

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
26 arrived and went. They were sent a chaser at about 1.30

1 by those instructing me. No response was received,
2 either by way of a courtesy acknowledgment or an apology
3 for not having served the witness statement. However,
4 at 4.16 Sunday afternoon, without any explanation or
5 apology for its lateness, a witness statement of Mr Poon
6 was faxed or emailed to us. It runs to eight pages. It
7 has a number of exhibits. The exhibits were not sent to
8 us at that stage with the witness statement.

9 At 4.39 on Sunday afternoon, a chaser was sent
10 again, marked red and "Urgent", calling for the
11 exhibits. Between 1654 and 1726, that is between 4.54
12 and 5.26, late yesterday afternoon, the exhibits turned
13 up in five batches. We then had, therefore, at 7.26
14 last evening what we thought was the complete package.

15 By way of postscript, at around about 9.45 this
16 morning, we were handed another copy of the witness
17 statement, with some manuscript amendments marked upon
18 it. I've had a quick look at those. There is one
19 curiosity but hopefully nothing much may turn on those
20 late manuscript amendments.

21 Sir, the position is this, so far as the other
22 parties, the interested parties, are concerned. Very
23 late last night, at something like 12.32, we received
24 a message from Mayer Brown on behalf of the MTRC,
25 obviously registering their concern and their
26 dissatisfaction with what had happened in terms of the

1 service of this rather late witness statement, and
2 stating -- perhaps the most relevant point for the
3 purposes of now -- that they wish to reserve their
4 position to cross-examine Mr Li, who is not yet in the
5 room for obvious reasons, after we have had
6 an opportunity to consider the photographs referred to
7 in Mr Poon's fifth witness statement. If I may say so,
8 an entirely understandable stance to take.

9 This morning, at 8.29, we received a message on
10 behalf of Leighton, from those instructing my learned
11 friends Mr Shieh and Mr Wilken, saying they agree
12 with -- it's actually Mayer Brown, not JSM --
13 Mayer Brown, and added thereto "no answer to lateness,
14 (ie defiance of the Commissioners' directions) and no
15 explanation as to whom sent Mr Poon the 4 photographs
16 (produced ... on Friday ...) and how".

17 So it would appear, if I have understood the
18 agreement that they are expressing, they also wish to
19 reserve their position to cross-examine Mr Li after
20 having had an opportunity to consider the photographs.

21 Sir, I don't know whether that is their position as
22 I stand here now or whether they wish to take some other
23 course, so perhaps it would be best, in the first
24 instance, to hear from the MTRC and Leighton as to what
25 they wish to do.

26 MR BOULDING: Go ahead.

1 MR WILKEN: Good morning, sir, Professor.

2 Our position is we have reserved our position. We
3 were told on Friday, and it's page 49, lines 20 to 21,
4 that these photographs were going to prove that there
5 was still pouring going on in area B on 14 January.
6 They don't.

7 If one looks at paragraph 9 of Mr Poon's
8 fifth statement, it now appears to be common ground that
9 pouring finished on 12 January. Therefore, there was
10 absolutely nothing revelatory about these photographs,
11 and the basis on which the Commission adjourned turns
12 out to be an incorrect one.

13 In terms of Mr Li's evidence, we do reserve our
14 position, but it does seem to us that, given
15 paragraph 9, Mr Poon has now confirmed the line of
16 cross-examination I put to the witness, that he can't
17 have seen anything on the 14th because it was poured,
18 and that therefore, rather than helping his witness,
19 Mr Poon has basically destroyed his credibility even
20 further.

21 On that basis, therefore, sir, I have no further
22 cross-examination at this point, albeit our position is
23 formally reserved because we haven't yet worked through
24 the photographs.

25 Unless I can assist further, sir.

26 CHAIRMAN: Thank you very much.

1 MR BOULDING: Good morning, sir. Good morning, Professor.

2 I would adopt those observations of my learned
3 friend. I have nothing to add on those matters this
4 morning, save that we still have not had a full and
5 proper opportunity to consider everything that Mr Poon
6 says, and in particular what he says the photographs
7 show, and in those circumstances I would formally
8 reserve my position to ask Mr Li some questions about
9 those photographs on another day, I fear. But what
10 I can say is that it doesn't appear very likely.

11 CHAIRMAN: Thank you.

12 MR PENNICOTT: Sir, unless anyone else wants to say
13 anything, can I then suggest what I think should happen?

14 Sir, it is my role as counsel to the Commission to
15 occasionally have to step in and try to sort a few
16 things out. It seems to me, with respect, that it would
17 be inappropriate, if indeed this is what Mr To has in
18 mind, for him to try to put some of these matters to
19 this witness in re-examination and some of these
20 photographs in particular.

21 Insofar as I believe some of the photographs need to
22 be put or matters arising out of the photographs need to
23 be put to Mr Li, I would propose that I do that. It may
24 be that if I do that, then Mr Wilken and Mr Boulding for
25 Leighton and MTRC respectively may be perhaps in
26 a better position to know whether they wish to put any

1 further questions, whether they need time to think about
2 those questions, or whatever the position may be.

3 That's what I would propose to do.

4 There is a way into this, and I assume there is no
5 way Mr Li can hear what I'm saying -- I assume he is
6 locked away in the witness room at the back -- but I do
7 think it fair to point out that during his
8 cross-examination by Mr Wilken, he referred not only to
9 some I-beams, which we did look at in one photograph
10 with him, with an I-beam in, but he also referred to
11 some steps. He referred to some steps that he was
12 perhaps looking down, we are not entirely sure, we don't
13 know where those steps are, but if you've had
14 an opportunity of looking at the photographs, at least
15 two of them do show some steps. They are perhaps not in
16 the area that Mr Li says he was, they seem to be in
17 a different area, but I'm not going to put the
18 photographs to him directly, immediately, because,
19 I shall ask him some questions leading up to that, and
20 will put the photograph if I need to.

21 Sir, that was my proposed course of action, and that
22 may just, as it were, finish this point off, and then
23 Mr Poon will just have to be cross-examined when we come
24 to him.

25 CHAIRMAN: May I ask about the diagram attached to Mr Poon's
26 affirmation, which appears to show an area co-lateral to

1 A1, called A2.

2 MR PENNICOTT: Yes, sir. That's a very --

3 CHAIRMAN: Sorry, in respect of that, there is mention of
4 14 January as being the pour date.

5 MR PENNICOTT: Yes, sir. My understanding is that, having
6 spent some time looking at this this morning, insofar as
7 Mr Li's evidence is concerned, the area A2 is something
8 of a red herring.

