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<p>1 Monday, 29 October 2018 2 (Proceedings delayed) 3 (10.17 am) 4 MR PENNICOTT: Good morning, sir. Good morning, 5 Prof Hansford. 6 Sir, when we adjourned on Friday, late morning/early 7 afternoon, the reason for that was the production by 8 China Technology of four photographs and the necessity 9 to consider those photographs and the implications of 10 them. 11 One of the consequences, however, was that China 12 Technology were invited to produce a witness statement 13 dealing with the photographs. 14 Sir, they originally asked for a time period up to 15 4 pm on Sunday to produce the witness statement from 16 Mr Poon. Sir, you, on Saturday evening, at 6.11, 17 granted an extension of time for the production of that 18 witness statement until 1 pm on Sunday. 19 MR SHIEH: I believe Mr Pennicott intended to say 4 pm on 20 Saturday. It came out as 4 pm on Sunday. 21 MR PENNICOTT: No, no, they asked for 4 pm on Sunday. 22 That's my understanding and I will be corrected if I am 23 wrong. 24 In any event, the upshot was you granted an 25 extension of time until 1 pm on Sunday. Sir, 1 pm</p>	<p>1 obviously registering their concern and their 2 dissatisfaction with what had happened in terms of the 3 service of this rather late witness statement, and 4 stating -- perhaps the most relevant point for the 5 purposes of now -- that they wish to reserve their 6 position to cross-examine Mr Li, who is not yet in the 7 room for obvious reasons, after we have had 8 an opportunity to consider the photographs referred to 9 in Mr Poon's fifth witness statement. If I may say so, 10 an entirely understandable stance to take. 11 This morning, at 8.29, we received a message on 12 behalf of Leighton, from those instructing my learned 13 friends Mr Shieh and Mr Wilken, saying they agree 14 with -- it's actually Mayer Brown, not JSM -- 15 Mayer Brown, and added thereto "no answer to lateness, 16 (ie defiance of the Commissioners' directions) and no 17 explanation as to whom sent Mr Poon the 4 photographs 18 (produced ... on Friday ...) and how". 19 So it would appear, if I have understood the 20 agreement that they are expressing, they also wish to 21 reserve their position to cross-examine Mr Li after 22 having had an opportunity to consider the photographs. 23 Sir, I don't know whether that is their position as 24 I stand here now or whether they wish to take some other 25 course, so perhaps it would be best, in the first</p>
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<p>1 arrived and went. They were sent a chaser at about 1.30 2 by those instructing me. No response was received, 3 either by way of a courtesy acknowledgment or an apology 4 for not having served the witness statement. However, 5 at 4.16 Sunday afternoon, without any explanation or 6 apology for its lateness, a witness statement of Mr Poon 7 was faxed or emailed to us. It runs to eight pages. It 8 has a number of exhibits. The exhibits were not sent to 9 us at that stage with the witness statement. 10 At 4.39 on Sunday afternoon, a chaser was sent 11 again, marked red and "Urgent", calling for the 12 exhibits. Between 1654 and 1726, that is between 4.54 13 and 5.26, late yesterday afternoon, the exhibits turned 14 up in five batches. We then had, therefore, at 7.26 15 last evening what we thought was the complete package. 16 By way of postscript, at around about 9.45 this 17 morning, we were handed another copy of the witness 18 statement, with some manuscript amendments marked upon 19 it. I've had a quick look at those. There is one 20 curiosity but hopefully nothing much may turn on those 21 late manuscript amendments. 22 Sir, the position is this, so far as the other 23 parties, the interested parties, are concerned. Very 24 late last night, at something like 12.32, we received 25 a message from Mayer Brown on behalf of the MTRC,</p>	<p>1 instance, to hear from the MTRC and Leighton as to what 2 they wish to do. 3 MR BOULDING: Go ahead. 4 MR WILKEN: Good morning, sir, Professor. 5 Our position is we have reserved our position. We 6 were told on Friday, and it's page 49, lines 20 to 21, 7 that these photographs were going to prove that there 8 was still pouring going on in area B on 14 January. 9 They don't. 10 If one looks at paragraph 9 of Mr Poon's 11 fifth statement, it now appears to be common ground that 12 pouring finished on 12 January. Therefore, there was 13 absolutely nothing revelatory about these photographs, 14 and the basis on which the Commission adjourned turns 15 out to be an incorrect one. 16 In terms of Mr Li's evidence, we do reserve our 17 position, but it does seem to us that, given 18 paragraph 9, Mr Poon has now confirmed the line of 19 cross-examination I put to the witness, that he can't 20 have seen anything on the 14th because it was poured, 21 and that therefore, rather than helping his witness, 22 Mr Poon has basically destroyed his credibility even 23 further. 24 On that basis, therefore, sir, I have no further 25 cross-examination at this point, albeit our position is</p>

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1 formally reserved because we haven't yet worked through 2 the photographs. 3 Unless I can assist further, sir. 4 CHAIRMAN: Thank you very much. 5 MR BOULDING: Good morning, sir. Good morning, Professor 6 I would adopt those observations of my learned 7 friend. I have nothing to add on those matters this 8 morning, save that we still have not had a full and 9 proper opportunity to consider everything that Mr Poon 10 says, and in particular what he says the photographs 11 show, and in those circumstances I would formally 12 reserve my position to ask Mr Li some questions about 13 those photographs on another day, I fear. But what 14 I can say is that it doesn't appear very likely. 15 CHAIRMAN: Thank you. 16 MR PENNICOTT: Sir, unless anyone else wants to say 17 anything, can I then suggest what I think should happen? 18 Sir, it is my role as counsel to the Commission to 19 occasionally have to step in and try to sort a few 20 things out. It seems to me, with respect, that it would 21 be inappropriate, if indeed this is what Mr To has in 22 mind, for him to try to put some of these matters to 23 this witness in re-examination and some of these 24 photographs in particular. 25 Insofar as I believe some of the photographs need to	1 Sir, that was my proposed course of action, and that 2 may just, as it were, finish this point off, and then 3 Mr Poon will just have to be cross-examined when we come 4 to him. 5 CHAIRMAN: May I ask about the diagram attached to Mr Poon's 6 affirmation, which appears to show an area co-lateral to 7 A1, called A2. 8 MR PENNICOTT: Yes, sir. That's a very -- 9 CHAIRMAN: Sorry, in respect of that, there is mention of 10 14 January as being the pour date. 11 MR PENNICOTT: Yes, sir. My understanding is that, having 12 spent some time looking at this this morning, insofar as 13 Mr Li's evidence is concerned, the area A2 is something 14 of a red herring. 15 However, when it comes to Mr Poon, it may be 16 a relevant point to ask him about, but as far as I'm 17 aware there is no suggestion from Mr Li, in his evidence 18 to date, that he was anywhere near area A2, as shown on 19 this schematic. So, so far as his evidence is 20 concerned, I'm reasonably content we don't need to worry 21 about it. 22 CHAIRMAN: Yes. 23 MR PENNICOTT: But we do need to worry about it potentially 24 going forward, and if I might just put some flesh on the 25 bones about that, since you have raised it: we have
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1 be put or matters arising out of the photographs need to 2 be put to Mr Li, I would propose that I do that. It may 3 be that if I do that, then Mr Wilken and Mr Boulding for 4 Leighton and MTRC respectively may be perhaps in 5 a better position to know whether they wish to put any 6 further questions, whether they need time to think about 7 those questions, or whatever the position may be. 8 That's what I would propose to do. 9 There is a way into this, and I assume there is no 10 way Mr Li can hear what I'm saying -- I assume he is 11 locked away in the witness room at the back -- but I do 12 think it fair to point out that during his 13 cross-examination by Mr Wilken, he referred not only to 14 some I-beams, which we did look at in one photograph 15 with him, with an I-beam in, but he also referred to 16 some steps. He referred to some steps that he was 17 perhaps looking down, we are not entirely sure, we don't 18 know where those steps are, but if you've had 19 an opportunity of looking at the photographs, at least 20 two of them do show some steps. They are perhaps not in 21 the area that Mr Li says he was, they seem to be in 22 a different area, but I'm not going to put the 23 photographs to him directly, immediately, because, 24 I shall ask him some questions leading up to that, and 25 will put the photograph if I need to.	1 looked at Leighton's method statement, concreting method 2 statement, to which Mr Poon refers in this fifth witness 3 statement. It does indeed show an area A1 and 4 specifically an area A2, and we can see that, if you are 5 interested in seeing it, at bundle C10/6757. If we can 6 just blow the diagram up slightly. Thank you very much. 7 That's fine. 8 CHAIRMAN: I see that. 9 MR PENNICOTT: Sir, our understanding now -- I have to say 10 this is a new point on us; perhaps others were aware of 11 it but I wasn't until last night -- there is indeed 12 an area marked A2, shaded blue, and it seems to be 13 outside of the diaphragm wall, the other side of the 14 diaphragm wall, as it were, and, if Mr Poon's schematic 15 is correct, at a lower level than the top of the EWL 16 slab. 17 Now, I anticipate that you may have raised it 18 because there may be -- I don't know, I just haven't had 19 chance to look at this yet in any detail -- a question 20 as to whether A2 is within the terms of reference, 21 whether it actually forms part of the EWL slab. I'm 22 a little bit doubtful about that at the moment, I'm 23 bound to say, but I need to look at that a bit more, if 24 I may. 25 But, sir, as I say, for present purposes, I'm rather

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<p>1 hopeful that A2 is not relevant to the current witness 2 and we can park it until everybody, me in particular, 3 has done some more research on it. 4 CHAIRMAN: Yes. Would anybody like to make any comments in 5 respect of the suggestion by counsel to the tribunal or 6 to the Commission? 7 MR WILKEN: Sir, we are perfectly happy with that course of 8 action. We also believe A2 is a red herring in relation 9 to this witness, because of course this witness was 10 adamant that it was area B on the EWL slab. 11 MR BOULDING: Sir, for our part, we think that 12 Mr Pennicott's suggestion is indeed very sensible and 13 are happy for him to proceed on that basis. 14 CHAIRMAN: Yes. 15 Mr Khaw? 16 MR KHAW: I am also happy with Mr Pennicott's suggestion. 17 CHAIRMAN: Do any other counsel wish to make any 18 observation? 19 MR TO: Mr Chairman and Commissioner, first of all, 20 I apologise on behalf of the client who's instructing me 21 because this only came up at the last minute and we have 22 been working very hard over the weekend to do this. 23 I apologise to everyone sincerely on this. 24 The second point, I totally agree with counsel for 25 the Commission in terms of what he's trying to do in</p>	<p>1 MR BOULDING: So would we, sir. 2 CHAIRMAN: Good. Nobody else is commenting, so I'll assume 3 we are going to go ahead now. Thank you very much. 4 So we need to call Mr Li. 5 MR PENNICOTT: Let's call Mr Li back. 6 MR LI RUN CHAO (on former affirmation in Punti) 7 (All answers given via simultaneous interpreter 8 except where otherwise specified) 9 Further examination by MR PENNICOTT 10 Q. Mr Li, good morning. 11 A. Good morning. 12 Q. I apologise that you've been kept waiting, not only on 13 Friday afternoon but also for a small part of this 14 morning. 15 Mr Li, first of all, can I ask you a couple of 16 general questions. You'll recall the warning that the 17 chairman gave you on both Thursday evening and Friday 18 lunchtime about not speaking to anybody whilst you are 19 giving your evidence. Do you remember those warnings? 20 A. Yes, I remember. 21 Q. Have you obeyed those warnings and not spoken to anybody 22 at all about your evidence? 23 A. I obeyed, because there was a WhatsApp of my company and 24 I was prevented from contacting anyone. 25 Q. Can you assure me and the Chairman and Commissioner,</p>
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<p>1 terms of proceed with these proceedings. 2 CHAIRMAN: Yes. Good. Thank you. 3 I also agree that it's the most sensible way 4 forward. It's unfortunate that matters have panned out 5 as they have. All counsel are aware, however, that we 6 are not, in these proceedings, involved in adversarial 7 litigation of the classic kind. What we are involved in 8 is a Commission of Inquiry seeking, through our joint 9 endeavours, to find out what the truth is, so we can 10 report to the Chief Executive and give assurances to the 11 Hong Kong public. So the whole purpose of this is very 12 different from a classic adversarial piece of litigation 13 and I think what counsel suggests fits in with the 14 underlying purpose. 15 Now, the next and final question is whether counsel 16 are happy to proceed now or whether counsel or any 17 number of them feel they still need a short period of 18 time to consider the papers. 19 Mr Pennicott? 20 MR PENNICOTT: For my part, I'm happy to proceed 21 immediately, sir. 22 CHAIRMAN: All right. 23 MR WILKEN: Sir, for Leighton's part, we would like to get 24 moving. 25 CHAIRMAN: Good.</p>	<p>1 Mr Li, that nobody has mentioned the word "photographs" 2 to you over the weekend? 3 A. Photographs? Nobody mentioned photographs to me. 4 Q. All right. Thank you very much. 5 Could you ask you, please, to be shown the 6 transcript for Friday morning at page 39. You will 7 recall, Mr Li, that on Friday morning, Mr Wilken for 8 Leighton was asking you a number of questions. Right at 9 the top of page 39, he had asked you a question or put 10 the point to you that you could have seen no rebar being 11 installed in area B on 12 January because the concrete 12 was in the course of being pumped in and laid and 13 placed. Do you remember that? 14 A. He did make this point. 15 Q. Yes. And your answer, at the top of page 39, was as 16 follows. You said: 17 "Because I truly couldn't tell the different bays 18 and areas. Perhaps I was referring to area B, but it 19 could mean the vicinity. I really cannot recall the 20 exact locations." 21 A. True. 22 Q. Then Mr Wilken said this: 23 "But area B is the last area to be concreted. 24 Therefore, they cannot be working on rebar anywhere 25 close to area B; correct?"</p>

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1 And you answered:
2 "I remember, at the time, there were some descending
3 steps around area B. You need to take a few steps down
4 before you reach area B. That's what I recall."
5 A. Correct.
6 Q. Now, Mr Li, do you agree with this, first of all: if
7 area B was being concreted on 12 January, the steps that
8 you there refer to could not have actually been in
9 area B?
10 A. Because, at the time, it was the first day I worked at
11 the site, I really cannot tell the exact locations.
12 Q. Okay. That's not an answer to my question. You've now
13 got some years of experience, Mr Li, in formwork and
14 concreting, I imagine. It must follow, must it not,
15 that if area B is being concreted, it cannot itself,
16 that is area B, have any steps constructed in it?
17 A. I disagree.
18 Q. Why do you disagree?
19 A. Because, when you pour concrete, it does not contradict
20 the fact that there could have been steps going down.
21 Q. So are you suggesting then that perhaps an area was --
22 there was some formwork in a particular area
23 constructed, some steps were in area B already, and then
24 the concrete was placed around that formwork, so as not
25 to interfere with the steps?

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1 A. Could you repeat the question?
2 Q. I'm trying to work out how you think, in a top-down
3 construction method, some steps would already have been
4 constructed in area B before it was actually concreted.
5 A. At the time, those steps, I think it had already been
6 concreted. I recall it could be covered by foot and it
7 had been concreted and there was no formwork.
8 Q. All right. I want you to think about this very
9 carefully, because it's very important, Mr Li. Are you
10 saying to the Commissioners that those steps were in
11 area B, or were they somewhere else, or they could have
12 been somewhere else? What is your evidence?
13 A. I recall at the time -- I recall there were some steps,
14 but was it really at area B or some boundaries or
15 transition areas? I really couldn't differentiate.
16 Because I recall at the time I was near where the
17 concrete was being poured. That's how I will respond.
18 Q. All right. Can you now think back, recollect and try to
19 describe how these steps looked?
20 A. I cannot recall.
21 Q. Were they fully formed? Were they concreted? Were they
22 metal? Were they wooden? Have you any recollection of
23 their form?
24 A. It should have been concreted.
25 Q. Right. Can you remember how many steps there were, how

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1 far down?
2 A. I cannot recall. How many metres deep were the steps?
3 Q. Yes.
4 A. It shouldn't have been very long; it was quite short.
5 Q. Okay. I'm going to show you some photographs, Mr Li.
6 I wonder if the witness could be shown -- I think
7 this is in the electronic bundle already -- D2/1096.
8 Mr Li, you can see in this photograph some concrete
9 steps?
10 A. Correct, I see it.
11 Q. Are these the steps that you are referring to?
12 A. It looks like it.
13 Q. All right. There's another photograph at the next page,
14 1097, of the same steps, a slightly closer-up
15 photograph.
16 Do you see those, Mr Li?
17 A. I see it.
18 Q. Again, are you telling the Commission that these are the
19 steps that you were referring to in your evidence on
20 Thursday and that you recall seeing at the time?
21 A. Yes. That's what I had said on Friday morning.
22 Q. Mr Li, our understanding is that these steps were not,
23 self-evidently, in area B, which was being concreted at
24 the time -- sorry, I should have said to you these
25 photographs are dated on 12 January 2016. These were

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1 self-evidently not in area B, Mr Li. They were between
2 area C1-4 and C1-5, we are told. Are you able to
3 confirm that or not?
4 A. I cannot give you a specific location because if there
5 was concreting going on, I was told it was area B that
6 was being concreted. That's why I've been answering it
7 was near area B.
8 Q. Do you recall going and standing by these steps, at the
9 top of them, perhaps?
10 A. I recall I went down a few steps, because at the time
11 there were some railings and I could access the area.
12 Q. All right. So you did go to these steps; is that right?
13 A. Yes. Yes, I had taken a few steps.
14 Q. You went down a few steps; is that right?
15 A. Yes.
16 Q. When you were there and you took a few steps down, what
17 could you see below the steps, in the void, as it were,
18 that we can see on the photograph?
19 A. If I recall correctly, there was an excavator,
20 excavating some earth and mud, if I recall correctly.
21 Q. So you didn't see, when you went to these steps and
22 looked down, any rebar fixing going on; you saw
23 excavation going on? Is that your evidence?
24 A. No. Beneath that area, there should have been some bar
25 bending work. As I said previously, it was not being

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<p>1 concreted, and I saw an excavator, there was a bay area. 2 What was the name of the bay area, I cannot recall, but 3 I did see people screwing material. There were people 4 cutting bars, as I said in my statement. 5 Q. So is it your evidence to the Commission, Mr Li, that it 6 was when you were standing on these steps that you saw 7 the bar cutting taking place? 8 A. Yes, because I said I was standing at the upper level 9 and I saw that. 10 Q. So what you would have seen was the lower level; is that 11 right? 12 A. I cannot confirm whether that was a lower level, because 13 at the time I was standing at the elevated position, 14 because in Hung Hom site there are many levels and 15 I cannot confirm that it was a lower level. 16 Q. In any event, your evidence is that you saw earthworks, 17 excavation, bar cutting, rebar fixing, all in this area 18 underneath these steps when you were standing there, and 19 that's your evidence, is it? 20 A. Correct. 21 Q. All right. You told us or tell us in your witness 22 statement that you were about 10 metres away from the 23 location where you saw the cutting going on; do you 24 remember that? 25 A. I recall.</p>	<p>1 their hands. They may want to have a think about the 2 answers that have just been given before they take 3 a stance. 4 MR WILKEN: Sir, I think at present we would prefer to 5 reserve our position. We do note, of course, that by 6 this date, areas C1-4 and 5 had not been concreted, but 7 I think we are still in the position of reserving our 8 position. Mr Pennicott has helpfully tested the 9 evidence and I just want to think about whether I can 10 assist the Commission any further by asking any further 11 questions. It may well be I can't. So if I may leave 12 it there for now. 13 CHAIRMAN: Thank you. 14 MR BOULDING: Sir, for our part, we would like to press 15 ahead with the few questions we have for this witness. 16 Insofar as he's dealt with the photograph, we would like 17 to give that a bit more thought, and formally I reserve 18 my position, but as I made clear before, I think it's 19 pretty unlikely that we'd require him to come back. So 20 I would propose that I simply cross-examine this witness 21 and hopefully that will be the end of it. 22 CHAIRMAN: Yes. 23 Ms Chong, do you wish to ask any questions? 24 MS CHONG: I have no further questions for this witness. 25 CHAIRMAN: Mr Khaw?</p>
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<p>1 Q. So this is 10 metres, is it, from you standing somewhere 2 on these steps, looking down to the area below? 3 A. Roughly 10 metres, yes. 4 Q. No less than 10 metres? 5 A. Roughly 10 metres, that's what I feel. 6 Q. Okay. Mr Li, I'm intrigued to know, looking at the 7 configuration that we can see on this photograph, how 8 you were able to see, or did you see, anyone trying to 9 connect rebar to the diaphragm wall at the lower level? 10 Did you see anybody trying to connect rebar to the 11 diaphragm wall at the lower level or not, when you were 12 standing on these steps? 13 A. I saw it, because it was quite bright at the time, there 14 was sufficient illumination at the construction site and 15 I saw people screwing the rebars. 16 Q. So the angles were sufficient, were they, that you could 17 actually see from these steps what was going on 18 underneath at the rebar on the east diaphragm wall? Is 19 that your evidence? 20 A. Yes. 21 MR PENNICOTT: Sir, I have put those questions, as I said 22 I would, and really it's a matter for others, before 23 Mr To re-examines, whether they wish to further 24 cross-examine Mr Li at this stage, or perhaps reserve 25 their position, as they were earlier. I'm entirely in</p>	<p>1 MR KHAW: I have a few questions. I wonder whether 2 Mr Boulding would like to ask his questions first, 3 before -- 4 MR BOULDING: I am perfectly happy to do that. 5 CHAIRMAN: Yes. We will proceed on that basis. 6 Sorry, Mr Coleman, the fact you are off to one side 7 doesn't mean you are being ignored, far from it, or on 8 the other side, where there's a representative, but if 9 there are questions you'd like to ask, I'm sure you will 10 be forward enough to stand up and ask. Thank you. 11 MR CONNOR: Thank you, sir. 12 Cross-examination by MR BOULDING 13 MR BOULDING: Good morning, Mr Li. 14 A. Good morning. 15 Q. You tell us that you joined China Tech as an assistant 16 foreman in January 2016; correct? 17 A. That's correct. 18 Q. And there's an issue, I think, between us as to whether 19 you started on 12 or 13 January; right? 20 A. Yes. 21 Q. In paragraph 4 of your witness statement, you tell us 22 that you had the opportunity read the witness statements 23 of Mr Poon dated 3 September and 14 September. Is that 24 correct, Mr Li? 25 A. Yes.</p>

