25 A. I understand.</p>
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<p>1 CHAIRMAN: Sorry, could I ask this: you say that on a day in 2 January 2016, it appears that you attended the training 3 course held by Leighton on 12 January, and presumably 4 that was a full-day course, was it? 5 A. It was not. 6 CHAIRMAN: How long was it for? 7 A. Half a day. 8 CHAIRMAN: All right. Did you go to work at all that day? 9 A. Yes. 10 CHAIRMAN: So you finished your course and then you went to 11 work that day. Do you have any recollection of what 12 happened after you finished the course and went to China 13 Technology that day? 14 A. That day, nothing special happened. After that day, 15 then I participated in the lunch meeting. 16 CHAIRMAN: All right. So "after that day", do you mean it 17 wasn't on that day, that is the 12th, it was some day 18 later? 19 A. Correct. 20 CHAIRMAN: And to the best of your memory now -- and 21 I appreciate it's difficult to identify a specific 22 day -- was it a few days later, was it maybe a couple of 23 weeks later, a month later, but before the end of 24 January? 25 A. My recollection is after joining, not too long after</p>	<p>1 Q. We can see that this RIS form relates to area B, EWL 2 slab, bay 4, that's B4 and B5. Do you see that under 3 the heading, "Location of work", if you are able to read 4 it, towards the top? 5 A. I'm not sure how they differentiate areas B4 and B5. 6 Q. No. You're right about that, as it happens, because B4 7 and B5 in fact got merged and we just now know it as B4, 8 as it happens. But, in any event, these two areas, as 9 they then were, were cast, so far as the concrete is 10 concerned, at the same time, and what this form is 11 showing is that on 5 January 2016, if you see just about 12 a third of the way down on the right-hand side, that 13 date, Leightons are asking for an inspection to be done 14 on 8 January. Do you see that? 15 A. Yes, I see it. 16 Q. There's a box a bit further down, "Part B", which 17 indicates that that inspection, as we understand it, 18 took place on 8 January at about 5 o'clock in the 19 afternoon; do you see that? 20 A. Yes. 21 Q. If you go to the next page, to 337, this is another 22 similar form, and the work that Leighton are asking to 23 be inspected this time is a "Pre-pour check (final 24 condition)"; do you see that? 25 A. Yes.</p>

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<p>1 Q. They are asking for that to be done on 11 January 2016 2 at 4.30, 1630; can you see that? 3 A. Yes, I see it. 4 Q. And a bit further down, there's a signature which 5 indicates that that inspection took place on 11 January 6 at 10 past 6, 1810; do you see that? 7 A. Correct. 8 Q. So that was 11 January. 9 Then, over the page, at 338 -- now, I've not been 10 able to ascertain precisely the time at which the 11 concrete started to be placed, but we can see from the 12 two records, at 338 and 339, that the area B slab, that 13 B4-B5 was concreted on 12 January. Do you see those? 14 I just want to show you those records, Mr Li, so that 15 you understand what it is. 16 CHAIRMAN: Where is the mention of the 12th? Oh, I see it. 17 MR PENNICOTT: At the top of the page, sir, in the middle. 18 CHAIRMAN: The 12th, I have that. And then? 19 COMMISSIONER HANSFORD: Could we just go back one page so 20 I can see some of the detail? Thank you. 21 MR PENNICOTT: Sorry, sir, you are back to 337? 22 COMMISSIONER HANSFORD: Yes. Sorry, it keeps moving on my 23 screen. Could I just have a look at 337 -- no, sorry, 24 it's the concreting record. 25 MR PENNICOTT: Sir, that's 338.</p>	<p>1 paragraph 10, you say this: 2 "At that night after Mr Poon mentioned the matter at 3 the lunch meeting ..." 4 Now, pause there. Mr Li, help us. What night are 5 you referring to? What date are you referring to at 6 paragraph 10? 7 A. I cannot recall the specific date. 8 Q. Mr Li, none of this is making a lot of sense, because 9 you then go on to say: 10 "... I saw five to six workers without upper 11 clothing cutting the threaded rebars in area B." 12 Mr Li, that can't be right, because the last 13 concreting in area B was on 12 January. So, with 14 respect, it cannot be right. If you saw this going on 15 somewhere else, some other area, please tell us, but it 16 can't be area B, Mr Li. 17 A. My memory would still be area B. 18 Q. It can't be area B at the EWL. 19 A. I didn't understand the question. Could you ask the 20 question again? 21 Q. I'm told again there's another translation problem. 22 I thought it was pretty clear. You say: 23 "At that night" -- and we don't know which night it 24 is because you can't recall -- "I saw five to six 25 workers without upper clothing cutting the threaded</p>
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<p>1 COMMISSIONER HANSFORD: That's the one. And then scroll it 2 down, please. Thank you. And further. 3 Thank you very much. 4 MR PENNICOTT: So, Mr Li, these records are why I'm 5 suggesting to you that if you turned up on 13 January, 6 which I think is what you told us earlier, to properly 7 start work, this area would have already been concreted. 8 And frankly, even if you turned up, as I think you might 9 have been suggesting to the chairman, on the afternoon 10 of the 12th, the likelihood is this concreting was going 11 on at the time. 12 But what you wouldn't have seen in this particular 13 area, Mr Li, on whatever scenario is right, is any bar 14 cutting. Can I suggest that that must be the case? 15 A. But, in my recollection, when I went to work, they had 16 not poured concrete. 17 Q. I'm told there is another problem with the translation. 18 I was suggesting to you, Mr Li, that if you were 19 assigned to area B on either 12 or 13 January, you could 20 not have witnessed any cutting of rebar in that area at 21 that time. Do you agree? 