9 However, when it comes to Mr Poon, it may be
10 a relevant point to ask him about, but as far as I'm
11 aware there is no suggestion from Mr Li, in his evidence
12 to date, that he was anywhere near area A2, as shown on
13 this schematic. So, so far as his evidence is
14 concerned, I'm reasonably content we don't need to worry
15 about it.

16 CHAIRMAN: Yes.

17 MR PENNICOTT: But we do need to worry about it potentially
18 going forward, and if I might just put some flesh on the
19 bones about that, since you have raised it: we have
20 looked at Leighton's method statement, concreting method
21 statement, to which Mr Poon refers in this fifth witness
22 statement. It does indeed show an area A1 and
23 specifically an area A2, and we can see that, if you are
24 interested in seeing it, at bundle C10/6757. If we can
25 just blow the diagram up slightly. Thank you very much.
26 That's fine.

1 CHAIRMAN: I see that.

2 MR PENNICOTT: Sir, our understanding now -- I have to say
3 this is a new point on us; perhaps others were aware of
4 it but I wasn't until last night -- there is indeed
5 an area marked A2, shaded blue, and it seems to be
6 outside of the diaphragm wall, the other side of the
7 diaphragm wall, as it were, and, if Mr Poon's schematic
8 is correct, at a lower level than the top of the EWL
9 slab.

10 Now, I anticipate that you may have raised it
11 because there may be -- I don't know, I just haven't had
12 chance to look at this yet in any detail -- a question
13 as to whether A2 is within the terms of reference,
14 whether it actually forms part of the EWL slab. I'm
15 a little bit doubtful about that at the moment, I'm
16 bound to say, but I need to look at that a bit more, if
17 I may.

18 But, sir, as I say, for present purposes, I'm rather
19 hopeful that A2 is not relevant to the current witness
20 and we can park it until everybody, me in particular,
21 has done some more research on it.

22 CHAIRMAN: Yes. Would anybody like to make any comments in
23 respect of the suggestion by counsel to the tribunal or
24 to the Commission?

25 MR WILKEN: Sir, we are perfectly happy with that course of
26 action. We also believe A2 is a red herring in relation

1 to this witness, because of course this witness was
2 adamant that it was area B on the EWL slab.

3 MR BOULDING: Sir, for our part, we think that
4 Mr Pennicott's suggestion is indeed very sensible and
5 are happy for him to proceed on that basis.

6 CHAIRMAN: Yes.

7 Mr Khaw?

8 MR KHAW: I am also happy with Mr Pennicott's suggestion.

9 CHAIRMAN: Do any other counsel wish to make any
10 observation?

11 MR TO: Mr Chairman and Commissioner, first of all,
12 I apologise on behalf of the client who's instructing me
13 because this only came up at the last minute and we have
14 been working very hard over the weekend to do this.
15 I apologise to everyone sincerely on this.

16 The second point, I totally agree with counsel for
17 the Commission in terms of what he's trying to do in
18 terms of proceed with these proceedings.

19 CHAIRMAN: Yes. Good. Thank you.

20 I also agree that it's the most sensible way
21 forward. It's unfortunate that matters have panned out
22 as they have. All counsel are aware, however, that we
23 are not, in these proceedings, involved in adversarial
24 litigation of the classic kind. What we are involved in
25 is a Commission of Inquiry seeking, through our joint
26 endeavours, to find out what the truth is, so we can

1 report to the Chief Executive and give assurances to the
2 Hong Kong public. So the whole purpose of this is very
3 different from a classic adversarial piece of litigation
4 and I think what counsel suggests fits in with the
5 underlying purpose.

6 Now, the next and final question is whether counsel
7 are happy to proceed now or whether counsel or any
8 number of them feel they still need a short period of
9 time to consider the papers.

10 Mr Pennicott?

11 MR PENNICOTT: For my part, I'm happy to proceed
12 immediately, sir.

13 CHAIRMAN: All right.

14 MR WILKEN: Sir, for Leighton's part, we would like to get
15 moving.

16 CHAIRMAN: Good.

17 MR BOULDING: So would we, sir.

18 CHAIRMAN: Good. Nobody else is commenting, so I'll assume
19 we are going to go ahead now. Thank you very much.

20 So we need to call Mr Li.

21 MR PENNICOTT: Let's call Mr Li back.

22 MR LI RUN CHAO (on former affirmation in Puntì)

23 Further examination by MR PENNICOTT

24 Q. Mr Li, good morning.

25 A. 早晨，早晨。

26 Q. I apologise that you've been kept waiting, not only on

1 Friday afternoon but also for a small part of this
2 morning.

3 Mr Li, first of all, can I ask you a couple of
4 general questions. You'll recall the warning that the
5 chairman gave you on both Thursday evening and Friday
6 lunchtime about not speaking to anybody whilst you are
7 giving your evidence. Do you remember those warnings?

8 A. 記得。

9 Q. Have you obeyed those warnings and not spoken to anybody
10 at all about your evidence?

11 A. 有，因為我公司出咗個WhatsApp，係唔可以畀任何人同我聯繫嘅。

12 Q. Can you assure me and the Chairman and Commissioner,
13 Mr Li, that nobody has mentioned the word "photographs"
14 to you over the weekend?

15 A. 相？有人同我提過呢一樣嘢。

16 Q. All right. Thank you very much.

17 Could you ask you, please, to be shown the
18 transcript for Friday morning at page 39. You will
19 recall, Mr Li, that on Friday morning, Mr Wilken for
20 Leighton was asking you a number of questions. Right at
21 the top of page 39, he had asked you a question or put
22 the point to you that you could have seen no rebar being
23 installed in area B on 12 January because the concrete
24 was in the course of being pumped in and laid and
25 placed. Do you remember that?

1 A. 佢係有講過呢一個問題。

2 Q. Yes. And your answer, at the top of page 39, was as
3 follows. You said:

4 "Because I truly couldn't tell the different bays
5 and areas. Perhaps I was referring to area B, but it
6 could mean the vicinity. I really cannot recall the
7 exact locations."

8 A. 係。

9 Q. Then Mr Wilken said this:

10 "But area B is the last area to be concreted.
11 Therefore, they cannot be working on rebar anywhere
12 close to area B; correct?"

13 And you answered:

14 "I remember, at the time, there were some descending
15 steps around area B. You need to take a few steps down
16 before you reach area B. That's what I recall."

17 A. 係。

18 Q. Now, Mr Li, do you agree with this, first of all: if
19 area B was being concreted on 12 January, the steps that
20 you there refer to could not have actually been in
21 area B?