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1 Q. I need to have a discussion with you -- hopefully it
2 won't take too long -- that I've already had with
3 a couple of your colleagues.
4 You go on to say in paragraph 4 that you agree that
5 the facts deposed to therein are true.
6 Is that still your position, Mr Li?
7 A. Yes.
8 Q. I'd like to do this as quickly as possible, but perhaps
9 we could just have a look at Mr Poon's first statement.
10 If you would be kind enough to go to -- let's start at
11 paragraph 30 on D19.
12 Have you got the Chinese version there or the
13 English version? The English version, I assume; is that
14 correct?
15 A. I have the English version, so could I be provided with
16 some translation?
17 Q. If necessary.
18 You will see the heading, "C1. Incidents in August
19 2015"; do you see that heading?
20 A. It's written in English and I cannot read the English.
21 Q. Well, presumably you've been told that it's also written
22 in Chinese, haven't you? Here, Mr Poon, let there be no
23 doubt about it, is dealing with incidents that occurred
24 in August 2015. You understand that, do you?
25 A. What happened in August? Because there were lawyers

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1 translating for me and you are asking me to recall what
2 happened, and I cannot recall.
3 Q. Well, the problem is, Mr Li, that you weren't even on
4 the site in August 2015, were you?
5 A. That is correct. In August 2015, I hadn't been working
6 there yet.
7 Q. Exactly. So when we look through paragraphs 30, 31, 32,
8 33, we can see, can we not, that Mr Poon is dealing with
9 incidents here which allegedly occurred in August 2015;
10 you know that, don't you?
11 A. I'm aware.
12 Q. And in those circumstances, it's absolutely impossible
13 for you, isn't it, to confirm the accuracy of what
14 Mr Poon is saying? You weren't even there; correct?
15 A. Well, what he told me does not relate directly to what
16 occurred with me.
17 Q. Well, it doesn't relate to what occurred with you at
18 all, does it, because you weren't there, were you, in
19 August 2015, Mr Li?
20 A. Correct.
21 Q. So you don't know one way or another, do you, whether
22 what Mr Poon says is correct; that's right, isn't it?
23 A. He just told me that and I've been relating what I was
24 told.
25 Q. You don't actually say that in your witness statement,

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1 do you, Mr Li? You say that you've read what Mr Poon
2 says and you confirm it's accurate. That's what you say
3 in your statement, isn't it, paragraph 4?
4 A. Yes.
5 Q. So you are now telling the learned Commissioner, are
6 you, that what you really ought to have said is that
7 "Mr Poon told me that this is what occurred"; that's
8 what you are now saying, is it not?
9 A. Yes. Yes.
10 Q. When did he tell you that this occurred? When did he
11 tell you -- look at paragraph 30 -- when did Mr Poon
12 tell you:
13 "In mid-August 2015, I and 12 other staff of Chinat
14 had an internal meeting at Chinat's temporary offices in
15 the Hung Hom Station construction site. Mr Leung
16 reported to me orally that he saw in late July 2015
17 someone cutting the threaded rebars using
18 cutting/grinding machines at bay 2 and bay 4 of area C1.
19 At the same time, Mr Chu also corroborated with what was
20 said by Mr Leung and told me that he also witnessed
21 similar incidents happening."
22 Now, is your evidence to the learned Commissioner
23 that Mr Poon told you all of that?
24 A. At the time I was at the lawyer's office, a lawyer told
25 me it was not Mr Poon who told me about it, because at

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1 that time I was asked to read his statement and I saw
2 this in the statement.
3 Q. Oh. So Mr Poon didn't tell you, contrary to what you
4 said a few moments ago; it was a lawyer who told you
5 this, was it?
6 A. Yes.
7 Q. And you do not know, one way or another, do you, whether
8 what the lawyer told you is true? That's right, isn't
9 it?
10 A. At the time, he translated Mr Poon's statement to me,
11 that's why I heard that.
12 Q. Please listen to the question, Mr Li, and we will finish
13 you quicker than might otherwise be the case.
14 You do not know whether, when the lawyer read this
15 true, whether that was true or false, do you?
16 A. The lawyer would not tell a lie to me.
17 Q. I will put the question again. When the lawyer read
18 this to you, you do not know whether what Mr Poon says
19 here was true or false; that's correct, isn't it? Don't
20 evade the question.
21 A. Yes.
22 Q. So you are agreeing with me; is that right?
23 A. Correct.
24 Q. Thank you. It took a while.
25 Now, I'm not going to go to other instances in this

Page 25	1 witness statement, Mr Li, because you would obviously 2 give me the same answer. So, in the interests of time, 3 I'm going to move on to the second occurrence of alleged 4 bar cutting that you refer to. 5 But, first of all, it's correct, is it not, Mr Li, 6 that Mr Poon had told you, as well as other workers of 7 China Technology, to take photographs of work progress 8 and the working environment every day; that's correct, 9 isn't it? 10 A. Correct. 11 Q. And the process was, wasn't it, that Mr Poon had told 12 you to upload those photographs to the China Technology 13 computer system on a regular basis; that's correct, 14 isn't it? 15 A. Correct. 16 Q. And presumably you obeyed what Mr Poon told you to do; 17 correct? 18 A. Yes. 19 Q. You tell us that you took about 40 to 50 photographs per 20 day; that's correct, isn't it? 21 A. Yes, correct. 22 Q. And presumably you also took videos as well, did you 23 not? 24 A. Videos, fewer of those. 25 Q. Sorry, a few?	Page 27	1 A. Yes. 2 Q. Then, just to look at paragraph 16: 3 "I saw two of the workers holding the steel threads, 4 which was about 2 metres long, with one worker at each 5 end. Then, two other workers held a hand-held 6 grinder/cutter approximately 40 centimetres by 7 20 centimetres in size, cutting the threaded rebars of 8 the steel threads. At that time, I was approximately 9 10 metres away from the workers and the Hung Hom Station 10 construction site lighting was bright enough for me to 11 clearly see the workings of the two workers. This time, 12 they did not screw the steel threads into the couplers 13 on the diaphragm wall after cutting the threaded rebars. 14 17. I took about 5 to 10 minutes to observe them. 15 As this was not part of the work of myself and/or 16 Chinat, I did not pay much attention, nor did I stop 17 them. I did not mention this matter to anyone at that 18 time." 19 Now, according to you, Mr Li, this was the second 20 time, was it not, that you had witnessed this unusual 21 practice; correct? 22 A. Correct. 23 Q. And you told the learned Commissioner and Prof Hansford 24 that you had been told by your boss to pay particular 25 attention to this sort of incident; correct?
Page 26	1 A. Fewer. Fewer videos than photos. 2 Q. Okay. 3 Then if we could look at the second occurrence, 4 please, and you deal with this in paragraphs 14 to 17 of 5 your witness statement, which is at D925 to D926. 6 A. Yes, I see it. 7 Q. Just so we are on the same wavelength, I'm going to read 8 it to you slowly so it can be translated: 9 "C2. Incidents in HKC. 10 14. In or about late January 2016, I was assigned 11 to work in the lower deck (ie NSL slab) of area HKC." 12 So far, so good? 13 A. Fine, yes. 14 Q. "15. On one day (which I could not recollect the exact 15 date of such), I saw five to six workers in uniform 16 (although I could not recall which company it was) 17 cutting threaded rebars at the conjunction of area HKC 18 and area A." 19 Now, just to pause there, you said in your evidence 20 last week that the reference to "one day" was in fact 21 a day in January 2016; that's correct, isn't it? 22 A. Yes. 23 Q. Thank you. You say that the workers cutting the rebars 24 wore uniform, but you couldn't remember which company; 25 that's your evidence, is it not?	Page 28	1 A. I said at the time that on the 12th, he asked me to go 2 and take a look, but he did not ask me to pay particular 3 attention to this. 4 Q. Well, why do you think he was asking you to take a look, 5 if it was not a matter of some significance? Why did 6 you think that, Mr Li? 7 A. Well, that I really can't answer you. 8 Q. No, because you haven't got an answer, have you, Mr Li? 9 That's right, isn't it? 10 A. Well, at the time -- I mentioned the first incident on 11 12 January -- he did ask me to go there and look around. 12 For the second time, because after that I didn't hear 13 anyone mention this, so that's why I said nothing about 14 the second incident. 15 Q. Well, you had been told to take photographs. You agreed 16 with me on that a few moments ago. That's correct, 17 isn't it? 18 A. Agreed. 19 Q. You were also told -- and I suggest this to you again -- 20 you were also told that it was a matter like this that 21 you had to pay particular attention to; that's right, 22 isn't it, Mr Li? 23 A. He asked me to pay attention if people were cutting 24 rebars. 25 Q. Thank you, Mr Li. We finally get there, don't we?

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<p>1 Now, you'd been asked to take photographs. You'd 2 been asked to pay particular attention. Yet you tell 3 us, in paragraph 17, "As this was not part of the work 4 of myself and/or Chinat, I did not pay much attention, 5 nor did I stop them. I did not mention this matter to 6 anyone at that time"?</p> <p>7 A. Yes.</p> <p>8 Q. And of course you didn't take any photographs of the 9 incident either, did you?</p> <p>10 A. No.</p> <p>11 Q. Nor a video?</p> <p>12 A. No.</p> <p>13 Q. Even though you were there for five to ten minutes?</p> <p>14 A. Yes.</p> <p>15 Q. I've got to suggest to you, Mr Li, that it is simply not 16 credible, your evidence is not credible. You saw this 17 occurrence, you had been told to pay attention, you had 18 been told to take photographs, you tell us you took 40 19 to 50 photographs a day, and yet you see this, this 20 second occurrence, you're there for five to ten minutes, 21 you don't take a photo, you don't take a video, you 22 don't tell anyone about it, and you didn't pay much 23 attention. The reality is, Mr Li, this second 24 occurrence did not occur, did it?</p> <p>25 A. No, I disagree. When it comes to taking photos, I said</p>	<p>1 I appreciate it's a subtle difference.</p> <p>2 MR BOULDING: Yes.</p> <p>3 In any event, Mr Li, you tell us you are 10 metres 4 away. You're not right in the worker's face, are you? 5 You are 10 metres away, and in those circumstances 6 I would suggest it would have been very, very easy 7 indeed, without making anybody angry, to take a photo. 8 That's right, isn't it?</p> <p>9 A. What if he saw me taking photos of him?</p> <p>10 Q. I'm not going to speculate like that, Mr Li. I'm simply 11 going to suggest to you again that this incident did not 12 happen.</p> <p>13 A. That's what you feel.</p> <p>14 MR BOULDING: Thank you. No further questions.</p> <p>15 Cross-examination by MR KHAW</p> <p>16 MR KHAW: Mr Li, on 12 January 2016, you were very new to 17 the site; is that right?</p> <p>18 A. Yes, correct.</p> <p>19 Q. Was there any person who gave you instructions and told 20 you where you should work, what you should do, on that 21 particular day?</p> <p>22 A. The concreting head would tell me -- because that day 23 I was arranged to go and look at the concreting.</p> <p>24 Q. You closely worked with him, is that right, on that day?</p> <p>25 A. Yes. I was with him. He did the concreting; I was</p>
Page 30	Page 32
<p>1 last Friday, I took 40 to 50 photos a day, which is 2 about the work of our own company.</p> <p>3 Q. But you agreed with me just a few moments ago, Mr Li -- 4 and we can look up the transcript; we can look up the 5 transcript -- that Mr Poon had told you to take 6 photographs of this sort of incident. Why didn't you? 7 It would be an obvious thing to do.</p> <p>8 A. Because, as I said before, Mr Poon told me that I should 9 avoid getting into confrontation with others. 10 I remember last week I said this too.</p> <p>11 Now, because if we get into confrontation, Leighton 12 will evict us from the site, so that's why Mr Poon said 13 that we shouldn't get into confrontation with others, 14 and so, if something like this happened --</p> <p>15 INTERPRETER: Sorry, I missed the last words of the witness.</p> <p>16 MR BOULDING: Mr Li, that simply doesn't make sense. If you 17 were recording instances of serious malpractice which 18 you say, or rather Mr Poon says, had implications in 19 terms of public safety, it is inconceivable, is it not, 20 that Leightons would have thrown you off site for 21 recording such instances, either in photographs or 22 videos? It's inconceivable, isn't it?</p> <p>23 CHAIRMAN: I think, with respect, what the witness was 24 saying was that a confrontation may result in being 25 evicted, as opposed to the taking of photographs.</p>	<p>1 responsible for leading the vehicles, whatever.</p> <p>2 Q. Were there any other workers who worked closely with you 3 on that particular day?</p> <p>4 A. The Chinat concreting workers.</p> <p>5 Q. So, at the time, when you said you witnessed the rebar 6 cutting incident, were you on your own or were you with 7 any other worker?</p> <p>8 A. It was just me.</p> <p>9 Q. If we can just go back to a few questions which were 10 raised by the Commission last Friday, if we can go to 11 the transcript of Day 5, page 41, line 23, it's 12 a question by the chairman, and he said: 13 "You mean to say you have to be given instructions 14 every single day, and any instructions that last longer 15 than a day you don't take any notice of? It just seems 16 to me -- you are an intelligent person, you are 17 qualified in construction -- surely you must realise 18 that there are certain general instructions given that 19 will last for the whole period of your attendance on 20 site. 'Keep a lookout for this type of activity because 21 it is worrying me.'"</p> <p>22 Then you said: 23 "At the time he told me to go and have a look, 24 I couldn't understand what he was thinking." 25 If we can just pause here and cast our minds back to</p>

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1 the time when you were first told by Mr Poon, at the
2 lunch meeting, when he asked you to take a look at such
3 incident; all right?
4 A. Yes.
5 Q. On that occasion, ie at the lunch meeting, when he
6 mentioned the rebar cutting incident, did he tell you
7 anything in relation to such incident which caused him
8 any concern?
9 A. Can you repeat the question, please?
10 Q. At the lunch meeting on 12 January, before you said you
11 saw the bar cutting incident -- okay?
12 A. Yes.
13 Q. -- that was the first time, the first lunch meeting,
14 where your boss told you about the re cutting incident
15 that he saw; right?
16 A. I said at the time that he -- no, no, perhaps I should
17 put it this way. He said he heard people say that there
18 were people cutting rebars there, so he asked me to go
19 and take a look.
20 Q. Right. My question is simply this, on that occasion, ie
21 at the lunch meeting, where he mentioned the rebar
22 cutting incident, did he tell you that such incident
23 caused him concern?
24 A. I don't remember.
25 Q. Sorry, your answer is no, he did not, or no, you do not

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1 remember?
2 A. I don't remember.
3 CHAIRMAN: Let me put it to you this way. The cutting of
4 rebars a couple of years later is the subject of your
5 statement; correct?
6 A. Correct.
7 CHAIRMAN: Now, Mr Poon would not have asked you to go and
8 check something unless it had some significance;
9 correct?
10 A. At the time, I really had no idea.
11 CHAIRMAN: Well, he wouldn't say, with respect, "Go and have
12 a look and see if you can see somebody take his helmet
13 off and scratch his head", because it would be of
14 absolutely no significance to anything.
15 A. Correct.
16 CHAIRMAN: So did you think that Mr Poon was telling you to
17 do these things because he was in any way concerned
18 about these events taking place?
19 A. I really don't know how to answer.
20 Because at the lunch meeting, the important point to
21 note would be written by him on the board, and he would
22 also ask me about the progress of works and why some
23 works were not performed; all would be written out on
24 the board.
25 On the 12th, what I heard was that I was asked to go

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1 over and take a look to see if indeed it was happening.
2 So that's how I get there.
3 MR KHAW: Let's now talk about the second lunch meeting that
4 you mentioned, ie the meeting, lunch meeting, after you
5 said you saw the rebar cutting incident on 12 January
6 2016. Okay?
7 A. We have lunch meetings every day.
8 Q. After you witnessed the rebar cutting incident on
9 12 January -- okay?
10 A. Yes.
11 Q. -- you told us you reported to your boss regarding what
12 you saw; right?
13 A. Correct.
14 Q. So, on that occasion -- that's why I call it a second --
15 A. Right, I understand.
16 Q. -- lunch meeting -- on that occasion, did your boss or
17 did anyone at the lunch meeting mention anything in
18 relation to the concern that this rebar cutting incident
19 might cause?
20 A. I do not remember.
21 Q. Throughout the whole period in January, for example,
22 throughout the whole period in January, did you talk to
23 any of your colleagues who worked with you on the site
24 in relation to, "What's wrong with this rebar cutting
25 incident?" Did you?