22 A. Are you referring to the 12th and 13th? 23 Q. I am. 24 A. I agree. 25 Q. If we then go to your witness statement, and let's go to</p>	<p>1 rebars in area B." 2 And I'm suggesting to you, Mr Li, that that simply 3 can't be right. That the EWL slab, the last area to be 4 concreted in area B was on 12 January, so what you're 5 saying simply cannot be right. 6 A. Are you referring to bay 4/bay 5 in area B or are you 7 referring to the whole area B? 8 Q. Mr Li, I'm referring to area B, bays 4 and 5, because 9 those were the only ones left to be concreted as at 10 12 January. There was no more concreting to be done in 11 area B after 12 January on the EWL slab. 12 A. But my memory is, it's not. 13 CHAIRMAN: You see, Mr Li, there is a possibility that you 14 saw these steel threads being -- or these rebars being 15 cut, perhaps to be taken somewhere else, and this was 16 out of the way, but your statement says you saw them 17 actually -- that they then screwed them into couplers on 18 the diaphragm wall. So the possibility of them finding 19 a hidden place to do their work can't be the case 20 because you say you saw them actually screwing them into 21 the couplers. 22 MR PENNICOTT: I haven't got to that bit yet. 23 CHAIRMAN: I'm sorry. I'm just trying to -- let me put it 24 this way. The documents that you have been shown are 25 documents that are prepared day by day, as you know, in</p>

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<p>1 building anything, on a building site. Okay? They are 2 filled in that day or perhaps the next day or the day 3 after that, and they are ordinary documents and there's 4 no reason for anybody to fabricate the dates and the 5 details. Do you understand? 6 A. Yes, I do. 7 CHAIRMAN: So we have these ordinary documents, prepared day 8 by day, in a mundane way, which show that all the 9 concreting was finished by late -- sorry, on 12 January. 10 Now, do you agree, if that's the case, whatever it 11 is you saw, you couldn't have seen in areas B4 and 5 of 12 the EWL slab on 13 January and thereafter; you must be 13 mistaken in your memory? 14 A. Right. 15 MR PENNICOTT: Sir, I see it's 4.57. Would that be 16 an appropriate moment to conclude? I've got a bit more 17 to do yet, I'm afraid, and I dare say there might be 18 a few questions from behind. 19 CHAIRMAN: Can I just ask you one question: who asked you to 20 come and give evidence in this matter? 21 WITNESS: Who asked me? The Commission. I think it was the 22 Commission. 23 CHAIRMAN: But the Commission would have asked you because 24 they had an indication that you would know something 25 that might be relevant?</p>	<p>1 to outline this afternoon are repeated in the police 2 statement as well. 3 CHAIRMAN: All right. 4 Mr Li, it's now 5 o'clock in the evening, so we are 5 finishing our work today. You, however, are in the 6 middle of giving your evidence, and as you can readily 7 see we have a few problems. The problems need to be 8 worked out in this room, with you and the counsel who 9 appear here. These are not problems that need to be 10 worked out with your colleagues at the company, your 11 bosses, your friends, your relatives, or anybody else; 12 okay? Which means that you are not entitled to discuss 13 this matter with anybody else outside of -- who's not -- 14 well, you are not entitled to discuss it with anybody 15 else while you are giving your evidence. Do you 16 understand me? 17 WITNESS: Yes, I do. 18 CHAIRMAN: Let me tell you, you can see from my grey hair 19 that I have been around these courts for a long time, 20 and I can tell you now that nothing is more obvious to 21 a judge or a commissioner than somebody who says one 22 thing late in the afternoon on a Monday and the next 23 morning miraculously is saying something very different 24 on the Tuesday. That is so obvious to a judge that they 25 have been discussing the matter with other people.</p>
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<p>1 WITNESS: Yes. 2 CHAIRMAN: How would they have known that? Do you know? 3 WITNESS: Your question again, sir? 4 CHAIRMAN: The Commission would have asked you if you could 5 assist them because they would have believed that you 6 were in a position to assist them, that you would have 7 some knowledge. 8 WITNESS: Yes. 9 CHAIRMAN: I appreciate you may not know what was in the 10 mind of the Commission, but from what you can understand 11 of matters, why would the Commission have believed that? 12 WITNESS: Because I might know something about what happened 13 in Hung Hom Station. That's why I was invited. 14 CHAIRMAN: All right. Perhaps we can leave counsel to visit 15 that. 16 MR PENNICOTT: Sir, I will obviously try to track the answer 17 to that question down. I imagine, but I don't know, it 18 might have something to do with the fact that Mr Li gave 19 a statement to the police on the particular topic, but 20 I may be wrong about that. I'm afraid that's another 21 area where I'm going to have to go, because I suspect 22 that the witness statement has been prepared by 23 reference to the police statement. 24 CHAIRMAN: Yes. 25 MR PENNICOTT: And of course the problems I've been trying</p>	<p>1 Okay? 2 WITNESS: I understand. 3 CHAIRMAN: So what I am saying is I'm not doubting your word 4 for one moment. I'm just saying the temptation is often 5 there to discuss things with third parties, but it's 6 very obvious if you do so. Okay? Good. Thank you so 7 much. We look forward to seeing you tomorrow morning at 8 10 o'clock. 9 (5.03 pm) 10 (The hearing adjourned until 10.00 am the following day) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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