22 A. 因為當時我係即係第一日返地盤，你具體嘅位置，我係--真係我唔係好識分。

23 Q. Okay. That's not an answer to my question. You've now
24 got some years of experience, Mr Li, in formwork and
25 concreting, I imagine. It must follow, must it not,

1 that if area B is being concreted, it cannot itself,
2 that is area B, have any steps constructed in it?

3 A. 我唔同意。

4 Q. Why do you disagree?

5 A. 因為你落緊石屎同埋有幾級梯係冇衝突㗎。

6 Q. So are you suggesting then that perhaps an area was --
7 there was some formwork in a particular area
8 constructed, some steps were in area B already, and then
9 the concrete was placed around that formwork, so as not
10 to interfere with the steps?

11 A. 可唔可以講多次？講多次。

12 Q. I'm trying to work out how you think, in a top-down
13 construction method, some steps would already have been
14 constructed in area B before it was actually concreted.

15 A. 當時嗰幾級係--好似係落咗石屎嘅，我記得係要行--我行到嘅，佢就係應該係
16 落咗石屎，就唔係釘緊板應該。

17 Q. All right. I want you to think about this very
18 carefully, because it's very important, Mr Li. Are you
19 saying to the Commissioners that those steps were in
20 area B, or were they somewhere else, or they could have
21 been somewhere else? What is your evidence?

22 A. 我記得我當時就係有記得嗰啲樓梯級，但係你話真係係咪喺B區定係或者喺嗰
23 啲咩嘢交界嗰啲，我係真係我係唔識分嘅，因為我就係記得我當時喺我落石屎
24 個地方附近，可以咁答你。

25 Q. All right. Can you now think back, recollect and try to

1 describe how these steps looked?

2 A. 我唔記得。

3 Q. Were they fully formed? Were they concreted? Were they
4 metal? Were they wooden? Have you any recollection of
5 their form?

6 A. 應該就係落咗石屎。

7 Q. Right. Can you remember how many steps there were, how
8 far down?

9 A. 唔記得。落到幾多米呀?

10 Q. Yes.

11 A. 應該唔係好多米，應該係比較短啲嘅梯。

12 Q. Okay. I'm going to show you some photographs, Mr Li.

13 I wonder if the witness could be shown -- I think
14 this is in the electronic bundle already -- D2/1096.

15 Mr Li, you can see in this photograph some concrete
16 steps?

17 A. 係，睇到。

18 Q. Are these the steps that you are referring to?

19 A. 似係。

20 Q. All right. There's another photograph at the next page,
21 1097, of the same steps, a slightly closer-up
22 photograph.

23 Do you see those, Mr Li?

24 A. 見到。

25 Q. Again, are you telling the Commission that these are the

1 steps that you were referring to in your evidence on
2 Thursday and that you recall seeing at the time?

3 A. 係，我星期五朝頭早我有咁講過。

4 Q. Mr Li, our understanding is that these steps were not,
5 self-evidently, in area B, which was being concreted at
6 the time -- sorry, I should have said to you these
7 photographs are dated on 12 January 2016. These were
8 self-evidently not in area B, Mr Li. They were between
9 area C1-4 and C1-5, we are told. Are you able to
10 confirm that or not?

11 A. 我答唔到具體嘅位置，因為當時如果落緊石屎，一係我就係不嬲都係同我講緊
12 係area B嗰度落石屎，所以我一直答都係area B嗰附近。

13 Q. Do you recall going and standing by these steps, at the
14 top of them, perhaps?

15 A. 我記得我係行落咗幾級嘅，因為當時佢嗰度都唔係話咩嘢，同埋佢有圍欄，
16 所以我可以行到落去。

17 Q. All right. So you did go to these steps; is that right?

18 A. 係，我有行過，我記得。

19 Q. You went down a few steps; is that right?

20 A. 係呀。

21 Q. When you were there and you took a few steps down, what
22 could you see below the steps, in the void, as it were,
23 that we can see on the photograph?

24 A. 冇記錯，就應該係有部雞頭喺度挖緊泥，出緊泥，冇記錯嘅話。

25 Q. So you didn't see, when you went to these steps and

1 looked down, any rebar fixing going on; you saw
2 excavation going on? Is that your evidence?

3 A. 唔係，係應該下低係紮緊鐵嘅，即係好似我所講嘅，我之前所講嘅，佢係未
4 落石屎㗎嘛，我係應--係見到下低係有雞頭挖緊泥，同埋有一倉，但係你話
5 係嗰一倉具體叫咩嘢名，我就真係唔記得，我係見到有人喺度擰緊嘅，即係
6 我份口供所講嘅有人喺度剪緊鋼筋嗰啲。

7 Q. So is it your evidence to the Commission, Mr Li, that it
8 was when you were standing on these steps that you saw
9 the bar cutting taking place?

10 A. 係呀，因為我當時好似都係話喺上層見到嘅。

11 Q. So what you would have seen was the lower level; is that
12 right?

13 A. 我唔確定嗰度係咪真係下層，因為我當時就係企喺上高，因為佢紅磡嗰度佢有
14 好多層，我唔確定我見到嗰一層係下層。

15 Q. In any event, your evidence is that you saw earthworks,
16 excavation, bar cutting, rebar fixing, all in this area
17 underneath these steps when you were standing there, and
18 that's your evidence, is it?

19 A. 係。

20 Q. All right. You told us or tell us in your witness
21 statement that you were about 10 metres away from the
22 location where you saw the cutting going on; do you
23 remember that?

24 A. 記得。

25 Q. So this is 10 metres, is it, from you standing somewhere

1 on these steps, looking down to the area below?

2 A. 大概10米嘍，係。

3 Q. No less than 10 metres?

4 A. 大概10米嘍，我覺得。

5 Q. Okay. Mr Li, I'm intrigued to know, looking at the
6 configuration that we can see on this photograph, how
7 you were able to see, or did you see, anyone trying to
8 connect rebar to the diaphragm wall at the lower level?
9 Did you see anybody trying to connect rebar to the
10 diaphragm wall at the lower level or not, when you were
11 standing on these steps?

12 A. 有呀，因為當時都好光，地盤下低啲照明都好充足，所以我係有見到有人係扭
13 咗入去。

14 Q. So the angles were sufficient, were they, that you could
15 actually see from these steps what was going on
16 underneath at the rebar on the east diaphragm wall? Is
17 that your evidence?

18 A. 係。

19 MR PENNICOTT: Sir, I have put those questions, as I said
20 I would, and really it's a matter for others, before
21 Mr To re-examines, whether they wish to further
22 cross-examine Mr Li at this stage, or perhaps reserve
23 their position, as they were earlier. I'm entirely in
24 their hands. They may want to have a think about the
25 answers that have just been given before they take

1 a stance.