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1 A. I remember that after I saw that, in the evening, at the
2 following day, I raised it to Mr Poon. I do not
3 remember his response. I mentioned it to Mr But as
4 well, but I do not remember his response.
5 Q. When you said you mentioned that to Mr Poon, but that
6 was an occasion other than the second lunch meeting
7 where you reported to him what you saw; is that right?
8 A. Not correct. All along, I am referring to that meeting
9 you refer to.
10 Q. So you are still talking about the lunch meeting?
11 A. (In English) Yes.
12 MR KHAW: I have no further questions.
13 CHAIRMAN: Mr Coleman?
14 MR COLEMAN: No, sir.
15 CHAIRMAN: Any questions?
16 MR CONNOR: No, sir.
17 CHAIRMAN: Thank you.
18 Re-examination by MR TO
19 MR TO: Mr Chairman, I just have one re-examination.
20 Mr Li, good morning. Thank you for assisting us.
21 A. Good morning.
22 Q. Can I take you to the transcript on page 25 of Friday,
23 26 October 2018, line 15. I will read it out to you, up
24 to line 25, slowly. This is my learned friend Mr Wilken
25 asking you a question. Line 15:

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<p>1 "You were not on site before, even on your own 2 evidence, 11 January; that's correct, isn't it." 3 MR PENNICOTT: Where are we? I'm in the wrong place, sorry. 4 Give us the reference again. 5 MR TO: It is page 26, 26 October. I will read it again. 6 Line 15, Mr Li; are you okay with that? 7 A. Yes. 8 Q. Question -- this is Mr Wilken asking you a question: 9 "You were not on site before, even on your own 10 evidence, 11 January; that's correct, isn't it?" 11 Let me finish first; okay? 12 A. Yes. 13 Q. Then at line 17 it says: 14 "Sometimes my classmates would take me in secretly 15 to take a look, but I wasn't there working." 16 Line 19, Mr Wilken asked again: 17 "Classmates from China Tech?" 18 Your answer on line 20: 19 "No, my classmates that I went to school together 20 with, but they also had worked for China Tech 21 previously." 22 Line 22, Mr Wilken asking again: 23 "So, in breach of site security, health and safety, 24 and all the regulations, you were taken secretly onto 25 site; is that your evidence?"</p>	<p>1 been made, Mr Li is probably free to go. 2 CHAIRMAN: Mr Li, your evidence is now completed. Thank you 3 very much indeed. You can go. 4 However, there have been indications made that 5 depending what may happen in this Inquiry, you may be 6 asked to return to answer some additional questions. 7 You understand that? 8 WITNESS: Right. Understood. 9 CHAIRMAN: Mr Pennicott -- 10 MR PENNICOTT: Yes, sir. 11 CHAIRMAN: -- I don't know that I need to give this witness 12 any warning. He's now completed his evidence. 13 MR PENNICOTT: Yes, sir. 14 CHAIRMAN: The fact that there's a reservation as to calling 15 him back again -- 16 MR PENNICOTT: Yes. I don't think he's under the same -- 17 CHAIRMAN: I don't think that means he has to remain in 18 purdah, so to speak. 19 MR PENNICOTT: No, sir. 20 CHAIRMAN: All right. 21 MR PENNICOTT: And obviously the sooner that those parties 22 that have made those reservations, as it were, can 23 release the reservations, the better. I don't want to 24 put them under any pressure but it would be helpful 25 obviously for Mr Li to know that there won't be any</p>
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<p>1 And on line 25 you said, "Yes." 2 Mr Li, I will ask you some questions relating to 3 this, maybe just one question. How can you go into site 4 if you do not have access? Remember you told us 5 previously, on Friday, that you had a card from Leighton 6 dated 11 January. So, if you went before 11 January, 7 how did you go into site? 8 A. Because at that time we could just sign in to gain 9 access and it really happened frequently at the site, 10 when manpower was needed, well, and you needed to 11 arrange for small classes, you needed to go in in 12 advance to provide documents of proof. So, at the time 13 we put our signature there at the entrance before going 14 in. 15 Q. So you signed on a sheet of paper? 16 A. (Chinese spoken). 17 Q. Did you have to show any identification? Did you have 18 to show identification to get in; just by signing your 19 name, you can get in? 20 A. The worker registration card. 21 MR TO: Thank you. I don't have any further questions to 22 ask this witness. 23 MR PENNICOTT: Sir, I certainly don't have any further 24 questions, and so unless you do or Prof Hansford does, 25 subject to I think one or two reservations that have</p>	<p>1 further requirement for him. 2 CHAIRMAN: Mr Li, as I've said, your evidence is now 3 complete. You can go. You may possibly be called back 4 to give evidence. You don't now have to remain entirely 5 mute as to discussing any portion of your evidence with 6 anybody else, but with respect I would suggest that it 7 is better that you do not enter into broad discussions 8 with anybody else who is going to give evidence, because 9 that may wrongly influence those other persons, and 10 equally may wrongly influence you, if you are in fact to 11 be called back later. Do you understand me? 12 WITNESS: Yes, understood. 13 CHAIRMAN: Thank you. 14 (The witness was released) 15 MR PENNICOTT: So, sir, on that basis, we go to the next 16 witness, who I believe is Mr Chu. I see it's 11.30, so 17 perhaps that's a good moment to have 15 minutes. 18 CHAIRMAN: 15 minutes. Okay. 19 (11.32 am) 20 (A short adjournment) 21 (11.53 am) 22 MR PENNICOTT: Sir, the next witness is Mr Chu. I will hand 23 over to Mr To. 24 CHAIRMAN: Yes. 25 MR TO: Thank you, Chairman and Commissioner.</p>

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<p>1 MR CHU KA KAM (affirmed in Punti) 2 (All answers given via simultaneous interpreter 3 except where otherwise specified) 4 Examination-in-chief by MR TO 5 Q. Mr Chu, thank you. You may sit down. 6 Mr Chu, can I take you to bundle D2, D970. Can you 7 see that, Mr Chu? 8 A. I don't read English. Could it be translated for me? 9 Q. Don't worry. I'm just asking you, do you see the page 10 number, 970 at the bottom right-hand side? 11 A. Yes. 12 Q. If you turn to page D977, can you see "D977" at the 13 bottom right-hand side? 14 A. Yes. 15 Q. Do you see your name at the top of that page and your 16 signature? 17 A. Yes. 18 Q. It's dated 27 September 2018? 19 A. Yes. 20 Q. Do you wish to adopt this witness statement as part of 21 your evidence? 22 A. Yes, okay. 23 Q. Mr Chu, before you begin, I have maybe two questions 24 I would like to ask you. 25 Can I refer you to the document C5696.</p>	<p>1 A. Yes. 2 Q. And you can see the whole columns on the right-hand side 3 have all been filled in, with dates and times? 4 A. Yes. 5 Q. So you were on site in August 2015, in the Hung Hom 6 site? 7 A. Yes. 8 Q. The reason for me asking you this question is because, 9 Mr Chu, in your witness statement, at D971, you did say, 10 for example, in paragraph 5 -- I will read it out to 11 you. In paragraph 5, it just says: 12 "From late September 2015 till March 2017, I was 13 assigned to work in the Hung Hom Station ..." 14 So, Mr Chu, can I ask you whether this is correct, 15 or the records as I've shown you are correct? 16 A. Yes. 17 Q. So is your statement correct or not correct here, in 18 this point, paragraph 5? 19 A. It's correct. 20 Q. Is your statement at paragraph 5 correct? 21 CHAIRMAN: Does he understand the problem? 22 A. During the period, there were four months where I was 23 working in Tai Po, so I had also attended meetings 24 during that period. 25 MR TO: So if I may ask you, Mr Chu, were you in the</p>
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<p>1 A. I see it. 2 Q. Okay. Do you need a hard copy? Would the computer 3 screen be okay? 4 A. I would prefer a hard copy. I have a low level of 5 education. I received education on the mainland. 6 MR PENNICOTT: It would be helpful if he could have C8, 7 because I shall be referring to it as well. 8 MR TO: Just wait a few minutes. The Secretariat is helping 9 you now to find the document. 10 Mr Chu, if you look at the bottom right-hand side 11 again, it says "C5696"; can you see that? 12 A. I see it. 13 Q. Can you look at the top -- you will see, for example, 14 your name somewhere on the second line; can you see 15 that? 16 A. Yes. 17 Q. If you look at it, it says that you were on site on June 18 2015; is this correct? 19 A. I see it. 20 Q. And also it says that you were in the Hung Hom boundary 21 or location? 22 A. Yes. 23 Q. Okay. I take you to page C5703. If you look at it 24 again, you will see the fifth line down, your name 25 again?</p>	<p>1 Hung Hom site in June as well as August? 2 A. I was there. 3 Q. Okay. Mr Chu, I'm going to take you on to a different 4 question. 5 In your witness statement, in paragraph 5.2, you did 6 say, in page D971, certain individuals -- I won't 7 mention the name -- "did not wear uniforms". 8 A. Yes. 9 Q. Can I show you the diagram at D591. Can you see that 10 diagram, Mr Chu? 11 A. Yes, I see it. 12 Q. The two gentlemen wearing yellow helmets, they are basic 13 construction workers; am I correct in saying that? 14 A. Yes. 15 Q. Can you see them wearing any type of uniform there? 16 A. Some did not wear any. 17 Q. So in fact, just to clarify, both gentlemen were not 18 wearing any uniforms, except for a safety vest; is that 19 correct? 20 A. Yes. 21 Q. Mr Chu, can I take you down to the bottom of the 22 photograph. Can you see that this was dated 29 August 23 2015? 24 A. Yes. 25 Q. And you were on site during that period?</p>

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<p>1 A. Yes.</p> <p>2 MR TO: No further questions.</p> <p>3 Examination by MR PENNICOTT</p> <p>4 MR PENNICOTT: Mr Chu, good morning. I am counsel to the</p> <p>5 Commission and I've got a few questions for you,</p> <p>6 although Mr To has taken you to a number of documents</p> <p>7 I was going to look at initially anyway.</p> <p>8 So can we summarise the position like this, Mr Chu,</p> <p>9 on the basis of the documents that Mr To has taken you</p> <p>10 to: you spent a couple of days at the site in the middle</p> <p>11 of June; you've seen that?</p> <p>12 A. Yes.</p> <p>13 Q. And I know from other records that you did your safety</p> <p>14 induction course with Leighton on 9 June, that is a few</p> <p>15 days before the two days that you worked in June. Do</p> <p>16 you remember that?</p> <p>17 A. I think it was around about 9 June, because at that time</p> <p>18 I had classes for several days, and then I went there to</p> <p>19 work for two full days. I think it was the 15th or 16th</p> <p>20 that I worked on site. Because, at the time, we were</p> <p>21 working on the formwork for earth wall and there was no</p> <p>22 other work and that's why I went somewhere else.</p> <p>23 Q. Right. So after the couple of days in June you went off</p> <p>24 to this site in Tai Po; is that right? You worked there</p> <p>25 for the rest of June and all of July, and you came back</p>	<p>1 of Chinat there -- we call it "(Chinese spoken)" in</p> <p>2 Chinese -- and I was the first group of workers to work</p> <p>3 there.</p> <p>4 Q. All right. Now, you say in paragraph 7, coming back to</p> <p>5 where I paused:</p> <p>6 "From late September 2015 to mid-November 2016 ..."</p> <p>7 I think that must be a typo, Mr Chu. Shouldn't it</p> <p>8 say "November 2015"?</p> <p>9 A. Yes, I think so.</p> <p>10 Q. Now, in paragraph 6 of your witness statement, Mr Chu,</p> <p>11 you say this:</p> <p>12 "It is common practice of Chinat to have lunch</p> <p>13 meetings almost every day in the temporary offices of</p> <p>14 Chinat at the site. Those meetings were held between</p> <p>15 Mr Poon and Chinat employees who were above the rank of</p> <p>16 foreman. On most occasions, I would also attend the</p> <p>17 lunch meetings."</p> <p>18 A few questions about those meetings, Mr Chu. If</p> <p>19 Mr Poon wasn't on the site, would the meetings take</p> <p>20 place or not? Or did they only take place when he was</p> <p>21 there?</p> <p>22 A. We would, because there's a site supervisor of the</p> <p>23 company there, or at first there was head foreman there</p> <p>24 at the time. In August, there were just two foremen --</p> <p>25 one foreman was me, the other one was head foreman --</p>
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<p>1 on 1 August; is that right?</p> <p>2 A. No. No. I wasn't at Tai Po at the time. It was Ngau</p> <p>3 Tam Mei to Tai Kong Po, the Express Rail Link section,</p> <p>4 that site was also awarded to my boss.</p> <p>5 Q. So you were elsewhere for the rest of June and all of</p> <p>6 July, and you came back to this site on 1 August, as</p> <p>7 Mr To has shown you?</p> <p>8 A. Yes.</p> <p>9 Q. So the reference in your witness statement to --</p> <p>10 paragraph 5, saying that from late September you were</p> <p>11 assigned to work at the station, it should be from the</p> <p>12 beginning of August?</p> <p>13 A. Yes, correct.</p> <p>14 Q. That's fine. So, in paragraph 7 of your witness</p> <p>15 statement -- D2/972 -- you say:</p> <p>16 "From late September 2015 ... I was assigned to work</p> <p>17 at the EWL ..."</p> <p>18 Just pausing there. Mr Chu, can you remember where</p> <p>19 you were assigned to work between 1 August and late</p> <p>20 September, a period of two months; where were you</p> <p>21 working during that first couple of months, which area?</p> <p>22 A. Area C.</p> <p>23 Q. Can you narrow that down for us; area C1, C2, C3? Do</p> <p>24 you remember?</p> <p>25 A. I don't remember. At that time, I was the only foreman</p>	<p>1 and Mr Poon. So there were just four people at the</p> <p>2 beginning.</p> <p>3 Q. Who was the head foreman in your eyes? Who did you</p> <p>4 think the head foreman was?</p> <p>5 A. At that time -- now, he worked at Leighton for a month</p> <p>6 or two, and for whatever reason unknown to me, then the</p> <p>7 two foremen came to work at Chinat. I remember one</p> <p>8 foreman was named Ah Fai.</p> <p>9 Q. Ah Fai. Do you remember the name of the other one?</p> <p>10 A. No, I don't remember.</p> <p>11 Q. Does the name Leung Kin mean anything to you?</p> <p>12 A. No, not Leung Kin.</p> <p>13 Q. Do you know who Leung Kin is or was? He was also</p> <p>14 a foreman, was he?</p> <p>15 A. Leung Kin was later. At first, it was not him. At</p> <p>16 first, it was someone else, I don't know his name,</p> <p>17 foreman.</p> <p>18 Q. All right. When Mr Poon attended these lunch meetings,</p> <p>19 Mr Chu, do you have any recollection as to whether he</p> <p>20 had a notebook or a diary that he used to write in at</p> <p>21 the lunch meetings, or did he not have anything at all,</p> <p>22 to your recollection?</p> <p>23 A. Usually, I don't do that myself, because we are</p> <p>24 responsible for formwork. For the formwork schedule on</p> <p>25 the day, you know, I would work on that. For other</p>

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1 things not related to me, usually I won't bother with
2 them.
3 Q. Let me try again, Mr Chu, it may be that I didn't put
4 the question clearly enough. You are at a lunch meeting
5 and Mr Poon is there.
6 A. Yes.
7 Q. You can see him clearly and you can hear him clearly?
8 A. Yes.
9 Q. I'm just trying to ask you: do you recollect that when
10 you were at those meetings, whether Mr Poon had any
11 notebook or diary that he used to write in? Do you have
12 any recollection of that?
13 A. I don't recall. Usually, when we have meetings,
14 sometimes he would take a book out, a notebook out.
15 I don't recall whether he was holding anything;
16 I couldn't recall.
17 Q. All right. In August, the first month that you were
18 properly working on the site, Mr Chu, do you recall the
19 average sort of number of foremen and other staff who
20 used to attend these meetings, in August I'm talking
21 about, August 2015?
22 A. In August, including me, there were four foremen or so,
23 I believe.
24 Q. And Mr Poon?
25 A. Yes.

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1 Q. So we're talking, what, five or six people at a meeting,
2 at a lunch meeting, in August; that would be your best
3 estimate, is that right?
4 A. No. August, four of us. There were four of us. And
5 later, towards the end of August or in September, the
6 number increased slowly, because at first it was
7 formwork. When we first moved in, there were just four
8 of us. And then eventually, the number increased
9 slowly. Eventually, there were over ten. So I'm not
10 sure exactly the period for that increase.
11 Q. When do you think the number started to increase? Was
12 it towards the end of August and then into September?
13 A. At that time, there was a long -- it's a long gap.
14 I can't remember, after the -- you know, I couldn't
15 remember.
16 Q. If I suggested to you, for example, that at a lunch
17 meeting in mid-August, so 15/16 August, let's say, there
18 were 12 people there, would you say I was right, wrong,
19 or you can't remember?
20 A. At that time, in mid-August, no, it should be wrong,
21 because I was asked to do the first bay, there were just
22 four foremen, and then starting from the second bay, the
23 number increased slowly, because -- how should I put
24 it? -- in mid-August, maybe there were more people, but
25 maybe I -- I don't recall exactly.

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1 Q. All right. What's the maximum number of people that
2 ever attended one of these lunch meetings that you can
3 recall, at any time?
4 A. The maximum -- can you repeat that, sorry?
5 Q. Yes. What's the maximum number of people that attended
6 one of these lunch meetings, at any time?
7 A. I think there were 17-18 people.
8 Q. Okay. Do you recall -- do you have any recollection of
9 when Mr Poon told you to take photographs at the site,
10 generally, not of any particular thing but just
11 generally take photographs?
12 A. That's what the foremen do, not me. I'm responsible for
13 formwork. Now, unless what we did was wrong and people
14 wouldn't accept our work, then only then we would take
15 photos, and then we would tell him.
16 Q. Did you personally ever take any photographs at the
17 site, or did you leave that to others?
18 A. Yes, I did, but not many photos. I just took photos on
19 the formwork where there were obstruction or whatever.
20 I don't take photos of other things.
21 Q. Okay, because I understand the primary purpose that
22 Mr Poon wanted the photographs was to have evidence of
23 the progress and problems that the formwork might have;
24 is that right?
25 A. Now, usually, when we did the work, there were foremen

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1 following us, so this should be done by foremen, not us,
2 head of workers. We are just responsible for doing the
3 work.
4 Q. All right.
5 Back to in paragraph 7 of your witness statement,
6 you say that you were assigned to work on the EWL slab
7 in September 2015, and you've indicated that that was in
8 area C.
9 A. Well, because at that time -- I recalled it wrong.
10 I forget, when I gave the statement. The police officer
11 chased me for a whole week, I didn't promise -- only
12 when I had time, and I went there. It said that I went
13 it was in September, it's wrong. Eventually, it's after
14 the Chinat colleagues checked the record and
15 I remembered when I worked there.
16 Q. Anyway, you were working in area C in
17 August/September/October?
18 A. I think I should work there to the end of December.
19 Q. All right.
20 Now, in paragraph 11 of your witness statement --
21 D973 -- you say:
22 "On a day in or about late October 2015 at around
23 noon, I saw two workers at or about area C ..."
24 Just pausing there, again, Mr Chu, so far as late
25 October 2015 is concerned and the incident that we're

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<p>1 just about to look at, can you narrow it down as to 2 whereabouts in area C? 3 A. It should be, you know, for area C, when we worked on 4 the slab, we did it bay by bay. So it should be above 5 the slab. 6 Q. So we narrow it down to the EWL slab, not the NSL -- so 7 EWL slab; yes? 8 A. Yes. 9 Q. But you can't recall that it was C1, C2 or C3? 10 A. At the time, now, I couldn't remember C-what for those 11 slabs. I think by then two slabs should have been done. 12 Two have been concreted. 13 Q. All right. Anyway, you go on to say this: 14 "... two workers ... area C wearing dark orange 15 uniforms and reflective safety vests, similar to those 16 worn by Leighton employees, cutting threaded rebars." 17 Pausing there, Mr Chu, you saw these workers, but 18 you can't confirm whether they were or were not Leighton 19 workers; is that the position? They may have been, they 20 may not have been? 21 A. They were wearing Leighton uniform, but those workers, 22 well, I can't recall the names, I don't know what works 23 they were involved in. 24 Q. All right. I only press you a little bit further, 25 Mr Chu, because you say, about the uniforms,</p>	<p>1 never saw these workers, or indeed any other workers, 2 seek to screw those bars into the couplers on the 3 diaphragm wall? 4 A. Agree. 5 Q. Then, in paragraph 14 of your witness statement, you say 6 this: 7 "In one of the lunch meetings in October 2015, 8 Mr Poon mentioned that he saw someone cutting the 9 threaded rebars. He said he would report the matter to 10 Leighton." 11 Mr Chu, do you know whether Mr Poon in fact reported 12 the matter to Leighton in October 2015? 13 A. At the time, I had no idea. 14 Q. And you still have no idea? 15 A. He did mention it at the lunch meeting, but I don't 16 know, because I was busy, I was involved in formwork, 17 and I didn't care about anything else. 18 Q. All right. Then your statement goes on to say: 19 "He also asked all foremen of Chinat to take 20 photographs and report the matter to him if we saw 21 anyone cutting the threaded rebars." 22 Now, with regards to the incident that you have 23 referred to and we looked at in paragraph 11 of your 24 witness statement, did you report that incident to 25 Mr Poon?</p>
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<p>1 "similar" -- I emphasise the word ""similar" -- to those 2 worn by Leighton. I mean, were they Leighton uniforms 3 or not? 4 A. They were. 5 Q. All right. And you say: 6 "At that time, I was about 2 to 3 metres away from 7 where they were cutting threaded rebars. The 8 surrounding lighting was sufficient for me to clearly 9 see what they were doing. One of the workers was 10 holding a green grinding/cutting machine ..." 11 Now, are you sure it was green, Mr Chu, and not red? 12 A. Correct. 13 Q. "... and using it to cut the threaded rebars. Those 14 threaded rebars were very easy to identify as they were 15 silver in colour whilst the steel threads were dark 16 brown in colour. According to what I saw, the threaded 17 rebars were initially about 7 centimetres long. Around 18 2 centimetres of the threaded rebars were trimmed by 19 these ... workers." 20 So leaving 5 centimetres; is that right, Mr Chu? 21 A. Correct. 22 Q. You then say: 23 "The two workers placed the steel threads on the 24 floor after they had finished cutting them." 25 So would I be right in suggesting, Mr Chu, that you</p>	<p>1 A. Did not. 2 Q. Did you ever report any incident to Mr Poon, such 3 incident to Mr Poon? 4 A. I did not anything to Mr Poon about the incident. 5 Q. Right. The incident that you refer to in late October 6 2015, so far as the EWL slab is concerned -- I know you 7 come on to talk about the NSL slab in a moment -- so far 8 as the EWL slab is concerned, was that the only incident 9 that you witnessed, such incident that you witnessed? 10 A. Correct. 11 Q. Which you did not report to Mr Poon? 12 A. I did not. 13 Q. In paragraph 15 of your witness statement, you say: 14 "In another lunch meeting in November 2015, Mr Poon 15 again mentioned that cutting threaded rebars were still 16 ongoing. He said he would report the matter to Leighton 17 again for follow-up." 18 Again, presumably the answer is the same, Mr Chu: 19 you don't know whether Mr Poon reported the matter to 20 Leighton? 21 A. I agree, because normally I wouldn't pay attention to 22 these things. 23 Q. You go on to say: 24 "He also reminded all foremen of Chinat to take 25 photographs ..."</p>

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<p>1 Pausing there, you didn't regard that as 2 an instruction to you personally but to the foremen; is 3 that right? 4 A. Correct. 5 Q. Then you go on to say: 6 "... and report the matter to him if we saw anyone 7 cutting the threaded rebars." 8 Well, presumably the position is this, insofar as 9 the EWL slab is concerned: you never had any need to 10 report the matter to Mr Poon, because as we know and 11 what you've said, the only incident you saw was back in 12 late October? 13 A. Correct. 14 Q. Then in paragraph 16 of your witness statement, Mr Chu, 15 you say this: 16 "In another lunch meeting in February 2016, Mr Poon 17 again mentioned cutting threaded rebars were still 18 ongoing." 19 Pausing there, Mr Chu, we know that by February 2016 20 all the concreting in areas A, B and C had been 21 completed. Do you recall where you were working, which 22 area you were working in, in February 2016? 23 A. I was working near the water treatment plant in Tai Po, 24 because in 2016 February, I needed to come over to 25 Leighton for the meeting several times a month.</p>	<p>1 "... Mr Poon again mentioned [at this lunch meeting 2 in February that] cutting threaded rebars were still 3 ongoing. He said he would report the matter to senior 4 officers of MTRC." 5 Again, do you know whether he in fact reported the 6 matter to senior officers of MTRC? 7 A. I don't know. I just left after the meeting. 8 Q. Okay. Now, moving on to mid-April 2016, so we are back 9 at paragraph 17 of your witness statement, you say you 10 began to work at the NSL; yes? The lower slab. 11 A. Lower deck? By the time I left, I didn't -- I don't 12 remember when, but indeed I started to take over in May 13 or June. 14 Q. Okay. Then you say at paragraph 18: 15 "In the evening of about mid-June 2016 ... at about 16 area A ..." 17 And you mean area A at the lower deck, ie the NSL, 18 to be clear? 19 A. Correct. 20 Q. "... wearing dark orange uniforms and reflective safety 21 vests, similar to those worn by Leighton employees 22 cutting threaded rebars." 23 Again you say: 24 "At that time, I was about 2 to 3 metres away from 25 where they were cutting threaded rebars. The</p>
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<p>1 Q. Okay. Sorry, Mr Chu, it's probably my fault. So at 2 some point you left this site and went somewhere else 3 and then came back; is that what you're telling us? 4 A. Correct. On Mr Poon's request, I was asked to go to the 5 site several times a month, because we still had a team 6 of workers here in Hung Hom. At the time, the workers 7 were not very obedient and they couldn't finish the work 8 on time and they were scolded, they were told off, and 9 I therefore came over to the site. 10 Q. The picture I'm getting, Mr Chu, is that you left the 11 site, the Hung Hom site, in about end of December 2015, 12 and you tell us that you returned in mid-April 2016 to 13 work at the NSL, so that three and a half -- is that 14 right? Just explain it to me. 15 A. I recall that I left the site in the end of December 16 2015 until April 2016. So that was from end of December 17 2015 to April 2016. I do not recall the exact date when 18 I came back, whether it was in April or May, because of 19 the lapse of time. 20 Q. Right. But in February -- that's the date you're 21 referring to in paragraph 16 -- you say you used to come 22 back for lunch meetings; is that right? 23 A. That's right. 24 Q. Okay. Got it. All right. 25 You say:</p>	<p>1 surrounding lighting was sufficient for me to clearly 2 see what they were doing. One of the workers was 3 holding [this time] a red machine and using it to cut 4 the threaded rebars." 5 So am I right in thinking that this machine was 6 different, certainly in colour -- was it different 7 entirely or was it the same type of machine that you saw 8 previously? 9 A. Not the same. This one is a red machine, and this one 10 carries a belt. It's belt-driven, with a disc, 11 a cutting disc. 12 Q. All right. So the green machine that you had seen 13 previously was entirely different, was it? 14 A. Correct. 15 Q. Can you describe that machine, the earlier one, the 16 green one? 17 A. That's a grinder, hand-held grinder. When you cut the 18 bar, you would see sparks, whereas with the red one, it 19 doesn't happen like this. 20 Q. You don't see sparks? 21 A. Sparks -- for the green machine, you see a lot of 22 sparks. It's a grinder. Whereas for this one, it's one 23 with a metal disc. So they are of different types. 24 Q. Were you able to tell how quickly the workers cut 25 through with the green machine first and how quickly</p>

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<p>1 would it go through the bar?</p> <p>2 A. Two to three minutes.</p> <p>3 Q. And with the red machine?</p> <p>4 A. The red one? Also two to three minutes. Because the</p> <p>5 one with the sparks -- well, I mean, there was a fire</p> <p>6 hazard, I mean the green machine. It's different using</p> <p>7 a grinder than using a metal disc.</p> <p>8 Q. Right. But the time, you think, was about the same?</p> <p>9 A. That's right. I think it's more or less the same.</p> <p>10 Q. Again, you describe the length of the thread of the</p> <p>11 rebar and how much was cut off, similar to the previous</p> <p>12 incident, and then you say this:</p> <p>13 "The two workers placed the steel threads on the</p> <p>14 floor after they had finished cutting them."</p> <p>15 And again, can I ask you the same question I asked</p> <p>16 you a short while ago, Mr Chu: did you ever see any of</p> <p>17 the workers seeking to screw in those cut rebar into the</p> <p>18 couplers on the diaphragm wall at the lower deck?</p> <p>19 A. I didn't see, because I just stood there for five</p> <p>20 minutes or so and then I moved on to check on my</p> <p>21 colleagues' work.</p> <p>22 Q. Finally from me, Mr Chu, can I just ask you this. Could</p> <p>23 you please be shown page D1/19. This is part of</p> <p>24 a witness statement of Mr Poon's, his first witness</p> <p>25 statement, Mr Chu. Have you seen it before?</p>	<p>1 cutting/grinding machines at bay 2 and bay 4 of</p> <p>2 area C1."</p> <p>3 Do you remember Mr Leung, that's Leung Kin,</p> <p>4 reporting such an incident?</p> <p>5 A. I have heard that in August, but I cannot recall the</p> <p>6 exact date.</p> <p>7 Q. What Mr Poon then goes on to say is this:</p> <p>8 "At the same time" -- so we are in mid-August 2015,</p> <p>9 Mr Chu -- "Mr Chu [that's you] also corroborated with</p> <p>10 what was said by Mr Leung and told me that he also</p> <p>11 witnessed similar incidents happening."</p> <p>12 Now, that can't be true, can it, Mr Chu, because you</p> <p>13 have told us that the one incident that you saw on the</p> <p>14 EWL slab was in October 2015?</p> <p>15 A. In August, I had heard from my colleagues. At the lunch</p> <p>16 meetings there won't so many foremen, so I might have</p> <p>17 said that I heard that from my colleagues, ie I heard</p> <p>18 that some people were cutting the threaded bars.</p> <p>19 Q. But you had not witnessed the cutting in August 2015?</p> <p>20 A. I did not.</p> <p>21 Q. I'll skip over paragraph 31. Let's go straight to 32.</p> <p>22 Mr Poon says this at paragraph 32:</p> <p>23 "I suggested to Mr Leung that he should report the</p> <p>24 matter to MTRC for record purposes. Sometime later,</p> <p>25 Mr Leung and Mr Chu told me that they had reported the</p>
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<p>1 A. I did see it.</p> <p>2 Q. Did someone read it through and translate it to you?</p> <p>3 A. A lawyer read it out to me.</p> <p>4 Q. All right. And you understood it?</p> <p>5 A. Understood.</p> <p>6 Q. Could I ask you to look at paragraph 30, first of all.</p> <p>7 What Mr Poon says in paragraph 30, Mr Chu, is this:</p> <p>8 "In mid-August 2015, I and 12 other staff of Chinat</p> <p>9 had an internal meeting at Chinat's temporary offices in</p> <p>10 the Hung Hom Station construction site."</p> <p>11 Do you recall, in mid-August 2015, Mr Chu, attending</p> <p>12 a meeting with Mr Poon and 11 other members of staff of</p> <p>13 Chinat?</p> <p>14 A. I don't recall how many people there were, but</p> <p>15 I attended all the lunch meetings, because in August</p> <p>16 I recall, in the beginning, there were four foremen,</p> <p>17 myself, and then gradually there were more.</p> <p>18 Q. Yes, and you told the Commissioners earlier that</p> <p>19 certainly in August, mid-August, the number of people</p> <p>20 attending would be at four or five people, and that's</p> <p>21 right, is it?</p> <p>22 A. Initially, correct.</p> <p>23 Q. Then Mr Poon goes on:</p> <p>24 "Mr Leung reported to me orally that he saw in late</p> <p>25 July 2015 someone cutting the threaded rebars using</p>	<p>1 matter to MTRC."</p> <p>2 First of all, Mr Chu, did you ever report any bar</p> <p>3 cutting incidents to MTRC?</p> <p>4 A. I can't recall whether I did that during that period.</p> <p>5 I had a lot of work on my hands and I cannot recall</p> <p>6 whether there was such an incident.</p> <p>7 Q. I need to put that to you again, Mr Chu, because it's</p> <p>8 quite important. Did you personally, Mr Chu, report any</p> <p>9 bar cutting incidents to MTRC?</p> <p>10 A. These matters were done by the foremen, not me, not us.</p> <p>11 My recollection, I cannot recall whether I had said</p> <p>12 that.</p> <p>13 Q. Is the answer to my question, Mr Chu, "Mr Pennicott,</p> <p>14 I did not report any bar cutting incidents to anybody at</p> <p>15 MTRC"? Is that the answer to my question?</p> <p>16 A. I cannot recall this incident, because a lot of</p> <p>17 communication is between the foremen and MTR. I'm only</p> <p>18 responsible for the formwork. It's like a war; we have</p> <p>19 to work every day and we do overtime till 1 am. We work</p> <p>20 some 20 hours. We work extra shifts. And I cannot</p> <p>21 recall whether I had said these things.</p> <p>22 Q. You see, Mr Chu, it strikes me that had you personally</p> <p>23 reported a bar cutting incident to MTRC, you would have</p> <p>24 remembered it. Do you agree?</p> <p>25 A. Well, typically this is done by foremen.</p>

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1 Q. Not by you? 2 A. I cannot recall whether this occurred. 3 Q. One further question. Going back to paragraph 32, what 4 Mr Poon says -- I will read it again: 5 "... Mr Chu told me that they [that's you and 6 Mr Leung] had reported the matter to MTRC." 7 Did you ever tell Mr Poon that you had reported the 8 matter to MTRC? 9 A. I cannot recall this incident, because at the time, 10 during that period, the platform work was very busy and 11 I cannot recall what happened. I had to do my job. 12 I had to perform my duties. 13 Q. Just focus with me, if you will, Mr Chu. You've told us 14 that you saw the one incident in October 2015, so far as 15 the EWL slab is concerned; yes? 16 A. Yes. 17 Q. A direct question: did you report that incident -- you 18 didn't report that incident to Mr Poon, you've already 19 told us that; do you agree? 20 A. I did not. 21 Q. And so on what basis would you have possibly reported it 22 to MTRC? 23 A. I cannot recall that. I cannot recall the incident. 24 Because at the time, I was only responsible for my own 25 duties. The other work, the other communication, was	1 vests, and sometimes they were just bare-chested. 2 Q. That's your observation of what they wore, and that's 3 why you stated in your witness statement, D971, 4 paragraph 5.2, that they were wearing casual clothing of 5 their own, and you did not state that they also wore 6 Leighton's uniform. Was that the case? 7 A. I did not say that. My recollection is they wore 8 reflective vests, they wore casual clothing, and 9 sometimes they worked bare-chested, because it was very 10 hot, their upper bodies were bare. 11 Q. In paragraph 11 of your witness statement, you stated 12 that you observed one incident of rebar cutting in late 13 October 2015. How long, in terms of time, that you 14 observed that bar cutting? 15 A. At that location, some three or four minutes. 16 Q. And you did not state how many rebars were cut on that 17 occasion, in paragraph 11. So my question is: how 18 many -- did you observe that they indeed cut more than 19 one, or just one rebar was -- 20 A. In the statement, I said they cut two or three bars. 21 Because I was responsible for observing my workers' 22 work, and for other issues I would just take a very 23 brief glance, because I was responsible for formwork on 24 the construction site. 25 Q. Yes. According to what you said, it took about two to
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1 the responsibility of the foremen, sometimes the 2 assistant foreman would communicate with MTR. And I am 3 responsible for frontline work. 4 Q. I understand that, Mr Chu, but I think, with respect, 5 you're evading the question. Can I suggest to you that 6 the October incident that you witnessed, that you say 7 you witnessed, you never reported that to anybody, 8 Mr Poon, MTRC, Leighton; you never reported it to 9 anybody? 10 A. Correct. 11 MR PENNICOTT: Thank you. 12 Sir, no further questions. 13 MS CHONG: Sir, I have a few questions for this witness. 14 CHAIRMAN: Yes. 15 Cross-examination by MS CHONG 16 MS CHONG: Mr Chu, whenever you encountered Fang Sheung's 17 workers, they were all wearing casual clothing of their 18 own, right; they did not have any uniform? 19 A. They had reflective vests and their own clothing. 20 Sometimes, they just carried the reflective vest; they 21 are bare-chested. 22 Q. They did not wear Leighton's uniform; was that the case? 23 A. At the time -- well, I cannot recall exactly. I am only 24 responsible for my own work. The Fang Sheung workers, 25 they would wear casual wear, they would wear reflective	1 three minutes to cut one rebar using the hand-held 2 grinder, and you also told us that you were there 3 observing for just three or five minutes -- three to 4 four minutes. So, if we just do a calculation, how 5 could three or four rebars be cut if it took two to 6 three minutes to cut one, and you were there for just 7 three to four minutes? 8 A. When I was walking past, there were two or three bars on 9 the floor, and while they were cutting, I think I saw 10 them cut one bar and then I moved on, because this is 11 not our responsibility. I'm responsible for formwork. 12 Q. Is it fair to say that you just saw one was being cut at 13 that moment, when you were there? 14 A. One had been cut and they were working on the second 15 one, then I was moving away. 16 Q. Now, in your paragraph 12, you said: 17 "... it may be common to cut the threaded rebars ... 18 as the threaded rebars might be damaged ..." 19 Do you have any training or qualification for bar 20 fixing or bar bending? 21 A. At the time, we were working concurrently, we were 22 working the formwork and the bar work, and I would be in 23 one location for a very long period, and when -- it's 24 very hard to screw in the third bars, it's hard to screw 25 it in if it's damaged. So, for a normal situation, it

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<p>1 would take three to screw in a threaded rebar, and if 2 it's damaged it takes more than ten minutes to screw it 3 in. 4 Q. Now, you worked for China Technology. Is it the case 5 that after Fang Sheung's workers finished their bar 6 fixing and they left the site, and then you, your 7 company, will then move into the site to do the formwork 8 or to do the concrete pouring? 9 A. I have to answer in two parts. After the bar work, we 10 have a lot of ceramic material, because it's next to the 11 Hung Hom stadium, there's a lot of work that needs to be 12 conducted, and at that point we can conduct the work 13 concurrently with the bar bending. 14 Q. But, under normal circumstances, you, your company, will 15 not work together with Fang Sheung's workers on the site 16 at the same time, when they were doing the rebar fixing? 17 A. Sometimes, it would occur concurrently. 18 Q. What work progress would that be, that you have to work 19 simultaneously with workers of Fang Sheung? 20 A. Covering the holes, there are ventilation/vents that 21 need to be covered; that could be done concurrently. 22 Q. Is it fair to say that you did not know the work 23 instructions or the work progress of other 24 sub-contractors on the site, including Fang Sheung, 25 because you only concentrate on your own work?</p>	<p>1 "... it may be common to cut the threaded rebars ... 2 as the threaded rebars might be damaged ..." 3 You said this. Why did you say "may"? Is it your 4 own speculation or what? 5 A. If it's not damaged, why would they cut it? Because if 6 the threaded rebar is not cut, it's already in a normal 7 working condition. 8 Q. So that's your own thinking; you have never clarified 9 with anybody as to why those bars were cut that way; is 10 that right? 11 A. I saw the procedures. Because, how should I put it, you 12 won't ask them. We are not on friendly terms with the 13 bar benders. We are not on good terms with the 14 Fang Sheung colleagues. 15 Q. So you did not ask; right? 16 A. Because of previous reasons, there had been some 17 confrontation with the Fang Sheung people, and my 18 supervisor and the supervisor of Fang Sheung, we had to 19 come to a negotiation, an understanding that we should 20 not interfere with each other's work. So there's very 21 minimal communication, so we wouldn't communicate. 22 Q. So the simple answer to my question is, because of 23 previous incidents, you did not communicate with 24 Fang Sheung's workers and you did not ask anything; you 25 did not ask how they did their work, right?</p>
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<p>1 A. At the time, I recall sometimes when we cover the holes 2 or the ceramic parts, we would have to work extra shifts 3 together with Fang Sheung and we would work until 4 9 o'clock. 5 Q. But you would not have any -- you would not know how 6 they did their work and why they did their work that 7 way; do you agree? 8 A. I'm not familiar with their work procedures. 9 Q. So, when you observed the incident in October 2015, you 10 did not know under what circumstances those bars were 11 treated that way? 12 CHAIRMAN: Sorry to interrupt. I read -- there are two 13 paragraphs which are to the same effect in this regard. 14 MS CHONG: Yes. 15 CHAIRMAN: And I really read the witness as saying, "Look, 16 I don't know why they cut the bars, and it may be 17 common, because they may have to do it if the threading 18 is damaged in any way. So he is not saying, "I know 19 why." He's simply saying, "I'm prepared to give them 20 the benefit of the doubt that there may be compelling 21 reasons to do the cutting." 22 MS CHONG: Yes. Maybe I just clarify why he said "may". 23 CHAIRMAN: Yes. 24 MS CHONG: So, in paragraph 12 and also in paragraph 19, you 25 said:</p>	<p>1 A. I did not. 2 Q. Please turn to paragraphs 14 and 15 of your witness 3 statement. In paragraph 14, you stated that in a lunch 4 meeting, you were told to take photographs if you ever 5 see someone cutting the rebars, the threaded rebars. 6 That is in one lunchbox meeting. 7 Then, in paragraph 15, in another lunch meeting in 8 November 2015, you were also told to take photographs of 9 people cutting the threaded rebars. 10 Then also, in another lunch meeting, in February 11 2016, were you told to take photographs of people 12 cutting the rebars, on that occasion? 13 A. I think you have recalled the wrong information. I was 14 at the Tai Po waterworks at the time. In February 2016, 15 I was in the Tai Po waterworks, but I would attend the 16 meetings very frequently. 17 Q. Yes, but you attended the lunch meeting in February 18 2016; right? 19 A. How could he have asked me to take pictures? I wasn't 20 at the construction site. 21 Q. But, according to your witness statement, in mid-June 22 2016, you said you witnessed another rebar cutting, 23 threaded rebar cutting. Despite all the reminders from 24 Mr Poon in those lunch meetings, is it your evidence 25 that you did not see fit to take any photos when you</p>