2 MR WILKEN: Sir, I think at present we would prefer to
3 reserve our position. We do note, of course, that by
4 this date, areas C1-4 and 5 had not been concreted, but
5 I think we are still in the position of reserving our
6 position. Mr Pennicott has helpfully tested the
7 evidence and I just want to think about whether I can
8 assist the Commission any further by asking any further
9 questions. It may well be I can't. So if I may leave
10 it there for now.

11 CHAIRMAN: Thank you.

12 MR BOULDING: Sir, for our part, we would like to press
13 ahead with the few questions we have for this witness.
14 Insofar as he's dealt with the photograph, we would like
15 to give that a bit more thought, and formally I reserve
16 my position, but as I made clear before, I think it's
17 pretty unlikely that we'd require him to come back. So
18 I would propose that I simply cross-examine this witness
19 and hopefully that will be the end of it.

20 CHAIRMAN: Yes.

21 Ms Chong, do you wish to ask any questions?

22 MS CHONG: I have no further questions for this witness.

23 CHAIRMAN: Mr Khaw?

24 MR KHAW: I have a few questions. I wonder whether
25 Mr Boulding would like to ask his questions first,
26 before --

1 MR BOULDING: I am perfectly happy to do that.

2 CHAIRMAN: Yes. We will proceed on that basis.

3 Sorry, Mr Coleman, the fact you are off to one side
4 doesn't mean you are being ignored, far from it, or on
5 the other side, where there's a representative, but if
6 there are questions you'd like to ask, I'm sure you will
7 be forward enough to stand up and ask. Thank you.

8 MR CONNOR: Thank you, sir.

9 Cross-examination by MR BOULDING

10 MR BOULDING: Good morning, Mr Li.

11 A. 早晨。

12 Q. You tell us that you joined China Tech as an assistant
13 foreman in January 2016; correct?

14 A. 係，冇錯。

15 Q. And there's an issue, I think, between us as to whether
16 you started on 12 or 13 January; right?

17 A. 係。

18 Q. In paragraph 4 of your witness statement, you tell us
19 that you had the opportunity read the witness statements
20 of Mr Poon dated 3 September and 14 September. Is that
21 correct, Mr Li?

22 A. 係。

23 Q. I need to have a discussion with you -- hopefully it
24 won't take too long -- that I've already had with
25 a couple of your colleagues.

1 You go on to say in paragraph 4 that you agree that
2 the facts deposed to therein are true.

3 Is that still your position, Mr Li?

4 A. 係。

5 Q. I'd like to do this as quickly as possible, but perhaps
6 we could just have a look at Mr Poon's first statement.
7 If you would be kind enough to go to -- let's start at
8 paragraph 30 on D19.

9 Have you got the Chinese version there or the
10 English version? The English version, I assume; is that
11 correct?

12 A. 可唔可以翻譯一下？我呢一個係英文版嚟嘅。

13 Q. If necessary.

14 You will see the heading, "C1. Incidents in August
15 2015"; do you see that heading?

16 A. 英文，我唔識睇。

17 Q. Well, presumably you've been told that it's also written
18 in Chinese, haven't you? Here, Mr Poon, let there be no
19 doubt about it, is dealing with incidents that occurred
20 in August 2015. You understand that, do you?

21 A. 8月份咩嘢事件呀？因為當時係有律師翻譯畀我聽嘅，因為我而家--你要我
22 記番，我記唔到呢一段。

23 Q. Well, the problem is, Mr Li, that you weren't even on
24 the site in August 2015, were you?

25 A. 係呀，2015年嘅8月我係未返工嘅。

1 Q. Exactly. So when we look through paragraphs 30, 31, 32,
2 33, we can see, can we not, that Mr Poon is dealing with
3 incidents here which allegedly occurred in August 2015;
4 you know that, don't you?

5 A. 知道。

6 Q. And in those circumstances, it's absolutely impossible
7 for you, isn't it, to confirm the accuracy of what
8 Mr Poon is saying? You weren't even there; correct?

9 A. 因為佢講嗰啲同我係冇咩嘢直接關係㗎嘛。

10 Q. Well, it doesn't relate to what occurred with you at
11 all, does it, because you weren't there, were you, in
12 August 2015, Mr Li?

13 A. 係。

14 Q. So you don't know one way or another, do you, whether
15 what Mr Poon says is correct; that's right, isn't it?

16 A. 佢咁講，我咪咁聽囉。

17 Q. You don't actually say that in your witness statement,
18 do you, Mr Li? You say that you've read what Mr Poon
19 says and you confirm it's accurate. That's what you say
20 in your statement, isn't it, paragraph 4?

21 A. 係。

22 Q. So you are now telling the learned Commissioner, are
23 you, that what you really ought to have said is that
24 "Mr Poon told me that this is what occurred"; that's
25 what you are now saying, is it not?

1 A. 係呀，因為--係呀。

2 Q. When did he tell you that this occurred? When did he
3 tell you -- look at paragraph 30 -- when did Mr Poon
4 tell you:

5 "In mid-August 2015, I and 12 other staff of Chinat
6 had an internal meeting at Chinat's temporary offices in
7 the Hung Hom Station construction site. Mr Leung
8 reported to me orally that he saw in late July 2015
9 someone cutting the threaded rebars using
10 cutting/grinding machines at bay 2 and bay 4 of area C1.
11 At the same time, Mr Chu also corroborated with what was
12 said by Mr Leung and told me that he also witnessed
13 similar incidents happening."

14 Now, is your evidence to the learned Commissioner
15 that Mr Poon told you all of that?

16 A. 當時我係喺律師樓，喺律師陪同，同我講，並唔係潘先生同我講緊呢一樣
17 嘢，因為當時係叫我睇番佢嗰份口供，我係喺口供度睇到。

18 Q. Oh. So Mr Poon didn't tell you, contrary to what you
19 said a few moments ago; it was a lawyer who told you
20 this, was it?

21 A. 係呀。

22 Q. And you do not know, one way or another, do you, whether
23 what the lawyer told you is true? That's right, isn't
24 it?

25 A. 當時佢係翻譯潘先生份口供畀我聽，所以我可以聽到。

1 Q. Please listen to the question, Mr Li, and we will finish
2 you quicker than might otherwise be the case.

3 You do not know whether, when the lawyer read this
4 true, whether that was true or false, do you?

5 A. 我律師唔會講呢啲大話嚟呢我吓嘛。

6 Q. I will put the question again. When the lawyer read
7 this to you, you do not know whether what Mr Poon says
8 here was true or false; that's correct, isn't it? Don't
9 evade the question.