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<p>1 witnessed the rebar cutting again in June 2016?</p> <p>2 A. Because that's to be done by Chinat's foremen. I am</p> <p>3 just responsible for the formwork. Other things to be</p> <p>4 done are to be done by the Chinat foremen. So I just do</p> <p>5 frontline work.</p> <p>6 Q. I see. You were employed also as a foreman but for</p> <p>7 formwork; was that the case?</p> <p>8 A. No. In my line of work, this is called</p> <p>9 (Chinese spoken), "snake head" literally. I'm just</p> <p>10 responsible for -- I don't care about other things.</p> <p>11 Q. Can you turn to paragraph 2 of your witness statement,</p> <p>12 you said you joined China Tech as a foreman for</p> <p>13 formwork.</p> <p>14 A. At the time, when I told the police, I think he got it</p> <p>15 wrong. I told him "snake head", that means I'm the head</p> <p>16 of formwork, so I'm responsible for formwork. I never</p> <p>17 said I was a Chinat foreman.</p> <p>18 Q. Then please see paragraph 1. You said you obtained the</p> <p>19 necessary qualification to become a foreman for</p> <p>20 formwork. That was stated in your --</p> <p>21 MR TO: Can I clarify. What he means by "foreman", Chairman</p> <p>22 and Commissioner, and also my learned friend, is he</p> <p>23 means "ganger". He was in charge of people, rather than</p> <p>24 being a foreman, who basically writes reports and all</p> <p>25 that. So he's a ganger in charge of a group of people</p>	<p>1 was in our way and I took the photos and I sent a letter</p> <p>2 to the Chinat foreman to negotiate with them. I was not</p> <p>3 the one doing the negotiation. Did you know that?</p> <p>4 MS CHONG: Just a few questions and then I will finish my</p> <p>5 cross-examination, Chairman, so maybe I will finish this</p> <p>6 witness and then we have the lunch break.</p> <p>7 CHAIRMAN: That's what I thought, yes.</p> <p>8 MS CHONG: I just have a few more questions.</p> <p>9 Please turn to D224. This is an organisation chart</p> <p>10 prepared by your company, China Tech. Under</p> <p>11 "Superintendent Thomas Ngai" there are five foremen</p> <p>12 there, and your name, "Chu Ka Kam", the fifth one, the</p> <p>13 one at the right side, appears to be a foreman there.</p> <p>14 A. I wear yellow helmet. If the company -- you can check</p> <p>15 the photos. In many photos I was wearing the yellow</p> <p>16 helmet. For the Chinat foremen, they wear white</p> <p>17 helmets, so I'm not a foreman.</p> <p>18 Q. So are you saying that this chart prepared by your</p> <p>19 company is wrong, wrongly stated you to be the foreman?</p> <p>20 A. How do I explain that? I'm just responsible for</p> <p>21 formwork and I do answer directly to Mr Poon. Now, when</p> <p>22 work is done, you know, when there's a need for formwork</p> <p>23 in any area, then the company will tell me.</p> <p>24 Q. So you are now saying that you were not foreman at any</p> <p>25 time on the site?</p>
Page 74	Page 76
<p>1 who do formwork.</p> <p>2 CHAIRMAN: I'm sorry, I'm grateful for that, but how do you</p> <p>3 know that's what he said? Because there's</p> <p>4 a mistranslation, or because his written document should</p> <p>5 be read better?</p> <p>6 MR SHIEH: I think it's evidence from the bar table, because</p> <p>7 that was not what the witness had said. Mr To was</p> <p>8 simply trying to explain on behalf of the witness what</p> <p>9 the word "foreman" might have meant when it was being</p> <p>10 drafted by whoever responsible for drafting it, but that</p> <p>11 was not what the witness was trying to communicate.</p> <p>12 MR TO: I was trying to communicate in terms of</p> <p>13 (Chinese spoken). It means "ganger".</p> <p>14 MS CHONG: If that's the case, that can be saved for</p> <p>15 re-examination.</p> <p>16 CHAIRMAN: All right. Thank you.</p> <p>17 MS CHONG: In paragraph 1, you said you obtained the</p> <p>18 qualification as a foreman.</p> <p>19 A. Not qualification of foreman. I just said for formwork,</p> <p>20 I'm qualified for formwork. So my qualification is in</p> <p>21 formwork. For foreman, foreman means someone who will</p> <p>22 manage other people, but I just manage the formwork</p> <p>23 process. For other issues or processes and so on, then</p> <p>24 it's the foremen and those assistant foremen at Chinat</p> <p>25 who would do that. Because for formwork, Fang Sheung</p>	<p>1 CHAIRMAN: Well, perhaps incorrectly I take him to say that</p> <p>2 whatever is written here, the fact is that he was in</p> <p>3 charge of the formwork, as a carpenter, the shuttering,</p> <p>4 and that he would have people who worked with him, and</p> <p>5 to that extent he was given the responsibility of</p> <p>6 managing those persons, but he didn't see himself as</p> <p>7 holding a formal position of foreman.</p> <p>8 I understand him to be using the word "foreman"</p> <p>9 there as a form of managerial rank as opposed to</p> <p>10 a qualification. So you can be qualified as a rifleman</p> <p>11 but it doesn't necessarily take you a sergeant.</p> <p>12 MS CHONG: In that case, I will --</p> <p>13 MR TO: Mr Chairman and Commissioner, if I may, to clarify</p> <p>14 the matter -- if you go to D2/223, there is also another</p> <p>15 organisation chart. If you look very closely, "Trade</p> <p>16 ganger", that column, you'll see "Carpentry ganger", you</p> <p>17 will see the name, very faintly, his name at the top.</p> <p>18 CHAIRMAN: Yes, I see that. Thank you.</p> <p>19 MR TO: Thank you.</p> <p>20 MS CHONG: Putting aside your work duties, when you observed</p> <p>21 those two incidents, did you have your phone with you at</p> <p>22 the time?</p> <p>23 A. Yes.</p> <p>24 Q. Your boss, Mr Poon, told you to take photographs when</p> <p>25 you observed rebar cutting again, and he told you</p>

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<p>1 repeatedly on the lunch meetings in October, in November 2 2015, and perhaps also in February 2016, and you had 3 your mobile phone with you. Did you think of taking 4 photographs when you observed the incident in mid-June 5 2016? 6 A. Mr Poon asked foremen to take pictures. First of all 7 I don't consider myself a foreman, and then secondly 8 I had some minor disputes with Fang Sheung. That's why 9 I did not think of taking photos. Also, you know, I am 10 lowly educated; I wouldn't foresee this major incident 11 now. 12 Q. In paragraph 18, the incident you stated there, those 13 workers were wearing Leighton's uniform, was it? 14 A. Yes. 15 Q. So it had nothing to do with Fang Sheung at that time; 16 right? 17 A. I couldn't recall the faces. It was a long time ago. 18 Q. You said that you had grudges with Fang Sheung so you 19 did not want to take photos of them, but in the incident 20 you observed in mid-June 2016, those workers, they were 21 wearing Leighton's uniform; right? As stated in 22 paragraph 18 of your witness statement. 23 A. Yes. 24 Q. So it had nothing to do with Fang Sheung at that time; 25 do you agree?</p>	<p>1 lunch. 2 CHAIRMAN: Thank you very much. 3 It's now quarter past one, so we will adjourn for 4 an hour and 15 minutes. Thank you. 5 MR PENNICOTT: 2.30. 6 CHAIRMAN: 2.30, yes. 7 (1.14 pm) 8 (The luncheon adjournment) 9 (2.32 pm) 10 MR SHIEH: Mr Chairman and Commissioner, on behalf of 11 Leighton, I wish to ask some questions. 12 CHAIRMAN: Yes. 13 Cross-examination by MR SHIEH 14 MR SHIEH: Mr Chu, I represent Leighton. Can you hear me? 15 A. Yes, I can hear you. 16 Q. May I ask you to look at your witness statement, 17 bundle D, page 974, paragraph 17. I need to read it out 18 so it gets translated, for your benefit. Paragraph 17 19 of your witness statement says: 20 "In or about mid-April 2016 till early March 2017, 21 I began to work at the NSL, which is the lower deck of 22 Shatin to Central Link." 23 That was what you said. Do you remember that? 24 A. Yes. 25 Q. In paragraph 18 of your witness statement, you said:</p>
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<p>1 A. I couldn't recall the faces. 2 Q. Sorry, I can't catch you. 3 A. I couldn't recall at that time the faces, because it was 4 a long time ago. I remember they were wearing Leighton 5 uniforms. 6 Q. Are you saying that you had vague memories of what you 7 saw on that occasion? 8 A. No, just that I had vague memory of the faces. 9 Q. You told us that you were not the foreman so it was not 10 the responsibility of you to take photographs. Is it 11 fair to say that because all the time you were thinking 12 that it was not your responsibility to take photographs, 13 to make a report to MTRC or to Leighton, so, when you 14 observed all these incidents, you did not pay much 15 attention, as it had nothing to do with your work 16 duties? 17 A. Correct. 18 Q. And the first time you had to recall all these incidents 19 is in 2018, when you were contacted by the police; is 20 that the case? 21 A. Yes. 22 MS CHONG: I have no further questions. 23 CHAIRMAN: Good. Thank you very much. 24 MR PENNICOTT: Sir, there's a transcript glitch back at 25 [draft] page 71, but I will try to sort it out over</p>	<p>1 "In the evening of about mid-June 2016, I saw two 2 workers at or about area A wearing dark orange uniforms 3 and reflective safety vests, similar to those worn by 4 Leighton employees cutting threaded rebars." 5 You remember saying that? 6 A. Yes. 7 Q. You then, in the witness statement, described one of the 8 workers using a red machine to cut the threaded rebars; 9 do you remember that? 10 A. Yes. 11 Q. Mr Chu, so we are now talking about the NSL, area A, 12 which was the area you were talking about in those two 13 paragraphs; yes? 14 A. Yes. 15 Q. Do you have any recollection that, of the entire area A 16 of NSL, the last concrete pouring date was 21 May 2016? 17 Do you have any recollection that the last concrete 18 pouring date for NSL area A was 21 May 2016? 19 A. I don't recall the date. 20 Q. Right. Let me just help you with some documents. 21 Bundle B5, page 2903. This is a document called the NSL 22 track slab pour plan, and if we -- you may or may not 23 have seen this document before. First of all, have you 24 seen this document before, a big physical sheet that's 25 now in front of you?</p>

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1 A. I shouldn't have seen it before.
2 Q. Okay. But look at the left-hand side of this sheet.
3 I hope he can be given some assistance in having
4 an area pointed out to him, because on the left-hand
5 side there is an area marked "Area A", which is yellow
6 in colour; can you see that yellow area?
7 A. Yes.
8 Q. You saw that?
9 A. Yes.
10 Q. That area shows the layout of the various bays in
11 area A. Even though you may not be able to read
12 English, you would see the numbers 1, 2, 3, 4 and 5, on
13 the top of each of the white boxes?
14 A. Yes.
15 Q. And there is a date in each of the white boxes telling
16 you, at least on MTRC's record and on Leighton's record,
17 the date of the last pouring. So, for example, in the
18 box which says "1", at the top right-hand corner of
19 area A, you will see "03", and then the English letters
20 "Mar" and then "16", meaning the last pour was 3 March
21 2016; that is how you read it.
22 MR PENNICOTT: The 1st.
23 MR SHIEH: Okay? Understand?
24 A. Yes.
25 Q. If you then look at all the five boxes for area A, the

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1 latest of the last pour dates in the five boxes was for
2 bay number 5, which is the bottom left-hand corner,
3 which is "21st", and then you see the English letters
4 "May", that is the fifth western calendar month of the
5 year, (Chinese spoken), and then 16, so it's 21 May
6 2016. That is the last pour date for bay 5 in area A.
7 Now, you have told us you have not seen this
8 document before; right?
9 A. Correct.
10 Q. And this document, as I said, was prepared on the basis
11 of documentary record. But does this document and the
12 date mentioned in this document, in particular the date
13 of 21 May 2016, help you or jog your memory as to the
14 approximate date of the last pouring for area A?
15 A. At the time, maybe I remember several things wrong. It
16 was the end of April to May. When I went back, area A,
17 I couldn't recall exactly how it was divided, because
18 I don't read English on this document and I don't recall
19 how the sections were split, because I don't deal with
20 the lower decks; there are other foremen working on
21 that.
22 So I couldn't recall which area I could have got it
23 wrong, I wouldn't know, and when I gave the statement to
24 the police I said I saw there were people lower down
25 cutting rebars, but which area exactly, I couldn't

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1 recall how the areas were divided down there.
2 Q. Are you now suggesting that you might have got the area
3 wrong?
4 A. Areas, I couldn't tell the areas. For the foremen down
5 there, I knew who was in which area, the foremen,
6 I meant.
7 Q. I will ask again: are you saying that you may have
8 actually got the area wrong and it may not be area A?
9 A. I honestly don't recall which area, because when I went
10 down there -- I don't speak much English, or -- actually
11 I don't know any English at all, so how the areas or
12 sections were divided, it's for the foremen down there
13 to tell us. I went there in April. First, I went back
14 to Leighton and I still don't know how the areas were
15 divided, even now.
16 Q. Can I ask you to look at your Chinese police statement.
17 Bundle D, page 982. I don't think this police statement
18 has an English translation -- it does? It's 27.1, yes.
19 Maybe mine doesn't actually have the English
20 translation. Which tab is it?
21 MR TO: It's at D902.
22 MR SHIEH: It's in another bundle. It's in D2, page 907.1.
23 I'm grateful.
24 A. I told the police, I used the terms "upper level" and
25 "lower level". I didn't know how it was to be

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1 translated. I said area A or area B -- I couldn't
2 recall exactly, and actually I don't recall how the
3 areas were divided, because when I went to look for
4 work, whether it's the east level, whenever I went to
5 the foremen, there were foremen of Chinat down there and
6 I would go to them or him to get work.
7 Q. The lower floor is what we call NSL; you know that? The
8 upper floor is EWL; do you agree?
9 A. Yes.
10 Q. But there's no dispute that you were on the lower
11 floor -- let's get this out of the way first -- you were
12 on the lower floor?
13 A. Yes.
14 Q. Can I ask you to look at your police statement. The
15 English is 907.4. The Chinese is 983, paragraph 7. For
16 the English, it should be 907.4. The Chinese version --
17 I'm sorry, it's actually paragraph 6, my mistake. The
18 Chinese is 982, and the English is 907.3.
19 At the bottom of 907.3 -- and if you're looking at
20 the Chinese one, it's in the middle of D982 -- there are
21 the words -- in Chinese do you see:
22 "(Chinese spoken)."
23 The English version:
24 "Besides, at one night on a certain day in mid-June
25 2016, whilst I was working in area A at the lower deck

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<p>1 (the exact location forgotten), I walked past the area 2 and again saw 2 construction workers ..." 3 Do you see that, your Chinese statement, 982? 4 A. Yes. 5 Q. So there you mentioned the lower floor, for which 6 there's no dispute. You also mention area A. Mr Chu, 7 you saw that? 8 A. If there's cutting in area A, I would say it's normal. 9 Why? If you cut some bar, you could move it anywhere; 10 I wouldn't know. I never said they screwed them in. 11 Q. But if you look at the entirety of the NSL, if you look 12 back at the big sheet of paper that you have been shown, 13 bundle B5/page 2903, I can tell you that of all the 14 areas, whether it's A or B or HKC or whatever, the 15 latest pour date was 28 May 2016. That can be found in 16 the left-most part of this diagram, under the heading 17 "SAT", and then you can see it's a pink area with two 18 boxes. The left-hand box is bay 1, the other is bay 2, 19 and you can see, under bay 2 of SAT, you can see the 20 date "28-May", that is the five month of the year, "16", 21 that's 2016; all right? 22 So this document shows us that as far as the NSL is 23 concerned, the final pour date was 28 May 2016. 24 A. I can tell you for sure. There were holes and other 25 ducts not yet done and they all had to do with screwing</p>	<p>1 actually see the top numbering is "6 post-concrete 2 survey check" -- may I ask that to be pointed out to the 3 witness? Sorry, "Concrete pour date", the white column 4 next to it, "Concrete pour date". You can from the 5 third entry onwards, that would be the date of the 6 concrete pour date for area A. So, for the next five 7 entries, starting with 3 March 2016, those five entries 8 were the pour dates for area A, and all we can see was 9 21 May 2016. 10 Mr Chu, you are still saying to us that by mid-June, 11 which was the date when you said you were in area A of 12 NSL, you saw people still cutting rebars; is that what 13 you are still saying? 14 A. That's right. 15 Q. I suggest to you one more time that area is all 16 concreted by mid-June, and there would be no scope for 17 anyone to cut any rebars in that area. Do you accept 18 that? 19 A. But that's just about pouring concrete. You still need 20 to go through other processes, building walls. It's not 21 just diaphragm walls that contain couplers, you know. 22 Q. So you are now saying that the steel bars are being cut 23 for purposes otherwise than being used for reinforcement 24 purposes in the slab? 25 A. Well, I saw bars being cut. There were different ways</p>
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<p>1 of couplers. 2 Q. But concrete has been poured for the entire NSL by 3 28 May already; do you accept that? Or does this 4 document help you recall that by mid -- 5 A. Well, the main concreting was done, but I think that for 6 the shaft, the location of the shaft, in area A, that is 7 where the trains are not run. So at the lower part, the 8 corner, there was this major shaft or area that had 9 still no concreting at the time. 10 Q. So you now remember it is in area A? 11 A. Area A, yes. Yes. But underneath, there was this huge 12 slab to be done. I remember there were still two main 13 shafts, no concreting yet. 14 Q. So you are saying that there is still concrete to be 15 poured after May? 16 A. Yes. 17 Q. Can I show you 2905. This is all in English; it's not 18 even in the form of a picture. But I can tell you that 19 this is a summary of the documentary record for the 20 pouring of various areas. And this table, you can see 21 on the left-hand side there is a column with various 22 locations, and then you can see -- it starts with SAT, 23 and under SAT you can see there is area A, (Chinese 24 spoken), and if you move to the right-hand-most -- not 25 the right-hand-most -- if you move to the right, you can</p>	<p>1 for the slabs as well as for the walls. It's not just 2 for the slab. It's not just for a single size kind of 3 bar that fits the diaphragm wall at the slab. We also 4 have bars for the partition walls. 5 Q. I repeat, you are suggesting that the reinforcement bars 6 that are being cut may well be used not for 7 reinforcement purposes in the slab? Are you saying 8 that? 9 A. That's right. 10 Q. Can I ask you then to look at bundle C34, page 25954. 11 Again, this is an English document, but in view of your 12 answers earlier I hope it's not controversial. This is 13 a concrete cube test report, which records the result of 14 testing of concrete sample on the date when concrete was 15 poured. This document, and the documents that follow 16 from this document -- I'm not going to take you through 17 all that -- tells us that an NSL track slab bay number 5 18 was poured on 21 May 2016. 19 You have no reason to doubt the date recorded in 20 these documents as being the last pour date of bay 21 number 5 of area A, do you? 22 A. Correct. 23 Q. Can I move on. This morning, you were asked about 24 whether you have mentioned the two incidents about 25 cutting to anyone. Can I ask you to look at bundle D2,</p>

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<p>1 page 906. That is your Chinese police statement. The 2 English police statement, the translation, is 907.4. 3 The paragraph I want you to look at is paragraph 6. 4 In the final sentence of paragraph 6 -- and you can 5 look at the Chinese one -- you said -- I will read the 6 English: 7 "Regarding the 2 incidents of someone cutting the 8 threaded ends of rebars as stated above, I have not 9 mentioned them to anybody." 10 In the Chinese: 11 "(Chinese spoken)." 12 Do you see that? 13 A. Yes. 14 Q. That was what you told the Hong Kong Police Force; 15 correct? 16 A. Correct. 17 Q. That is correct, yes? That is true; correct? 18 A. True. 19 Q. So you are telling the truth to the police? 20 A. True. 21 Q. That being so, can I then ask you to look again at what 22 Mr Poon had said. Bundle D1, page 19. Mr Pennicott 23 showed this to you this morning, but I won't just show 24 it to you, I will read it to you and have it translated. 25 I think you also had it read to you and translated but</p>	<p>1 similar incidents happening? You did not tell Mr Poon? 2 A. I did not. 3 Q. Thank you. 4 Then page 19, paragraph 32, this is another 5 paragraph which was read out to you. Mr Poon said: 6 "Sometime later, Mr Leung and Mr Chu told me that 7 they had reported the matter to MTRC." 8 Right. So Poon said you told him that you had 9 reported the matter to MTRC. 10 A. Well, normally, I would not do something like that. 11 Q. Mr Chu, it is not just a matter of whether you would 12 normally do something like that, because in your police 13 statement you have clearly said you did not tell anyone. 14 Do you remember? You did not tell anyone? 15 A. That's true. 16 Q. Therefore, you did not tell MTRC; correct? 17 A. Correct. 18 Q. So you did not tell Mr Poon that you had told MTRC; 19 correct? 20 A. I don't remember whether Mr Leung -- I mean whether 21 I followed Mr Leung to contact MTRC. It was in the 22 beginning of my work at the transfer plate, I was busy, 23 and I do not remember whether I went along with him to 24 approach MTRC. 25 Q. Okay. So now you are saying you might have followed</p>
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<p>1 I will do it again. Page D19, paragraph 30, Mr Poon 2 said: 3 "In mid-August 2015, I and 12 other staff of 4 China Tech had an internal meeting at China Tech's 5 temporary offices in the Hung Hom Station construction 6 site. Mr Leung reported to me orally that he saw in 7 late July 2015 someone cutting the threaded rebars using 8 cutting/grinding machines at bay 2 and bay 4 of area C1. 9 At the same time, Mr Chu [that's you] also corroborated 10 with what was said by Mr Leung and told me that he also 11 witnessed similar incidents happening." 12 You may not understand the English there, but I have 13 read out what he said to you, it's been translated to 14 you in Chinese -- that was what Mr Poon said in his 15 witness statement. What he was saying there is not 16 correct; do you agree? 17 A. Not correct because in August I was told by my 18 subordinates, or at the meeting I agreed with him that 19 my workers also witnessed what happened. 20 Q. That sentence said, "Mr Chu corroborated with what was 21 said by Leung and told me". So Mr Chu told Mr Poon that 22 Mr Chu also witnessed similar incidents happening. That 23 was what you said Mr Poon said. 24 A. I did not witness. My workers did. 25 Q. Right. So you did not tell Mr Poon that you had seen</p>	<p>1 Mr Leung to speak to MTRC? 2 A. That's right. 3 Q. Contrary to what you have said in the witness statement, 4 when you said you did not tell anyone about the 5 incident? 6 A. Not correct, because at the time, during the work, there 7 weren't many foremen, just six or seven, covering 8 several areas. Sometimes, I was asked to help by 9 following him to take a look at things, whereas for 10 management and other matters, I wouldn't usually care 11 much about that, taking photos. 12 Q. So you are now saying for whether you had followed 13 Mr Leung to tell MTRC, you can't remember? 14 A. That's right. 15 Q. Can you look at the beginning of your witness statement, 16 at bundle D2, page 971. At paragraph 4, you said: 17 "I have had the opportunity to read the witness 18 statement and the supplemental witness statement of 19 Mr Poon dated 3rd September ..." 20 That was the one I was just showing you. 21 "I agree that the facts deposed therein are true." 22 But we have seen just now that you disagree with 23 what Mr Poon had said, when he said you had told him 24 that you had seen people cutting, and you say you can't 25 remember whether you followed Mr Leung to tell MTR.</p>

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1 I suggest to you that you simply can't possibly agree
 2 with Mr Poon had said in his witness statement; do you
 3 accept that?
 4 A. Can you repeat?
 5 Q. You could not possibly agree with what Mr Poon had said
 6 in his witness statement?
 7 A. Disagree, because in August I did tell Mr Poon and
 8 I corroborated with that, but as to whether Mr Leung and
 9 I went to follow up the matter with MTRC, I don't
 10 remember, because I was really busy at work.
 11 Q. I'm not going to spend more time with you. I'm
 12 suggesting to you that you were just content to sign
 13 whatever form of witness statement put in front of you,
 14 without trying to understand its content. Do you accept
 15 that?
 16 A. Well, perhaps sometimes I didn't catch what the lawyer
 17 said in his translation.
 18 Q. But the lawyer -- did the lawyer explain or translate
 19 Mr Poon's witness statement to you, when you signed your
 20 own witness statement?
 21 A. Yes.
 22 Q. He did?
 23 A. Yes.
 24 Q. So the lawyer told you or explained to you that Mr Poon
 25 said you and Mr Leung went to the MTR?

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1 A. He did, but I cannot recall it from my memory.
 2 Q. I will suggest one more time that you were just content
 3 to sign whatever the lawyer had put in front of you and
 4 explained to you, and you were just happy to sign it
 5 without bothering with whether it was true or not. Do
 6 you agree?
 7 A. Disagree.
 8 MR SHIEH: Thank you very much, Mr Chu. I have no further
 9 questions for you.
 10 Cross-examination by MR BOULDING
 11 MR BOULDING: Sir, I just have one or two questions, if
 12 I may.
 13 Good afternoon, Mr Chu. I'd like to ask you one or
 14 two questions about your witness statement. That's in
 15 bundle D2 at page D970. If you would be kind enough to
 16 go to D971, I'd like to ask you about what you said in
 17 paragraph 5.2. There you say:
 18 "Workers of Fang Sheung did not wear any form of
 19 uniform, they usually wore casual clothing of their own
 20 or did not wear any upper clothing. Workers of
 21 Fang Sheung also wore red safety vests sometimes."
 22 Do you see that, Mr Chu?
 23 A. Right.
 24 Q. Today, you told the learned Commissioner that sometimes
 25 Fang Sheung workers wore reflective vests; do you

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1 remember that?
 2 A. Yes, the reflective vests. The reflective vest, that's
 3 not the same thing as a piece of clothing. A reflective
 4 vest, you can see people wearing that on the road. You
 5 can still have an inner garment and then a reflective
 6 vest on top, and a vest is something else. Sometimes
 7 it's red reflective vest.
 8 Q. Mr Chu, I might be a lawyer but I can tell you I know
 9 what a reflective vest is; okay?
 10 You also said that sometimes the Fang Sheung people
 11 were bare-chested; do you remember telling the learned
 12 Commissioner that?
 13 A. Could you repeat the question?
 14 Q. Yes. You also said that sometimes the workers were
 15 Fang Sheung were bare-chested; do you remember saying
 16 that?
 17 A. Yes.
 18 Q. Lastly in this context, you said that sometimes they
 19 wore casual clothing; do you remember saying that?
 20 A. Yes.
 21 Q. Good. So far, so good.
 22 Now, my learned friend Mr Shieh has already drawn
 23 your attention to paragraph 4 of your witness statement,
 24 where you say that you agree that the facts deposed to
 25 by Mr Poon in his first and second statements are true.

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1 Do you remember Mr Shieh putting that paragraph to you?
 2 A. What did he ask me?
 3 Q. Mr Shieh took you to paragraph 4 of your witness
 4 statement and read it to you. Do you want to go and
 5 have another look at it?
 6 A. Could you read it out for me once again?
 7 Q. I'm very happy to do that, Mr Chu, because it is
 8 an important statement from you:
 9 "I have had the opportunity to read the witness
 10 statement and the supplemental witness statement of
 11 Mr Poon dated 3 September 2018 and 14 September 2018
 12 respectively."
 13 Then you go on to say, rather importantly, some
 14 might think:
 15 "I agree that the facts deposed to therein are
 16 true."
 17 A. Yes.
 18 Q. Now, we've looked at one or two paragraphs in Mr Poon's
 19 statement, but could I trouble you, please, to go to
 20 paragraph 86 in D36 -- page D36. Presumably, you would
 21 like me to read that to you again, would you?
 22 A. Yes, please.
 23 Q. "Representatives of the MTRC then asked me if I may
 24 produce any further information proving that those
 25 persons involved in the cutting of the threaded rebars

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<p>1 were staff members of Leighton. I told them that staff 2 members of Leighton can easily be identified from staff 3 of other sub-contractors by their uniforms. As staff 4 members of Leighton were all dressed with Leighton 5 T-shirts and reflective vests." 6 Now, it's the next sentence I'd like you to 7 concentrate on, please: 8 "On the other hand, staff of Fang Sheung were all 9 rebar fixers and their uniforms were heavily 10 contaminated by sweat and rust in dark brown colour." 11 So you can see there, can you not, that your boss, 12 Mr Poon, is going to tell the Commission, when he gives 13 evidence later this afternoon, that the uniforms worn by 14 Fang Sheung were dark brown in colour and contaminated 15 by sweat and rust? Do you see that? 16 A. I see it. 17 Q. Who's right, Mr Chu? Are you right that Fang Sheung 18 wore reflective vests or were sometimes bare-chested or 19 had casual clothing on, or is your boss, Mr Poon, right, 20 namely that they had dark brown uniforms that were 21 heavily contaminated by sweat and rust? Who's right? 22 A. The casual clothes, they have different types of casual 23 clothing, and I cannot recall all of them. Because at 24 that time I was not on good terms with the bar benders, 25 so aside from fighting over location, whether they were</p>	<p>1 sometimes cause syntax difficulties. 2 MR BOULDING: I take your point, sir, but going back to the 3 sentence in question, what is indisputable, I suggest, 4 Mr Chu, is that your boss is saying that Fang Sheung 5 wore uniforms; do you see that? "Fang Sheung were all 6 rebar fixers and their uniforms". 7 A. Their uniform was a reflective vest, as I said before, 8 and the clothing that they wore was assorted. That's 9 all I recall. Whether it was dark brown, I cannot 10 recall. 11 Q. Mr Chu, a reflective vest and their own clothing is not 12 a uniform, I suggest, is it? That's not a uniform? 13 A. If they don't have a reflective vest, they cannot enter 14 the construction site. 15 Q. I think you've got my point, Mr Chu. I'll move on. 16 You deal with occurrence 1, the first alleged 17 occurrence of bar cutting, and that took place in late 18 October 2015. You give evidence on that in 19 paragraphs 11 to 13 of your witness statement. That's 20 page D973. 21 In paragraph 12 of your statement, you state that 22 "it may be common to cut the threaded rebars of a steel 23 thread as [it] might be damaged"; that's correct, is it 24 not? 25 A. Yes.</p>
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<p>1 an inconvenience to our work, our communication was 2 limited. Then I would agree that their uniforms were 3 dark coloured. 4 Q. Well, Mr Poon says dark brown. Are you agreeing with 5 him, are you saying he's right, or are you disagreeing? 6 A. I did not disagree, because these clothes, I cannot 7 recall whether it was dark brown. The clothing worn by 8 Fang Sheung workers, they are very assorted, and 9 sometimes when you work it gets dirty and they wear 10 a reflective vest on top of it. I cannot recall what 11 exactly they wore. They don't have a standard uniform 12 set of clothing. 13 Q. I'll give you one more opportunity, Mr Chu. What your 14 boss, Mr Poon, says is that their uniform were dark 15 brown in colour. 16 CHAIRMAN: I would, with respect, just put one cautious 17 caveat to that, because on a reading in English it could 18 be, it seems to me, that it's not a description of the 19 colour of the uniform; it's a description of the result 20 of rust and dirt. 21 MR BOULDING: Well, we will no doubt investigate that with 22 Mr Poon. 23 CHAIRMAN: That's why I say I make one cautious caveat, but 24 perhaps experience in translation between colloquial 25 Cantonese and Chinese dialects into English can</p>	<p>1 Q. You go on to say that they cut the threads so they can 2 be screwed into the coupler; that's what you say, isn't 3 it? 4 A. Yes. 5 Q. But you've already told the learned Commissioner, have 6 you not, that you never saw anyone on site trying to 7 screw threads, which had been cut, into couplers; you 8 never saw anyone trying to do that, did you? 9 A. I did not witness and saw it, but I witnessed people 10 cutting the bars. 11 Q. Can I suggest to you, Mr Chu, that the reason you've put 12 forward, namely that they were cutting the bars so they 13 could screw them into the couplers, that's pure 14 speculation on your part, isn't it? Pure speculation. 15 A. Well, if it is damaged, I think that's what they were 16 trying to do. They were removing the damaged parts. 17 Q. Well, in paragraph 13, you tell the learned 18 Commissioner: 19 "That said, I did not check whether the threaded 20 rebars were actually damaged when I witnessed the 21 cutting of the threaded rebars. I did not inquire into 22 the matter as it was not within my job scope and duties 23 to do so." 24 So, obviously, you do not know whether the threads 25 on the rebar were damaged or not, do you?</p>

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1 A. If it was not damaged, then why were they cutting it?
2 Q. I'm the one who asks the questions. And I suggest to
3 you -- and I've suggested it once; I will put it
4 again -- you are speculating, are you not, as to why
5 those rebars were being cut?
6 A. Well, they are cutting the bars, I witnessed that, and
7 I definitely saw with my own eyes. But I can still see
8 you from where I am, and why they had to cut the bars,
9 the reasons, I have no idea.
10 Q. That will do.
11 A. The typical or normal threads would not be cut. If it
12 is in working condition, if they have to install into
13 couplers, they wouldn't have to cut that.
14 Q. Well, you gave the answer I wanted but I'll put it to
15 you once again: it's pure speculation on your part as to
16 why those bars were being cut because, as you say, you
17 didn't check to see whether they were damaged, you
18 didn't enquire into the matter, so you are speculating,
19 are you not?
20 A. It's not my job responsibility. I'm a formworker.
21 Q. I've heard that, Mr Chu, but you are pretty good at
22 evading questions, and I'll put it to you again. You do
23 not know why they were cutting the rebars, do you? You
24 don't know?
25 A. I saw it, I saw them cutting the bars, but I don't know

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1 for what reason they did so.
2 MR BOULDING: Thank you, Mr Chu.
3 Cross-examination by MR KHAW
4 MR KHAW: Just a few questions.
5 I'm acting for the government.
6 On the last point that Mr Boulding asked you about,
7 regarding your evidence in relation to the damaged
8 threads --
9 A. Okay.
10 Q. -- while you were working in the Hung Hom Station for
11 this particular SCL project, were you actually aware of
12 any incident where you were told or you heard that the
13 threaded parts of the couplers were damaged?
14 A. No.
15 MR KHAW: I have no further questions.
16 CHAIRMAN: Thank you.
17 MR PENNICOTT: Sir, before Mr To re-examines, if that's
18 indeed what he's going to do, I wonder if I might just
19 be permitted to ask a few more questions.
20 The point is this, that the witness gave some
21 answers to Mr Shieh regarding, it seemed to me, work
22 that was carried out post the completion on 28 May 2016
23 of the last part of the NSL slab, and he referred to
24 holes and various other, if I might euphemistically say,
25 bits and pieces that needed to be done.

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1 CHAIRMAN: Yes.
2 MR PENNICOTT: I just wondered whether it might help us to
3 understand what further work Fang Sheung and indeed
4 China Technology had to do beyond just the slab.
5 Now, of course we are 100 per cent primarily
6 concerned with the EWL slab and the NSL slab, but it
7 does seem to me, subject obviously to asking this
8 witness and perhaps some of the Fang Sheung witnesses
9 precisely what the position is, that there were other
10 works -- there was reference to core walls and other
11 aspects of work that still needed to be done -- which
12 perhaps also required rebar, reinforcement in the core
13 walls and so forth. And if it's right that this witness
14 saw rebar being cut in June 2016, as he says, then it's
15 possible, I suppose -- it's got absolutely nothing to do
16 with either the EWL or the NSL slab, but it may have
17 something to do with these other bits and pieces, for
18 want of a better expression.
19 I just wondered if that might be helpful, if
20 somebody else -- I'm quiet happy to do it myself, or if
21 you want to reflect on it and have a break. It's up to
22 you.
23 COMMISSIONER HANSFORD: Are you suggesting, Mr Pennicott,
24 that some of these other bits and pieces might involve
25 couplers?

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1 MR PENNICOTT: That's also another question that I wanted to
2 ask, because it arose in the context of that very answer
3 that he gave, which you obviously picked up, and I was
4 going to ask him about that as well. That was my
5 lead-in.
6 COMMISSIONER HANSFORD: I think that would be helpful.
7 CHAIRMAN: Yes. Thank you.
8 Further examination by MR PENNICOTT
9 MR PENNICOTT: Mr Chu, I'm sorry, but I get to have a few
10 more questions.
11 Could I ask you to be shown the transcript for
12 earlier this afternoon at [draft] pages 88 and 89. Has
13 everybody got that? Let me just read it out again.
14 Mr Shieh, at [draft] page 88, line 23, finished the
15 question with these words:
16 "So this document shows us that as far as the NSL is
17 concerned, the final pour date was 28 May 2016."
18 And your answer was this:
19 "I can tell you for sure. There were holes and
20 other ducts not yet done and they all had to do with ...
21 couplers."
22 Now, first of all, Mr Chu, could you explain your
23 reference to couplers there? What did you mean by that?
24 What were you referring to?
25 A. Some parapet walls or -- there were some ducts in the

<p style="text-align: right;">Page 105</p> <p>1 platforms, and I think there were some -- three of them, 2 and there were some holes, and we had to use couplers. 3 Q. All right. So you had to use couplers. That suggests 4 obviously you were using reinforcement and -- sorry, not 5 you were using, but you saw reinforcement being used? 6 A. Yes. 7 Q. This was work being done by Fang Sheung; is that right? 8 A. This was not our work and I wouldn't investigate into 9 it. I would only concern myself with our own work. 10 Q. With regard to those holes and ducts you were talking 11 about, were you responsible for doing the formwork in 12 relation to that, to those holes and ducts? 13 A. Typically, I had to do anything related to formwork, 14 because that was my responsibility. I had to arrange 15 staff to do the work in that area. 16 Q. Okay. Could I just ask you, please, to be taken to some 17 documents in the e-bundle. I'm afraid we don't have 18 them in the hard-copy versions, but I'm told that if we 19 look at B5, document 45.13 -- that's the folder -- "Site 20 diaries", then 45.77. That should be the MTRC diary, 21 starting on 1 June 2016. 22 So, Mr Chu, I doubt this is a document you have seen 23 before, but it is an MTR site diary. You can see that 24 from the very top, on the left-hand side. Do you see 25 that?</p>	<p style="text-align: right;">Page 107</p> <p>1 or where, I wouldn't know. 2 Q. Yes, I understand that. These core walls, is this the 3 sort of work you would be doing your formwork for, the 4 core walls; you would be involved in that, would you? 5 A. Yes, yes, I would do it. 6 Q. Right. I don't know if you can find 2 June, the next 7 day, it's SD8350 on my hard copy. This is 2 June, 8 Mr Chu; do you see that? 9 A. Yes. 10 Q. If we go back to the left-hand side, we can see again 11 a similar entry as to CTC, and again on 2 June at 12 number 4, we can see the rebar fixing to the core walls 13 is still continuing. 14 A. Yes. 15 MR PENNICOTT: Right. I think I've taken that as far as 16 I want to for now. We can perhaps discuss it with 17 Fang Sheung in due course as well. 18 CHAIRMAN: Thank you. 19 Anything arising from those questions? Good. Thank 20 you. 21 Re-examination by MR TO 22 MR TO: Okay, Mr Chu. I just have two questions to 23 re-examine you on. Can I show you a diagram called C40. 24 Before you say anything, Mr Chu, can I remind you of 25 your witness statement, paragraph 11, at page D973, as</p>
<p style="text-align: right;">Page 106</p> <p>1 A. Yes. 2 Q. And on the top right, you can see it's for 1 June 2016. 3 If we can go to the writing, the typescript on the 4 left-hand side, please, and pause there, you will see, 5 at item 2, it says: 6 "CTC", which I imagine is China Technology, 7 "-- dismantling of walings and struts to core wall ... 8 on NSL track slab. 9 -- scabbling to form vertical CJs to core wall ..." 10 Reference is given. 11 Then if we move down to item 4 there, we see: 12 "Fang Sheung -- rebar fixing to core wall A-W4-1, 13 A-W5-2, A-W14-1 on NSL track slab." 14 Mr Chu, is this the type of miscellaneous work, for 15 want of a better expression, that you're referring to, 16 were referring to just a moment ago? 17 A. Miscellaneous -- well, I don't know how you define that. 18 You know, steel fixing is the job of Fang Sheung. I'm 19 in charge of formwork. So this is a different type of 20 work. 21 Q. Yes. This is clearly not rebar that is being fixed on 22 the NSL slab itself, but clearly there are items of work 23 called core walls which clearly require rebar, according 24 to this diary? 25 A. I remember someone cut the bars, but for what purposes</p>	<p style="text-align: right;">Page 108</p> <p>1 well as D975, paragraph 18. Remember you were asked 2 questions relating to a machine? Now look at C40 again. 3 Is this the type of machine that you are referring to in 4 paragraph 18 of your witness statement on page D975? 5 A. In June, on that date, this was the machine I saw, or 6 this type of machine that I saw, same type, same model. 7 Q. Thank you. 8 Another question, can I take you to -- this is to do 9 with Mr Shieh's question asking about the slabs, the EWL 10 slab and also the NSL slab. Can I take you to H2, 11 page H534. 12 Just by looking at this diagram, Mr Chu, can you 13 tell us how many slabs are there? 14 A. I can't see it clearly. 15 Q. Okay. If we move on to H536, how many slabs are there; 16 can you see? 17 A. There are three slabs there. 18 Q. So can you tell us the first slab at the very top, what 19 slab is that? 20 A. On top, it's for train, the one at the bottom part is 21 also for train, and the middle part is for the 22 ventilation duct. So three levels altogether. 23 Q. So, when you say certain people were still doing work, 24 do you mean the middle one or the bottom one or the top 25 one?</p>

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1 MR BOULDING: This is leading.
2 MR TO: Sorry, I will rephrase. I apologise for that.
3 When they were doing rework, which slab were you
4 meaning?
5 MR SHIEH: Sorry, I'm not even sure whether the witness --
6 first of all, I'm not sure which part of Mr Chu's
7 evidence Mr To is re-examining on, and secondly, I'm not
8 even sure whether or not the witness had linked up that
9 part of his evidence purportedly re-examined on with any
10 diagram. And the witness, upon being shown this
11 diagram, could well feel obliged to refer his evidence
12 to something on this diagram. There's no foundation for
13 doing that.
14 MR PENNICOTT: Sir, with respect, I think it would be
15 appropriate, if Mr To is on the topic I think he's on,
16 which was the one I asked some questions about at the
17 end, if the question simply is, "From this diagram, can
18 you point out what work was being done in June 2016 and
19 afterwards", I think that's a perfectly appropriate
20 question, if that's the question he's trying to get at.
21 MR TO: Chairman and Commissioner, that's correct. Thank
22 you, Mr Ian Pennicott, for putting that. So I will just
23 ask the witness, if that's okay.
24 Mr Chu, can you tell us what work was done in June
25 afterwards, in which area? Can you point out to us?