10 A. 係。

11 Q. So you are agreeing with me; is that right?

12 A. 係。

13 Q. Thank you. It took a while.

14 Now, I'm not going to go to other instances in this
15 witness statement, Mr Li, because you would obviously
16 give me the same answer. So, in the interests of time,
17 I'm going to move on to the second occurrence of alleged
18 bar cutting that you refer to.

19 But, first of all, it's correct, is it not, Mr Li,
20 that Mr Poon had told you, as well as other workers of
21 China Technology, to take photographs of work progress
22 and the working environment every day; that's correct,
23 isn't it?

24 A. 係，冇錯。

25 Q. And the process was, wasn't it, that Mr Poon had told

1 you to upload those photographs to the China Technology
2 computer system on a regular basis; that's correct,
3 isn't it?

4 A. 啱。

5 Q. And presumably you obeyed what Mr Poon told you to do;
6 correct?

7 A. 係。

8 Q. You tell us that you took about 40 to 50 photographs per
9 day; that's correct, isn't it?

10 A. 啱。

11 Q. And presumably you also took videos as well, did you
12 not?

13 A. 錄影就少啲。

14 Q. Sorry, a few?

15 A. 翻--翻譯好似有少少問題。

16 Q. Okay.

17 Then if we could look at the second occurrence,
18 please, and you deal with this in paragraphs 14 to 17 of
19 your witness statement, which is at D925 to D926.

20 A. 係，睇到。

21 Q. Just so we are on the same wavelength, I'm going to read
22 it to you slowly so it can be translated:

23 "C2. Incidents in HKC.

24 14. In or about late January 2016, I was assigned
25 to work in the lower deck (ie NSL slab) of area HKC."

1 So far, so good?

2 A. 係，係。

3 Q. "15. On one day (which I could not recollect the exact
4 date of such), I saw five to six workers in uniform
5 (although I could not recall which company it was)
6 cutting threaded rebars at the conjunction of area HKC
7 and area A."

8 Now, just to pause there, you said in your evidence
9 last week that the reference to "one day" was in fact
10 a day in January 2016; that's correct, isn't it?

11 A. 係。

12 Q. Thank you. You say that the workers cutting the rebars
13 wore uniform, but you couldn't remember which company;
14 that's your evidence, is it not?

15 A. 係。

16 Q. Then, just to look at paragraph 16:

17 "I saw two of the workers holding the steel threads,
18 which was about 2 metres long, with one worker at each
19 end. Then, two other workers held a hand-held
20 grinder/cutter approximately 40 centimetres by
21 20 centimetres in size, cutting the threaded rebars of
22 the steel threads. At that time, I was approximately
23 10 metres away from the workers and the Hung Hom Station
24 construction site lighting was bright enough for me to
25 clearly see the workings of the two workers. This time,
26 they did not screw the steel threads into the couplers

1 on the diaphragm wall after cutting the threaded rebars.

2 17. I took about 5 to 10 minutes to observe them.

3 As this was not part of the work of myself and/or

4 Chinat, I did not pay much attention, nor did I stop

5 them. I did not mention this matter to anyone at that

6 time."

7 Now, according to you, Mr Li, this was the second

8 time, was it not, that you had witnessed this unusual

9 practice; correct?

10 A. 係呀。

11 Q. And you told the learned Commissioner and Prof Hansford

12 that you had been told by your boss to pay particular

13 attention to this sort of incident; correct?

14 A. 我當時應該係話佢12號嗰一日叫我去睇，但係唔係叫我特別去留意呢一樣嘢。

15 Q. Well, why do you think he was asking you to take a look,

16 if it was not a matter of some significance? Why did

17 you think that, Mr Li?

18 A. 呢個我真係答你唔到，呢個問題。

19 Q. No, because you haven't got an answer, have you, Mr Li?

20 That's right, isn't it?

21 A. 因為當時我講緊第一次，1月12號嗰次係佢係有叫我過去睇㗎嘛，第二次係--

22 因為我--之後我都有聽過啲人講呢一單嘢，所以我見到我都有講。

23 Q. Well, you had been told to take photographs. You agreed

24 with me on that a few moments ago. That's correct,

25 isn't it?

1 A. 同意。

2 Q. You were also told -- and I suggest this to you again --
3 you were also told that it was a matter like this that
4 you had to pay particular attention to; that's right,
5 isn't it, Mr Li?

6 A. 佢叫我去留意睇下有冇人剪鋼筋。

7 Q. Thank you, Mr Li. We finally get there, don't we?

8 Now, you'd been asked to take photographs. You'd
9 been asked to pay particular attention. Yet you tell
10 us, in paragraph 17, "As this was not part of the work
11 of myself and/or Chinat, I did not pay much attention,
12 nor did I stop them. I did not mention this matter to
13 anyone at that time"?

14 A. 係。

15 Q. And of course you didn't take any photographs of the
16 incident either, did you?

17 A. 冇。

18 Q. Nor a video?

19 A. 冇。

20 Q. Even though you were there for five to ten minutes?

21 A. 係。

22 Q. I've got to suggest to you, Mr Li, that it is simply not
23 credible, your evidence is not credible. You saw this
24 occurrence, you had been told to pay attention, you had
25 been told to take photographs, you tell us you took 40

1 to 50 photographs a day, and yet you see this, this
2 second occurrence, you're there for five to ten minutes,
3 you don't take a photo, you don't take a video, you
4 don't tell anyone about it, and you didn't pay much
5 attention. The reality is, Mr Li, this second
6 occurrence did not occur, did it?

7 A. 我唔同意，我影相，我上個星期五，我係咁講，我一日影四、五十張相，我
8 係影番我哋自己公司嘅情況。

9 Q. But you agreed with me just a few moments ago, Mr Li --
10 and we can look up the transcript; we can look up the
11 transcript -- that Mr Poon had told you to take
12 photographs of this sort of incident. Why didn't you?
13 It would be an obvious thing to do.

14 A. 因為我都講過，我哋潘生都同我講過，避免喺地盤同人哋發生衝突，我記得
15 我係上個星期我都有咁講過，因為我哋--因為禮頓--因為如果我哋同人哋
16 發生，禮頓會趕你哋走㗎嘛，所以潘生每次影相，佢都話都唔可以同人哋
17 發生衝突，我都係有咁講過，即係如果有呢啲情況出現嘅，我就冇影。

18 INTERPRETER: Sorry, I missed the last words of the witness.

19 MR BOULDING: Mr Li, that simply doesn't make sense. If you
20 were recording instances of serious malpractice which
21 you say, or rather Mr Poon says, had implications in
22 terms of public safety, it is inconceivable, is it not,
23 that Leightons would have thrown you off site for
24 recording such instances, either in photographs or
25 videos? It's inconceivable, isn't it?

1 CHAIRMAN: I think, with respect, what the witness was
2 saying was that a confrontation may result in being
3 evicted, as opposed to the taking of photographs.
4 I appreciate it's a subtle difference.

5 MR BOULDING: Yes.

6 In any event, Mr Li, you tell us you are 10 metres
7 away. You're not right in the worker's face, are you?
8 You are 10 metres away, and in those circumstances
9 I would suggest it would have been very, very easy
10 indeed, without making anybody angry, to take a photo.
11 That's right, isn't it?

12 A. 咁如果佢望到你影佢呢？

13 Q. I'm not going to speculate like that, Mr Li. I'm simply
14 going to suggest to you again that this incident did not
15 happen.

16 A. 呢個係你覺得啫。

17 MR BOULDING: Thank you. No further questions.

18 Cross-examination by MR KHAW

19 MR KHAW: Mr Li, on 12 January 2016, you were very new to
20 the site; is that right?

21 A. 係，冇錯。

22 Q. Was there any person who gave you instructions and told
23 you where you should work, what you should do, on that
24 particular day?

25 A. 石屎工頭會講我聽，因為我嗰一日係被安排咗去睇石屎咁嘛。

1 Q. You closely worked with him, is that right, on that day?

2 A. 係，我係同佢一齊，但係佢就落石屎，我就負責帶車呀、盛呀嗰啲囉。

3 Q. Were there any other workers who worked closely with you
4 on that particular day?

5 A. 我哋中科啲石屎工人。

6 Q. So, at the time, when you said you witnessed the rebar
7 cutting incident, were you on your own or were you with
8 any other worker?

9 A. 得我自己。

10 Q. If we can just go back to a few questions which were
11 raised by the Commission last Friday, if we can go to
12 the transcript of Day 5, page 41, line 23, it's
13 a question by the chairman, and he said:

14 "You mean to say you have to be given instructions
15 every single day, and any instructions that last longer
16 than a day you don't take any notice of? It just seems
17 to me -- you are an intelligent person, you are
18 qualified in construction -- surely you must realise
19 that there are certain general instructions given that
20 will last for the whole period of your attendance on
21 site. 'Keep a lookout for this type of activity because
22 it is worrying me.'."

23 Then you said:

24 "At the time he told me to go and have a look,
25 I couldn't understand what he was thinking."

26 If we can just pause here and cast our minds back to

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. 係。

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. 可唔可以問多次?

10 Q. At the lunch meeting on 12 January, before you said you
11 saw the bar cutting incident -- okay?

12 A. 係。

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. 佢係--我當時係話佢聽到人--唔係，佢應該係咁講，佢當時話佢聽到人
17 話嗰一個區有人剪鋼筋，就叫我過去睇。

18 Q. Right. My question is simply this, on that occasion, ie
19 at the lunch meeting, where he mentioned the rebar
20 cutting incident, did he tell you that such incident
21 caused him concern?

22 A. 我唔記得。

23 Q. Sorry, your answer is no, he did not, or no, you do not
24 remember?

25 A. 我唔記得。

1 CHAIRMAN: Let me put it to you this way. The cutting of
2 rebars a couple of years later is the subject of your
3 statement; correct?

4 A. 係。

5 CHAIRMAN: Now, Mr Poon would not have asked you to go and
6 check something unless it had some significance;
7 correct?

8 A. 我當時真係唔知。

9 CHAIRMAN: Well, he wouldn't say, with respect, "Go and have
10 a look and see if you can see somebody take his helmet
11 off and scratch his head", because it would be of
12 absolutely no significance to anything.

13 A. 係。

14 CHAIRMAN: So did you think that Mr Poon was telling you to
15 do these things because he was in any way concerned
16 about these events taking place?

17 A. 呢個真係唔知點答，因為我哋開飯盒會比較重要啲嘅，佢會喺塊黑板度寫晒
18 出嚟嘅，同埋佢會問番我哋啲係做到點同埋點解做唔到，即係嗰啲佢會寫
19 晒落去黑板度。我當時12號我聽到嘅就係佢叫我過去望一望有冇呢一樣嘢發
20 生嘅啫，我返到去都係咁。

21 MR KHAW: Let's now talk about the second lunch meeting that
22 you mentioned, ie the meeting, lunch meeting, after you
23 said you saw the rebar cutting incident on 12 January
24 2016. Okay?

25 A. 我哋每一日都會開。

1 Q. After you witnessed the rebar cutting incident on
2 12 January -- okay?

3 A. 係，係，係，係，okay。

4 Q. -- you told us you reported to your boss regarding what
5 you saw; right?

6 A. 係。

7 Q. So, on that occasion -- that's why I call it a second --

8 A. 係，明白，明白，明白。

9 Q. -- lunch meeting -- on that occasion, did your boss or
10 did anyone at the lunch meeting mention anything in
11 relation to the concern that this rebar cutting incident
12 might cause?

13 A. 我唔記得咗。

14 Q. Throughout the whole period in January, for example,
15 throughout the whole period in January, did you talk to
16 any of your colleagues who worked with you on the site
17 in relation to, "What's wrong with this rebar cutting
18 incident?" Did you?

19 A. 我就係記得應該就係睇到後--即係睇到嘅嗰一--夜晚嘅之後一日，我有同
20 潘生提過，但係佢點答，我都唔記得，同埋我都有同阿畢提過，但係我都唔
21 記得佢哋同我講咗啲咩嘢。

22 Q. When you said you mentioned that to Mr Poon, but that
23 was an occasion other than the second lunch meeting
24 where you reported to him what you saw; is that right?

25 A. 唔係，一路都係講緊你講嘅嗰一次。

1 Q. So you are still talking about the lunch meeting?

2 A. Yes.

3 MR KHAW: I have no further questions.

4 CHAIRMAN: Mr Coleman?

5 MR COLEMAN: No, sir.

6 CHAIRMAN: Any questions?

7 MR CONNOR: No, sir.

8 CHAIRMAN: Thank you.

9 Re-examination by MR TO

10 MR TO: Mr Chairman, I just have one re-examination.

11 Mr Li, good morning. Thank you for assisting us.

12 A. 係，早晨。

13 Q. Can I take you to the transcript on page 25 of Friday,
14 26 October 2018, line 15. I will read it out to you, up
15 to line 25, slowly. This is my learned friend Mr Wilken
16 asking you a question.

17 A. 好。

18 Q. Line 15:

19 "You were not on site before, even on your own
20 evidence, 11 January; that's correct, isn't it."