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1 A. Now, formwork, it was in area A. Because, sorry,
2 sometimes we could do seven rounds -- at the bottom,
3 there were some 20 or 30 people working down there. For
4 the formwork procedures that followed the partition
5 walls and others, there were people working on those as
6 well at the time. But I remember, for area A, there was
7 cutting of bars, but for the other processes, there were
8 so many people working, it was like a battlefield, so
9 I couldn't tell for sure.
10 Sometimes the same person could walk up one level or
11 down one level, then people could be doing formwork or
12 partition walls. You know, that is the shear wall, the
13 big shear walls.
14 Q. I understand. Just looking at this diagram, can you
15 just point to us -- I'm just asking you a simple
16 question -- just point to us where other work was done
17 after June?
18 A. On the two sides or in the middle -- you know, the
19 partition walls in the middle, there are two partition
20 walls in the middle, in area A, and they were about
21 a metre or so, and then there's also the structural wall
22 linking up the three levels. They were also doing the
23 reinforcement walls at the bottom. So, in the middle
24 section, there were two shear walls here.
25 Q. Can someone see where he is pointing so he can show us,

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1 maybe in hard copy.
2 Mr Chu, there is a hard copy in front of you. Can
3 you show us?
4 A. These two shear walls, there were people working there
5 too, this one (indicating). In the middle here, the
6 shear wall.
7 Q. I understand.
8 INTERPRETER: It could be shear wall, it could be structural
9 wall, because the witness has an accent.
10 MR TO: Thank you very much.
11 A. Anyway, it's these two sections here, in the middle.
12 MR TO: I don't have anything further to re-examine.
13 CHAIRMAN: Good. Thank you very much indeed, Mr Chu. Your
14 evidence is now completed. You can go. There is
15 a possibility that you may be recalled at some stage, if
16 there are any further questions which the Commission
17 would like to ask you, but at the moment I think you can
18 work on the basis that you're free to go and will not be
19 called upon again. Thank you very much.
20 MR SHIEH: Chairman, can I just place on the record, because
21 when the witness pointed at the hard copy, the way he is
22 pointing doesn't actually show on the transcript. Can
23 I have it on the record that he is pointing in
24 a vertical direction?
25 CHAIRMAN: Yes, of course. He is pointing at the vertical

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1 drawings.
2 Good. Thank you very much indeed, Mr Chu.
3 (The witness was released)
4 MR TO: Mr Chairman and Commissioner, would it be possible
5 if we have 15 minutes' break so I can consult with our
6 client before he comes at this stage?
7 CHAIRMAN: Yes.
8 MR PENNICOTT: Sir, it's 3.45 so I would have thought it's
9 an ideal time for a break.
10 CHAIRMAN: Yes, we'll do exactly that. 15 minutes.
11 (3.46 pm)
12 (A short adjournment)
13 (4.05 pm)
14 MR PENNICOTT: Sir, the next witness is Mr Poon.
15 CHAIRMAN: Yes.
16 MR TO: If we may, Mr Chairman and Commissioner.
17 MR POON CHUK HUNG, JASON (sworn in Puntì)
18 (All answers given via simultaneous interpreter
19 except where otherwise specified)
20 Examination-in-chief by MR TO
21 Q. Mr Poon, correct me if I am wrong, you have made five
22 witness statements; am I correct?
23 A. Yes, five in total.
24 Q. Can I take you to D10.
25 A. Yes.

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<p>1 Q. That's your first witness statement. Can I refer you to 2 D41. 3 A. Yes. 4 Q. Is that your signature on this page? 5 A. Yes. 6 Q. And the date is dated -- the previous page, D40 -- 7 3 September 2018; correct? 8 A. Correct, 3 September. 9 Q. And the second witness statement, can I take you to 10 that: it's D889. 11 A. Yes. 12 Q. Can you look at D890. 13 A. Yes. 14 Q. Is that your signature on this page? 15 A. Yes, correct. 16 Q. And it's dated 14 September 2018? 17 A. Correct. 18 Q. Can I take you to your third witness statement. That's 19 D1001. 20 A. Yes, I see it. 21 Q. Can I refer you to D1004. 22 A. I see it. 23 Q. Is that your signature on D1004? 24 A. Yes. 25 Q. And this witness statement is dated 11 October 2018?</p>	<p>1 A. Yes. 2 Q. Mr Poon, do you wish to adopt these witness statements, 3 the five of them, including the last one, the amended 4 one, as part of your evidence? 5 A. Yes, correct. 6 Q. So, Mr Poon, if I may, I'm going to ask you some 7 questions. 8 A. Yes. 9 Q. Mr Poon, can I refer you to a diagram called H534. 10 A. (In English) I have it. 11 Q. Can you tell us something about this diagram? 12 A. The diagram shows area A of Hung Hom Station, A1. 13 Q. Mr Poon, can you slow down a bit. 14 Continue. 15 A. This diagram is area A1 of Hung Hom Station. It's the 16 cross-section. In the diagram, there is 17 a characteristic that only area A1 has mass concrete 18 filling. If you look at from the bottom, there's 19 an area between the left and the right. 20 Q. Can you slow down, because it's getting translated, you 21 see. 22 A. (In English) I don't think -- (Chinese spoken) 23 translation. (Chinese spoken) translation. 24 Q. But you are going too fast so he can't translate it. 25 Can you tell us anything further about this diagram?</p>
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<p>1 A. Correct. 2 Q. Can I take you to your witness statement number 4. It 3 is D2/D1058. 4 A. Yes. 5 Q. Can I refer you to D1064. 6 A. Yes. 7 Q. Can you see your signature on this page? 8 A. Yes. 9 Q. And the date of this witness statement is 25 October 10 2018? 11 A. Correct. 12 Q. Can I take you to your last witness statement, number 5. 13 That's D1082. 14 A. Yes. 15 Q. Can you go to D1089. 16 A. Yes. 17 Q. Can you see your signature there? 18 A. Yes. 19 Q. So this witness statement is dated 28 October 2018? 20 A. Yes, correct. 21 Q. On top of that, you have an amended version which you 22 handed to the Commission on 29 October 2018; is that 23 correct? 24 A. Correct. 25 Q. And your signature is on that as well?</p>	<p>1 A. I'm sorry, I don't have translation at all. 2 Q. You need to press this. 3 A. If you look at the dotted areas, where there are 4 triangles, that is mass concrete. 5 Q. Anything further? 6 A. And in area A, the platform A, there's a characteristic. 7 So aside from the bottom layer, the NSL slab, we also 8 have a large, long EWL slab. There's another layer in 9 between. 10 Q. Can I take you to H536. You have mentioned about the 11 middle layer. Can you show us where that middle layer 12 is on the diagram? 13 A. (Indicating) (Chinese spoken). 14 Q. So you are pointing at the location between which ones? 15 A. Between the NSL track slab and EWL track slab, we also 16 have a middle layer (indicating). 17 Q. Thank you. I'm going to show you next some photographs, 18 if I may. I'm going to show you six photographs and 19 then you can tell us something about those. 20 Can I refer you to D591. 21 MR PENNICOTT: Sir, I don't mind if Mr To wishes to show 22 photographs and ask specific questions. I don't just 23 want the question "Tell me about this photograph" and 24 then get a prepared speech. If he wants to ask 25 a specific question on a specific point, that's fine,</p>

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<p>1 but I don't want any more prepared speeches, please.</p> <p>2 MR TO: Got it.</p> <p>3 In diagram D591, can you see four persons there?</p> <p>4 A. (In English) Yes.</p> <p>5 Q. Can you see some of them are wearing uniforms and some</p> <p>6 of them are not?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. The ones wearing uniform, are they wearing any special</p> <p>9 clothing?</p> <p>10 A. They are wearing red and blue. It is the direct</p> <p>11 uniforms of Leighton.</p> <p>12 Q. And what about the other two with yellow safety helmets;</p> <p>13 what are they wearing?</p> <p>14 A. They are not wearing clothing, they are only wearing</p> <p>15 reflective vests. The reflective vests usually are Fang</p> <p>16 Sheung workers. They are always half-naked so they are</p> <p>17 always penalised or fined by the safety unit. So it is</p> <p>18 their practice to wear a reflective vest when they are</p> <p>19 not fully clothed.</p> <p>20 Q. In this diagram, you can see there are lots of red</p> <p>21 bubbles or square boxes. Why were there lots of bubbles</p> <p>22 and square boxes showing certain locations?</p> <p>23 A. Our company, when we submit each photograph, these are</p> <p>24 the annotations that we include.</p> <p>25 Q. So the one you pointed at the very bottom there</p>	<p>1 long, and when we see steel bars that have to be</p> <p>2 connected to couplers that are longer than 6 metres,</p> <p>3 I will reasonably suspect that those are fake. Steel</p> <p>4 bars longer than 6 metres, unless the threading machine</p> <p>5 is in open air and there are no physical constraints,</p> <p>6 otherwise you cannot thread the bar.</p> <p>7 Q. Okay, Mr Poon. Can I take you to another diagram or</p> <p>8 photo. It's at D593.</p> <p>9 Can you rotate it around?</p> <p>10 MR SHIEH: Mr Chairman and Mr Commissioner, can I lay down</p> <p>11 a marker, because Mr Pennicott said no prepared</p> <p>12 speeches. We have just had a prepared speech which did</p> <p>13 not form the subject matter of any witness statement,</p> <p>14 and my learned friend cannot pretend that this is some</p> <p>15 kind of a top-up evidence by pointing at some point of</p> <p>16 bubble, because in this Inquiry we have rules,</p> <p>17 hopefully, which are supposed to be obeyed, and if the</p> <p>18 rules are that if people have to put what they want to</p> <p>19 say in the form of a witness statement, we work on the</p> <p>20 basis of their witness statement, not on some bubbles</p> <p>21 which some unknown person had chosen to slip into one of</p> <p>22 several photographs, the provenance of which is not</p> <p>23 proven, and then this witness seeks to expand on. He</p> <p>24 has had legal advice, he has had five chances to put in</p> <p>25 witness statement.</p>
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<p>1 called -- can you see the box, it says "Normal threaded</p> <p>2 bar"?</p> <p>3 A. Yes.</p> <p>4 Q. So what do you mean by "Normal threaded bar"?</p> <p>5 A. Because every threaded bar, aside from being screwed on</p> <p>6 to the coupler, there's another requirement. The</p> <p>7 requirement is the lapping length. In the photograph,</p> <p>8 you see it is T40, and if you include the lapping length</p> <p>9 it should be 2 metres long in length.</p> <p>10 So, in my experience, over the years, this is</p> <p>11 a normal threaded bar.</p> <p>12 Q. If you go down, you will see there's a longer sort of</p> <p>13 a square box that says, "These long bars are suspecting</p> <p>14 fake thread bars ..."</p> <p>15 What do you mean by that?</p> <p>16 A. So this is an observation of abnormal threaded bars and</p> <p>17 I suspect that the ends do not have a thread. The</p> <p>18 reason is a normal bar, when they manufacture the</p> <p>19 threads, there will be some space limitations. There is</p> <p>20 a threading machine that bites the threads into the bar.</p> <p>21 So it's like sharpening a pencil; you have to insert the</p> <p>22 pencil into the pencil sharpener. Under normal</p> <p>23 circumstances, as far as I know, BOSA, in their workshop</p> <p>24 on site, they use a cargo terminal to do -- container</p> <p>25 trucks and these container trucks are over 6 metres</p>	<p>1 I just lay down a marker because what he has said</p> <p>2 has been said, and we know the issues in this case are</p> <p>3 about cut threaded ends of rebars, and what this witness</p> <p>4 had just said in relation to the bubbles, as far as</p> <p>5 I can see, doesn't bear any relationship to any issues</p> <p>6 that we can find in the witness statements. I just lay</p> <p>7 down a marker here. I can't erase what this witness has</p> <p>8 said, but if this witness doesn't control himself or if</p> <p>9 Mr To doesn't control his client, there could be many</p> <p>10 occasions like this, from numerous parties, I gather.</p> <p>11 MR BOULDING: Sir, I would adopt those submissions and make</p> <p>12 one further point: had this evidence been in a witness</p> <p>13 statement, it is likely, to say the least, that someone</p> <p>14 would have wanted to say something in response to it,</p> <p>15 but of course we are hearing it for the first time</p> <p>16 in-chief in circumstances where there is not a scintilla</p> <p>17 of this sort of evidence in his witness statement.</p> <p>18 MR SHIEH: And this witness and his company has had legal</p> <p>19 advice, so he can't hide behind something like "I don't</p> <p>20 know the procedure", so he knows full well the</p> <p>21 procedure. He cannot say, "I am minded to assist."</p> <p>22 This is not helpful at all.</p> <p>23 CHAIRMAN: Mr To.</p> <p>24 MR TO: Mr Chairman and Commissioner, I have got the point,</p> <p>25 and I'll try to be fast, in terms of maybe ten minutes</p>

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<p>1 at the most in terms of my examination-in-chief.</p> <p>2 CHAIRMAN: I don't think that's the point. I don't think</p> <p>3 anybody is trying to limit you to a time period. The</p> <p>4 point is -- and I confess I am still a little puzzled by</p> <p>5 what came out just now, because it doesn't seem to link</p> <p>6 in with anything -- I think the point is that statements</p> <p>7 have been made already. Those contain copious amounts</p> <p>8 of material. If there are new matters, then they should</p> <p>9 not just come in right at the beginning of</p> <p>10 examination-in-chief, unless they are of such small</p> <p>11 moment that one wants to merely use them in order to</p> <p>12 clarify something that's already there. But this could</p> <p>13 be, from what I can see, something of potential</p> <p>14 materiality, and it puts other parties at a disadvantage</p> <p>15 in being able to understand what is said, being able to</p> <p>16 know what they can expect to be said, because it's</p> <p>17 already appeared in a coherent and rational form in</p> <p>18 writing.</p> <p>19 MR SHIEH: And if I may say so, this is no small matter,</p> <p>20 because the last thing we would wish to happen is for</p> <p>21 this witness -- we have something to say about this</p> <p>22 witness -- the last thing we want to do or see is if</p> <p>23 this witness, if things turn against him, then turns</p> <p>24 around and says, "I was only trying to be helpful and</p> <p>25 I am stopped from doing so by the chairman by some</p>	<p>1 Okay, Mr Poon, can I show you just a few</p> <p>2 photographs, just to make things in perspective. These</p> <p>3 relate to your witness statement.</p> <p>4 Can I go to D594.</p> <p>5 A. Yes.</p> <p>6 Q. In this diagram -- I will ask you a question -- you said</p> <p>7 in your witness statement that the couplers were not</p> <p>8 screwed in properly. What can you see from this</p> <p>9 diagram?</p> <p>10 A. I'd like to supplement. In this diagram, in the middle</p> <p>11 of the picture --</p> <p>12 Q. Can you be brief?</p> <p>13 A. In the middle of the picture, the coupler has been</p> <p>14 removed.</p> <p>15 Q. Okay.</p> <p>16 A. This, aside from cutting of the bars, where the couplers</p> <p>17 attach to the diaphragm wall --</p> <p>18 CHAIRMAN: Sorry, I do apologise. Could you help me,</p> <p>19 actually. I've got this photograph. I obviously have</p> <p>20 a recognition of it but there's an awful lot of</p> <p>21 photographs, there's an awful lots of diagrams. Can you</p> <p>22 tell me in what context did this come before us</p> <p>23 originally?</p> <p>24 MR TO: This came in his witness statement in terms of the</p> <p>25 couplers not being screwed in properly.</p>
<p>Page 122</p> <p>1 technicality. Rules have been made. Procedures have</p> <p>2 been made. He is legally advised and he knows full well</p> <p>3 the rules of this Commission.</p> <p>4 CHAIRMAN: Mr To, that's clear. If a matter arises in this</p> <p>5 Inquiry, which I emphasise again, it is, it's an attempt</p> <p>6 for this Commission to be able to assist the Hong Kong</p> <p>7 public at large in finding out whether there are grounds</p> <p>8 for real concern about the building of these structures,</p> <p>9 but if there are extra matters that must, in the public</p> <p>10 interest, come forward, then there is a way of bringing</p> <p>11 them forward, as happened for example over the weekend,</p> <p>12 so that one would need to be able to say, "This is</p> <p>13 fresh, this could be of materiality, we need to put it</p> <p>14 down in writing in a rational way and give</p> <p>15 an opportunity for it to be answered."</p> <p>16 I appreciate that you've got some difficulties</p> <p>17 because you now have the witness about to give evidence,</p> <p>18 but with respect, if there were matters that still</p> <p>19 needed to be dealt with, then whatever frowns of</p> <p>20 criticism or lashings of the tongue that you may</p> <p>21 receive, it would have been your obligation to say,</p> <p>22 "Look, other matters have come up, we do need to put</p> <p>23 them into writing and present them in a proper form;</p> <p>24 could we have another half-day or something like that?"</p> <p>25 MR TO: I understand, Mr Chairman.</p>	<p>Page 124</p> <p>1 CHAIRMAN: Okay. So which witness statement is that? It's</p> <p>2 better perhaps -- we have to say, "Look, in your witness</p> <p>3 statement, you attached a particular photograph", then</p> <p>4 I know that it's something that everybody has had</p> <p>5 an opportunity to view already. Then what you are</p> <p>6 asking the witness to do is not to do anything other</p> <p>7 than to amplify, effectively, and further explain his</p> <p>8 evidence that has already been put down in writing.</p> <p>9 That way around, the matter proceeds in an orderly</p> <p>10 fashion, in addition to which I'm not confused.</p> <p>11 MR TO: I understand. Sorry. This photograph was not</p> <p>12 mentioned in his witness statement, but in terms of the</p> <p>13 words that were mentioned, in terms of couplers were not</p> <p>14 screwed in properly.</p> <p>15 CHAIRMAN: All right. So are you saying this is</p> <p>16 a photograph which nobody has seen yet?</p> <p>17 MR PENNICOTT: No, sir, that's not right. What's happened</p> <p>18 is in Mr Poon's first witness statement, 3 September</p> <p>19 2018, he only exhibited seven photographs, and Mr Shieh</p> <p>20 was emphasising this point during the course of his</p> <p>21 opening.</p> <p>22 CHAIRMAN: Yes.</p> <p>23 MR PENNICOTT: What then happened was that China Technology</p> <p>24 disclosed a quantity of documentation.</p> <p>25 CHAIRMAN: That's right, yes.</p>