21 MR PENNICOTT: Where are we? I'm in the wrong place, sorry.

22 Give us the reference again.

23 MR TO: It is page 26, 26 October. I will read it again.

24 Line 15, Mr Li; are you okay with that?

25 A. 係，係，okay，得。

26 Q. Okay?

1 A. 係。

2 Q. Question -- this is Mr Wilken asking you a question:

3 "You were not on site before, even on your own
4 evidence, 11 January; that's correct, isn't it?"

5 Let me finish first; okay?

6 A. 係, 係。

7 Q. Then at line 17 it says:

8 "Sometimes my classmates would take me in secretly
9 to take a look, but I wasn't there working."

10 Line 19, Mr Wilken asked again:

11 "Classmates from China Tech?"

12 Your answer on line 20:

13 "No, my classmates that I went to school together
14 with, but they also had worked for China Tech
15 previously."

16 Line 22, Mr Wilken asking again:

17 "So, in breach of site security, health and safety,
18 and all the regulations, you were taken secretly onto
19 site; is that your evidence?"

20 And on line 25 you said, "Yes."

21 Mr Li, I will ask you some questions relating to
22 this, maybe just one question. How can you go into site
23 if you do not have access? Remember you told us
24 previously, on Friday, that you had a card from Leighton
25 dated 11 January. So, if you went before 11 January,
26 how did you go into site?

1 A. 因為當時係可以簽名入去㗎嘛，同埋地盤其實係好多呢啲情況，因為當你需
2 人嘅時候，咁可能就會--即係同埋你要上細堂嗰啲都要安排㗎嘛，你要提早啲
3 人咗去畀啲證件公司，公司幫你報番啲堂嘅嗰啲，所以當時就係喺門口簽咗名
4 先入去。

5 Q. So you signed on a sheet of paper?

6 A. 係。

7 Q. Did you have to show any identification? Did you have
8 to show identification to get in; just by signing your
9 name, you can get in?

10 A. 工人註冊證。

11 MR TO: Thank you. I don't have any further questions to
12 ask this witness.

13 MR PENNICOTT: Sir, I certainly don't have any further
14 questions, and so unless you do or Prof Hansford does,
15 subject to I think one or two reservations that have
16 been made, Mr Li is probably free to go.

17 CHAIRMAN: Mr Li, your evidence is now completed. Thank you
18 very much indeed. You can go.

19 However, there have been indications made that
20 depending what may happen in this Inquiry, you may be
21 asked to return to answer some additional questions.

22 You understand that?

23 WITNESS: 哦，明白。

24 CHAIRMAN: Mr Pennicott --

25 MR PENNICOTT: Yes, sir.

1 CHAIRMAN: -- I don't know that I need to give this witness
2 any warning. He's now completed his evidence.

3 MR PENNICOTT: Yes, sir.

4 CHAIRMAN: The fact that there's a reservation as to calling
5 him back again --

6 MR PENNICOTT: Yes. I don't think he's under the same --

7 CHAIRMAN: I don't think that means he has to remain in
8 purdah, so to speak.

9 MR PENNICOTT: No, sir.

10 CHAIRMAN: All right.

11 MR PENNICOTT: And obviously the sooner that those parties
12 that have made those reservations, as it were, can
13 release the reservations, the better. I don't want to
14 put them under any pressure but it would be helpful
15 obviously for Mr Li to know that there won't be any
16 further requirement for him.

17 CHAIRMAN: Mr Li, as I've said, your evidence is now
18 complete. You can go. You may possibly be called back
19 to give evidence. You don't now have to remain entirely
20 mute as to discussing any portion of your evidence with
21 anybody else, but with respect I would suggest that it
22 is better that you do not enter into broad discussions
23 with anybody else who is going to give evidence, because
24 that may wrongly influence those other persons, and
25 equally may wrongly influence you, if you are in fact to
26 be called back later. Do you understand me?

1 WITNESS: 明白。

2 CHAIRMAN: Thank you.

3 (The witness was released)

4 MR PENNICOTT: So, sir, on that basis, we go to the next
5 witness, who I believe is Mr Chu. I see it's 11.30, so
6 perhaps that's a good moment to have 15 minutes.

7 CHAIRMAN: 15 minutes. Okay.

8 (11.32 am)

9 (A short adjournment)

10 (11.53 am)

11 MR PENNICOTT: Sir, the next witness is Mr Chu. I will hand
12 over to Mr To.

13 CHAIRMAN: Yes.

14 MR TO: Thank you, Chairman and Commissioner.

15 MR CHU KA KAM (affirmed in Puntì)

16 Examination-in-chief by MR TO

17 Q. Mr Chu, thank you. You may sit down.

18 Mr Chu, can I take you to bundle D2, D970. Can you
19 see that, Mr Chu?

20 A. 我唔識英文，可唔可以翻譯？

21 Q. Don't worry. I'm just asking you, do you see the page
22 number, 970 at the bottom right-hand side?

23 A. 係，係。

24 Q. If you turn to page D977, can you see "D977" at the
25 bottom right-hand side?

1 A. 係，係。

2 Q. Do you see your name at the top of that page and your
3 signature?

4 A. 係。

5 Q. It's dated 27 September 2018?

6 A. 係。

7 Q. Do you wish to adopt this witness statement as part of
8 your evidence?

9 A. 好。

10 Q. Mr Chu, before you begin, I have maybe two questions
11 I would like to ask you.

12 Can I refer you to the document C5696.

13 A. 睇到。

14 Q. Okay. Do you need a hard copy? Would the computer
15 screen be okay?

16 A. 就係可以紙張版，我都唔係咁明白，我文化好低嘅，因為我喺大陸接受教育嘅。

17 MR PENNICOTT: It would be helpful if he could have C8,
18 because I shall be referring to it as well.

19 MR TO: Just wait a few minutes. The Secretariat is helping
20 you now to find the document.

21 Mr Chu, if you look at the bottom right-hand side
22 again, it says "C5696"; can you see that?

23 A. 睇到。

24 Q. Can you look at the top -- you will see, for example,
25 your name somewhere on the second line; can you see

1 that?

2 A. 係。

3 Q. If you look at it, it says that you were on site on June
4 2015; is this correct?

5 A. 見到。

6 Q. And also it says that you were in the Hung Hom boundary
7 or location?

8 A. 係。

9 Q. Okay. I take you to page C5703. If you look at it
10 again, you will see the fifth line down, your name
11 again?

12 A. 係。

13 Q. And you can see the whole columns on the right-hand side
14 have all been filled in, with dates and times?

15 A. 係。

16 Q. So you were on site in August 2015, in the Hung Hom
17 site?

18 A. 係。

19 Q. The reason for me asking you this question is because,
20 Mr Chu, in your witness statement, at D971, you did say,
21 for example, in paragraph 5 -- I will read it out to
22 you. In paragraph 5, it just says:

23 "From late September 2015 till March 2017, I was
24 assigned to work in the Hung Hom Station ..."