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<p>1 MR PENNICOTT: Not referred to in anybody's witness 2 statement but just, "Here we are, here are some 3 documents", and this photograph certainly is included in 4 that general run of material that was supplied. Nobody 5 speaks to it, and as Mr Shieh has already said, and no 6 doubt we will all be cross-examined in due course about 7 it, nobody has proved it, we don't know where it comes 8 from, we don't know who took it, we don't know what its 9 provenance is, we don't know who's put the writing on, 10 we don't know anything about it. It's not spoken to in 11 any witness statement.</p> <p>12 As it happens, and I hesitated on the other one but 13 Mr Shieh got there first, but this one has no 14 annotations, not that have been superimposed on it. One 15 can see "EH19", so we know where we are in terms of 16 diaphragm walls and so forth.</p> <p>17 But again, Mr Shieh has made the point, Mr Boulding 18 has made the point, I've made the point: if there's 19 a specific question that needs to be addressed, let it 20 be put, but we can't just have this general -- I'm 21 afraid it is -- speech preparing. This has all been 22 prepared, it's quite obvious it's all been prepared, and 23 this is not, as both my learned friends Mr Shieh and 24 Mr Boulding have said, this is not the way to do it, I'm 25 afraid.</p>	<p>1 evidence, so everybody needs to know what evidence is 2 coming so they can prepare themselves to test it, and, 3 as I say, at the end of the day I'm in a position where 4 I need to be able to consider it, in conjunction with 5 Prof Hansford, in a rational way.</p> <p>6 MR TO: Got it.</p> <p>7 CHAIRMAN: Good. I hope that assists you.</p> <p>8 MR TO: It does, Mr Chairman.</p> <p>9 CHAIRMAN: This is not criticisms out of the air. They are 10 an attempt to ensure an orderly investigative process.</p> <p>11 MR TO: Thank you, Mr Chairman.</p> <p>12 I just have one question to ask Mr Poon. Can I show 13 you the diagram D600, this last diagram.</p> <p>14 CHAIRMAN: Sorry, what about this one we've just looked at? 15 Are you going to drop that one?</p> <p>16 MR TO: I'm going to drop it.</p> <p>17 CHAIRMAN: What the witness is doing now, the witness is 18 saying these show a coupler that is uncoupled or 19 whatever the term is. I'm not sure what he's meaning. 20 Is he meaning that this is where you remove a coupler 21 from the diaphragm wall, because it's damaged in some 22 way and has to be replaced? So we've heard evidence 23 already that you take out the old coupler that's 24 damaged, you feed in a new coupler, you cement it in 25 with epoxy resin or whatever it is you use, and that way</p>
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<p>1 MR TO: Okay, Mr Chairman and Commissioner. Maybe I will 2 just go for one photograph and maybe this will clarify 3 my opening in terms of examination-in-chief, and that's 4 the finish.</p> <p>5 CHAIRMAN: Mr To, let me emphasise that, as far as I am 6 concerned, as the Chairman of this Commission, my 7 overriding objective is not to determine, as I said this 8 morning, litigation of the classic kind, but as 9 an Inquiry for the public good. So what we need to try 10 and do is to understand the evidence and be able to come 11 to the truth of it, so that we can make recommendations 12 to the Hong Kong public via the Chief Executive, that 13 have some meaning and may be acted upon.</p> <p>14 In order to do that, there has to be an internal 15 regularity to the proceedings, because if there isn't, 16 I'm going to be all over the place. I'm going to end up 17 in mid-December trying to remember what photograph said 18 what and without any ability by going to the transcript 19 to be able to identify a flow of evidence. Do you see 20 what I mean?</p> <p>21 MR TO: Yes.</p> <p>22 CHAIRMAN: So I think that's why -- people are not saying 23 this to you or to Mr Poon on the basis of just purely 24 and simply attempting to be difficult. It's not that. 25 It's just that everybody needs to be able to test the</p>	<p>1 around you've now got a new coupler in place, ready to 2 be threaded.</p> <p>3 So I'm left a bit up in the air.</p> <p>4 MR TO: I will maybe ask this question, if you want. 5 Mr Poon, can you see on the floor of D594. 6 A. (Chinese spoken). 7 Q. What can you see on the floor in terms of the -- 8 A. On the floor there were --</p> <p>9 CHAIRMAN: No, sorry, again, we're going around -- if you 10 said to me, "This photo will be coming up later, can 11 I reserve on my position on this", then I would be 12 sitting back happily. But neither myself nor 13 Prof Hansford -- and it is an Inquiry, and it must have, 14 to some degree, a colouring of being inquisitorial, 15 where we can ask questions and try to get -- we don't 16 want what could be of real importance just kicked into 17 touch because you're not quite sure, with the greatest 18 of respect, how to deal with it technically. That 19 doesn't help me or Prof Hansford.</p> <p>20 MR TO: So, Mr Chairman, can I reserve this photograph so 21 that it can be cross-examined by my fellow --</p> <p>22 CHAIRMAN: You can do that with the greatest of pleasure.</p> <p>23 MR WILKEN: I'm terribly sorry, sir, but we can't do that 24 because Mr Shieh would be cross-examining in a vacuum. 25 CHAIRMAN: I see. You are quite right.</p>

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<p>1 MR WILKEN: The other issue of course is the extent to which 2 this witness is now straying, not into factual evidence, 3 but into expert evidence as to his opinion drawn from 4 a photograph which is not proven. 5 CHAIRMAN: Yes. 6 Mr Pennicott, we are going around in circles here. 7 MR PENNICOTT: We are, sir, yes. 8 CHAIRMAN: In all honesty, are we going to simply say, 9 "Fine", because it's now 4.30, I would rather adjourn 10 and have a situation -- I know it means burning the 11 midnight oil, but this witness has only just started his 12 evidence in the sense that nothing has actually been 13 said other than who he is. 14 MR PENNICOTT: Yes. 15 CHAIRMAN: And perhaps we could put in, by a proper process 16 of putting in a further statement. 17 MR PENNICOTT: Sir, ultimately of course I'm in your hands. 18 I'm bound to say that whilst I am counsel for the 19 Commission, and I am doing my best to be as independent 20 and patient as I possibly can, and I do regard myself as 21 a rather patient individual, generally speaking, I'm 22 afraid even I'm beginning to lose it. Having burned 23 some rather serious midnight oil last night, I'm not too 24 keen on doing it tonight, quite frankly. 25 Sir, of course, if one goes to this photograph, and</p>	<p>1 dramatically important evidence has been missed", and we 2 are in danger, as a result, of a finding which can be 3 overturned on the basis that there are structural 4 concerns. 5 Now, I'm not in any way suggesting that the points 6 raised already have been merely clever lawyer points, 7 and I'm not suggesting that they will be. I am 8 fortunate to have counsel of very considerable 9 experience before me. But counsel have to appreciate 10 that Prof Hansford and I also have a solemn duty to 11 fulfil. 12 Now, if I'm suddenly confronted or Prof Hansford is 13 suddenly confronted with a photograph that's meant to 14 show perhaps that there's a failure to replace faulty 15 couplers where they should be replaced, or perhaps it's 16 a nothing, perhaps this is just another photograph among 17 many hundreds of photographs that once we examine it 18 will not prove anything. But I just need to have some 19 orderly process where those kinds of decisions can be 20 made by Prof Hansford and myself. 21 Please forgive me, I appreciate it's a bit of 22 a judicial tirade and I don't mean it to be, but 23 I'm just saying it has to be a combined exercise, where 24 you appreciate what Prof Hansford and I are dealing 25 with, and we are not dealing with, "Have you proved your</p>
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<p>1 the problem that one has of course is because it's not 2 been proven in the proper way -- I mean, there is no 3 guarantee that I or Mr Shieh or Mr Boulding or Mr Khaw 4 or Ms Chong will actually go to this photograph in 5 cross-examination. We might think we don't need to. 6 This is a photograph, a snapshot, taken apparently on 7 22 September 2015. We can see the two diaphragm walls, 8 so we can locate it, we can find out which area it's in, 9 we can find out when the rebar started, when the rebar 10 completed. This is probably just a few days into the 11 rebar. I've no idea because I was just about to check 12 before you asked me to stand up again. So this is some 13 incompleting rebar; what does it tell us? Not a lot, 14 frankly, and that's the problem. 15 CHAIRMAN: That may be. The problem that I face -- and let 16 me emphasise this again -- this is a Commission of 17 Inquiry. 18 MR PENNICOTT: Yes, sir. 19 CHAIRMAN: And what Prof Hansford and I have to do is we 20 have a responsibility on us to be answerable to the 21 public, so that anything that we may put down in 22 a report cannot be undermined substantially by people 23 who have perhaps listened and read the transcript, 24 saying, "There is a lot of clever lawyer points gone on 25 here, and as a result of those clever lawyer points some</p>	<p>1 case and are you entitled to damages?" We are dealing 2 with something a bit more profound than that, in the 3 public interest. 4 MR PENNICOTT: Yes. 5 COMMISSIONER HANSFORD: Can I add to that -- I'm struggling 6 with this a little in that we received a fifth witness 7 statement at -- well, this morning. 8 MR PENNICOTT: As far as you are concerned, yes. 9 COMMISSIONER HANSFORD: As far as I'm concerned, yes. 10 I think it was still this morning, just after midnight, 11 but anyway, extremely recently. 12 MR PENNICOTT: Yes, sir. 13 COMMISSIONER HANSFORD: Which referred to a number of 14 photographs. 15 MR PENNICOTT: Yes. 16 COMMISSIONER HANSFORD: And now we are here seeing some 17 other photographs. 18 MR PENNICOTT: Yes, sir. 19 COMMISSIONER HANSFORD: And I'm wondering why they weren't 20 included in the last witness statement that we received. 21 MR PENNICOTT: Sir, that is I think the point that I am 22 making and Mr Shieh and Mr Boulding and so forth, that 23 everybody accepts that these photographs have been 24 there, as it were, since day one, since they were 25 disclosed, and certainly I sort of accept the general</p>

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1 proposition that it would be most helpful if this
2 witness -- China Technology generally, but it sounds as
3 though it's this witness in particular -- if they want
4 to use these photographs to make a series of points --
5 well, they could do so. I think the point that's being
6 made is that they've had plenty of opportunity to do so,
7 and obviously Mr To has taken the witness to a couple of
8 photographs, but I can tell you that if one turns up in
9 bundle D2 where these photographs start, there's
10 probably, I don't know, maybe 10, 12, 15 photographs
11 there, one or two of which are attached to the witness
12 statement, but certainly the couple we have looked at
13 are not attached to the witness statement and not spoken
14 to.

15 So if the intention now is that this witness wishes
16 to speak to each of these photographs insofar as he
17 hasn't already, really it's a matter for the Commission.
18 If the Commission feels it would be helpful to have that
19 evidence, then I'm afraid it's going to be time out
20 again in order for that to take place, and of course
21 I would say, on behalf of the Commission, that I am
22 going to then need time to digest it to see what
23 questions I need to ask and no doubt my learned friends
24 for the other parties will need the same indulgence.
25 I appreciate entirely what the chairman says, but

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1 the problem everybody is finding themselves in is it
2 seems to be every time we make a move forward, China
3 Technology seem to bring us back again. It doesn't seem
4 to be anybody else, as far as I can work out.

5 But, sir, if you will be assisted by some narrative
6 explanation, and you felt it appropriate to say to China
7 Technology and Mr Poon, "Right, this is your last
8 opportunity in terms of explaining photographs to me",
9 and give them an opportunity to go away and do that --
10 frankly, that's got to happen now, because I'm about to
11 start cross-examining this witness and that exercise
12 can't possibly happen once I've embarked on the
13 cross-examination and my learned friends have embarked
14 on their cross-examination.

15 CHAIRMAN: I appreciate that.

16 MR PENNICOTT: So it's a real last-chance saloon. As I say
17 and Prof Hansford says, four photographs that we had on
18 Friday grew into 11 photographs that we had last night,
19 and now we are being able to another couple of
20 photographs, but I know that there are a number of other
21 photographs in this run, some of which I accept are
22 already spoken to by Mr Poon but not by any means all of
23 them. It really is a matter for Mr To and Mr Poon and,
24 as you say, if you are going to be helped.
25 CHAIRMAN: That's exactly it.

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1 Forgive me, Mr Shieh, just a second.

2 My concern is just that if suddenly a photograph is
3 put before us, and Mr To considered it important enough
4 to try and elucidate some explanation, and it shows
5 rebars and diaphragm walls and a suggestion made that
6 perhaps something is not as it should be, just, with the
7 greatest of respect, for Mr To to say, "Technically, in
8 a legal sense, it's a bit too hard to deal with this,
9 I'll just drop it" is no good. If it's a legal case, if
10 you are suing for damages, I will say, "Well, that's
11 a decision made tactically in the throe of things", but
12 this is in the public interest.

13 So what I would much rather have is a situation
14 where Mr To tomorrow can come back and say, "We are not
15 going to make anything of this." Then I can say it
16 hasn't been dropped because there's been a legal
17 skirmish and somebody has been wounded. No, it's been
18 dropped because it's been considered, it's been
19 discussed, and it's not going to help anybody", and
20 I can rely then on Mr To's expertise to give me that
21 satisfaction.

22 Now, what does that mean? That means that, just as
23 you have said, I think Mr To has to be able to look at
24 the rest of these photographs and discuss them with
25 Mr Poon, and something has to be put in writing, so that

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1 we know where we stand, and if anything further is going
2 to come in, it needs to be included, and if anything
3 thereafter should suddenly arise, well, if there's
4 compelling reason in the public interest that it should
5 be entered into evidence, we will allow that, subject to
6 proper process.

7 Now, Mr Poon's already been sworn in, but with the
8 greatest of respect he is not really said anything yet,
9 other than sort of by way of introduction, if I can put
10 it that way, and I don't think, therefore, that I am in
11 a public inquiry going to undermine the fairness of that
12 inquiry by saying that Mr Poon should be permitted
13 effectively to give instructions in respect of these
14 documents overnight and then he can start his evidence
15 properly tomorrow.

16 How long are you going to need, Mr To?

17 MR TO: Maybe five or ten minutes in terms of discussing
18 with the client these photographs.

19 CHAIRMAN: All right. I'll give you until 5 o'clock.

20 You've got quarter of an hour to discuss what, if
21 anything, you wish to put in, and if you wish to put it
22 in, it must be in by tomorrow morning.

23 MR SHIEH: Mr Chairman --

24 CHAIRMAN: Sorry, Mr Shieh, yes.

25 MR SHIEH: -- before Mr To embarks on that exercise, may

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1 I just seek to assist, and it is genuine assistance.
2 First of all, it is reassuring to hear that
3 Mr Chairman did not intend to say that any one of us are
4 taking clever lawyer points, because there are media out
5 there, probably some of which are fanned by Mr Poon to
6 capitalise upon each and every word that could be
7 twisted in his favour, so it is reassuring to be on
8 record that Mr Chairman is not suggesting that Leighton
9 or MTRC are taking clever lawyer points.
10 CHAIRMAN: No. In fact, let me emphasise that. A lot of
11 witnesses have given their evidence already. I haven't
12 stopped anybody on the basis that their line of
13 questioning is improper. I like to think I fully
14 understand the fundamental point which is one going to
15 credibility, and the questioning has been put by
16 experienced counsel and it's been put quite properly,
17 and continues to be.
18 MR SHIEH: Thank you, Mr Chairman, but more importantly,
19 when I say I'm trying to assist, we've heard what has
20 come from the Commission as to the need for maybe
21 further evidence, but first I wish to repeat to this
22 Commission what I had said in my opening concerning
23 Leighton's view of what this witness and China Tech is
24 trying to achieve. So that is something -- of course,
25 we are not seeking to ask the Commission to make

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1 a finding now, in the middle of a hearing, but one must
2 bear in mind that there is the background of what we say
3 this witness is trying to achieve.
4 Secondly, we absolutely share the Commission's view
5 that the credibility of this Inquiry is paramount, and
6 therefore we will not wish it to be said that this
7 Commission has somehow shut out material evidence which
8 this witness is eager to put before the Commission, but
9 some clever lawyer is desperately trying to exclude, but
10 as against that, can I remind this Commission of Day 1
11 transcript -- it can be put up, hopefully -- page 88.
12 Can I just tell the Commission what the point is?
13 The Commission will remember, on Day 1 of the hearing,
14 Mr To actually prefaced or attempted to put in 40-odd,
15 he said, or 20-odd, I forgot the precise number,
16 photographs that he said at some stage were in a USB
17 given to the police or whatever, and then it turned out
18 that he said, and I read from page 88 of the
19 transcript -- he said:
20 "Mr Poon merely just wants to disclose any
21 information that is available to himself [to] the
22 Commission, if they want to look at it. He doesn't
23 really want to rely on them at all."
24 That is on record. Day 1, Mr To said he really
25 doesn't want to rely on them at all.

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1 CHAIRMAN: I remember that.
2 MR SHIEH: And we know what the rules are if you rely on
3 anything you prove it in a witness statement and you
4 explain it.
5 Now, having committed to the statement that he
6 doesn't really want to rely on it at all, for Mr Poon to
7 rely on the four on Friday which grew to 11 is already
8 an about-turn on what he, through his counsel, had said
9 on Day 1.
10 For him now to say "Actually, there may be more"
11 stands the risk of actually hijacking this Commission.
12 It becomes a heads he wins, tails we lose kind of
13 situation, because whatever happens is he would always
14 stand firm and he would spin it to the media, "I have
15 tried my very best to help the Commission, it is just
16 that they won't do their homework and look at it, and
17 therefore I am being unfairly treated." I am disclosing
18 some of my hand but I feel I am obliged to say this.
19 So, Mr Chairman and Mr Commissioner, in making any
20 decision one must always bear in mind the undercurrent
21 that anything said to have been done or decided could be
22 twisted and spun against the Commission, despite all
23 good wishes, and despite the absolute about-turn that
24 China Tech has engaged in since Day 1. It is not
25 an excuse for them to say, "We are only now forced to go

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1 through 40,000-odd photographs", because they've had
2 whatever number of photographs in their possession since
3 they began to write emails in January, and then in
4 September 2017, in May 2018, on 10 July. We can take
5 numerous dates. If they were to go through 40,000-odd
6 photographs, there's ample number of minutes and
7 workforce for them to be able to do so, and Mr To's
8 statement on Day 1 -- I'm going to repeat that numerous
9 times for the media to copy -- Mr Poon did not want to
10 rely on them last Monday.
11 I'm sorry, I don't wish to go on some kind of
12 counsel's tirade, but this is something that we
13 absolutely wish the Commission to bear in mind. No
14 finding is needed but this is going to be one of the
15 possibilities that we would ask the Commission to pitch
16 every decision against. We are up against someone who
17 is keen to exploit everything and spin the media to his
18 advantage.
19 CHAIRMAN: Thank you.
20 MR BOULDING: Sir, I do not intend to labour the point, but
21 I do associate myself with the remarks and observations
22 of my learned friend Mr Paul Shieh.
23 You will recall, in my opening, now a week ago
24 I think, that I said to the Commission, and I meant it,
25 that MTR considered that the criticism that had been

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1 made of it in the press was simply unjustified and
2 unsubstantiated.
3 Whilst you have been kind enough to retract any
4 suggestion that I or indeed my learned friends are
5 engaging in any clever lawyer points, I do want to
6 emphasise that I'm not and I do not regard my learned
7 friends as doing that either. I would like to emphasise
8 again that we are here, MTR are here, to enable you to
9 get to the end of this Commission of Inquiry and make
10 such recommendations as you consider appropriate. We
11 are here to assist and we will assist.
12 But one of my functions is to ensure that there is
13 fair play, certainly fair play so far as the MTR is
14 concerned. We were at photograph D594 and, as has been
15 pointed out already, Mr Poon was just about to give some
16 sort of opinion as to what one could see in the picture,
17 and I anticipate that shortly after that, there would
18 have been some criticism of Fang Sheung and/or Leighton
19 and/or MTR.
20 Now, if that's the purpose of Mr To's
21 examination-in-chief -- and I suspect it is -- we've
22 obviously got to have a proper opportunity to deal with
23 that.
24 So I'm sorry to labour the point but that's what
25 I would like to say, sir.

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1 CHAIRMAN: No, that's perfectly all right. You are entitled
2 to make whatever statement you wish. If I have been
3 misinterpreted, please forgive me, but I think if you go
4 back on the transcript I did not suggest at any stage --
5 at any stage -- that you had indulged in lawyer tricks.
6 What I said was, if you go back to the transcript, I did
7 not want a situation where this Commission at a later
8 stage was criticised on the basis that it had allowed
9 certain evidence to be kicked into touch through lawyer
10 tricks. I had made it quite clear that the questioning
11 so far, in my view, has been entirely proper, because
12 I understand the nature of it. And you can take it from
13 me that if I felt that it was not, I would have stopped
14 you, on the turn.
15 I hope I make myself understood.
16 MR BOULDING: It's very clear.
17 CHAIRMAN: And criticisms, indirect, of that kind, in order
18 to try to gain some advantage is not acceptable.
19 I have not said anything in this Commission intended
20 for the benefit of the press. That is not the purpose
21 of myself or Prof Hansford. Our purpose is to try to
22 get to the truth, to act in the public interest. That's
23 the burden that's been put on our shoulders and that's
24 the burden we will deal with.
25 If I had criticised you in any way, then I would

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1 have accepted it, I would have seen you in private and
2 I would have apologised. But I have not. So, before
3 coming at me, please just read the transcript.
4 What I'm going to do is I'm going to give you
5 quarter of an hour, Mr To, to consider your position.
6 All right?
7 MR TO: Yes, Mr Chairman.
8 CHAIRMAN: And I will see Mr Pennicott as well. Thank you.
9 (4.54 pm)
10 (A short adjournment)
11 (5.10 pm)
12 MR TO: Mr Chairman and Commissioner, I have spoken to the
13 client, and the client will not rely on those
14 photographs at all.
15 CHAIRMAN: All right. Good. And you are aware, as
16 everybody else I'm sure is aware, whether it's through
17 you or if anyone else wishes to bring more evidence in,
18 it has to be put before this Commission by way of
19 an affirmation which adopts it and explains it, its
20 provenance and its detail.
21 MR TO: Yes, I'm aware of that.
22 CHAIRMAN: Thank you very much.
23 MR TO: Mr Chairman and Commissioner, I apologise for the
24 inconvenience caused. In terms of examination-in-chief,
25 I have no further questions to put to this witness,

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1 Mr Poon.
2 CHAIRMAN: Good.
3 Then I think, Mr Pennicott, you wish to
4 cross-examine, and perhaps it's best for us to deal with
5 that tomorrow morning at 10 am.
6 MR PENNICOTT: Yes, thank you.
7 CHAIRMAN: Good. Thank you all very much.
8 (5.11 pm)
9 (The hearing adjourned until 10.00 am the following day)
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