25 So, Mr Chu, can I ask you whether this is correct,

1 or the records as I've shown you are correct?

2 A. 係。

3 Q. So is your statement correct or not correct here, in
4 this point, paragraph 5?

5 A. 正確。

6 Q. Is your statement at paragraph 5 correct?

7 CHAIRMAN: Does he understand the problem?

8 A. 嗰段期間，我有四個月去大埔水廠嗰度工作，然後嗰段期間有過去開會嘅。

9 MR TO: So if I may ask you, Mr Chu, were you in the
10 Hung Hom site in June as well as August?

11 A. 喺度。

12 Q. Okay. Mr Chu, I'm going to take you on to a different
13 question.

14 In your witness statement, in paragraph 5.2, you did
15 say, in page D971, certain individuals -- I won't
16 mention the name -- "did not wear uniforms".

17 A. 係。

18 Q. Can I show you the diagram at D591. Can you see that
19 diagram, Mr Chu?

20 A. 睇到。

21 Q. The two gentlemen wearing yellow helmets, they are basic
22 construction workers; am I correct in saying that?

23 A. 係。

24 Q. Can you see them wearing any type of uniform there?

25 A. 有啲冇。

1 Q. So in fact, just to clarify, both gentlemen were not
2 wearing any uniforms, except for a safety vest; is that
3 correct?

4 A. 係。

5 Q. Mr Chu, can I take you down to the bottom of the
6 photograph. Can you see that this was dated 29 August
7 2015?

8 A. 係。

9 Q. And you were on site during that period?

10 A. Yes.

11 MR TO: No further questions.

12 Examination by MR PENNICOTT

13 MR PENNICOTT: Mr Chu, good morning. I am counsel to the
14 Commission and I've got a few questions for you,
15 although Mr To has taken you to a number of documents
16 I was going to look at initially anyway.

17 So can we summarise the position like this, Mr Chu,
18 on the basis of the documents that Mr To has taken you
19 to: you spent a couple of days at the site in the middle
20 of June; you've seen that?

21 A. 係。

22 Q. And I know from other records that you did your safety
23 induction course with Leighton on 9 June, that is a few
24 days before the two days that you worked in June. Do
25 you remember that?

1 A. 應該係6月9號嘅，因為嗰陣時上堂上咗幾日先去做咗兩日，全日，應該係
2 15號、16號喺嗰度做，因為做嗰陣時就做擋土牆嘅，做咗兩日就有
3 咩嘢做，我就去其他地方做。

4 Q. Right. So after the couple of days in June you went off
5 to this site in Tai Po; is that right? You worked there
6 for the rest of June and all of July, and you came back
7 on 1 August; is that right?

8 A. 唔係，嗰陣時唔係喺大埔做，嗰陣時做牛潭尾至大江埔嗰條高鐵嘅，嗰個地盤
9 又係我哋嘅老細嘅。

10 Q. So you were elsewhere for the rest of June and all of
11 July, and you came back to this site on 1 August, as
12 Mr To has shown you?

13 A. 係。

14 Q. So the reference in your witness statement to --
15 paragraph 5, saying that from late September you were
16 assigned to work at the station, it should be from the
17 beginning of August?

18 A. 係。

19 Q. That's fine. So, in paragraph 7 of your witness
20 statement -- D2/972 -- you say:

21 "From late September 2015 ... I was assigned to work
22 at the EWL ..."

23 Just pausing there. Mr Chu, can you remember where
24 you were assigned to work between 1 August and late
25 September, a period of two months; where were you

1 working during that first couple of months, which area?

2 A. C區。

3 Q. Can you narrow that down for us; area C1, C2, C3? Do
4 you remember?

5 A. 唔記得咗，嗰陣時中科公司得我一個工頭，叫「蛇頭」，我哋行內叫「蛇頭」
6 嘅，我帶一班伙記喺嗰度做嘢。

7 Q. All right. Now, you say in paragraph 7, coming back to
8 where I paused:

9 "From late September 2015 to mid-November 2016 ..."

10 I think that must be a typo, Mr Chu. Shouldn't it
11 say "November 2015"?

12 A. 係呀。

13 Q. Now, in paragraph 6 of your witness statement, Mr Chu,
14 you say this:

15 "It is common practice of Chinat to have lunch
16 meetings almost every day in the temporary offices of
17 Chinat at the site. Those meetings were held between
18 Mr Poon and Chinat employees who were above the rank of
19 foreman. On most occasions, I would also attend the
20 lunch meetings."

21 A few questions about those meetings, Mr Chu. If
22 Mr Poon wasn't on the site, would the meetings take
23 place or not? Or did they only take place when he was
24 there?

25 A. 會，因為公司有個地盤總監喺嗰度嘅，或者喺嗰度，初初嗰陣時就有一個科文

1 頭喺度嘅，因為8月份得兩個科文，一個科文、我同另一個阿頭同埋潘生，
2 四個人，初初開始嗰陣時。

3 Q. Who was the head foreman in your eyes? Who did you
4 think the head foreman was?

5 A. 喺嗰度，喺禮頓做咗一、兩個月，唔知咩嘢事呢兩個科文都有喺中科做，我
6 記得一個科文叫阿輝嘅，後起又有喺嗰度做。

7 Q. Ah Fai. Do you remember the name of the other one?

8 A. 唔記得咗。

9 Q. Does the name Leung Kin mean anything to you?

10 A. 唔係梁健嚟嘅。

11 Q. Do you know who Leung Kin is or was? He was also
12 a foreman, was he?

13 A. 梁健有，梁健後嚟嘅，嗰陣時，初初唔係佢㗎，初初嗰陣時一個，唔知叫咩嘢
14 科文，梁健我識佢嘅。

15 Q. All right. When Mr Poon attended these lunch meetings,
16 Mr Chu, do you have any recollection as to whether he
17 had a notebook or a diary that he used to write in at
18 the lunch meetings, or did he not have anything at all,
19 to your recollection?

20 A. 我一般都有做呢個動作，因為我哋負責釘板呢瓣嘅，因為當日嗰啲工序--釘
21 板嗰啲工序我係當日做嘅，其他啲嘢唔關我事，一般我都唔會理嘅。

22 Q. Let me try again, Mr Chu, it may be that I didn't put
23 the question clearly enough. You are at a lunch meeting
24 and Mr Poon is there.

1 A. 係。

2 Q. You can see him clearly and you can hear him clearly?

3 A. 係。

4 Q. I'm just trying to ask you: do you recollect that when
5 you were at those meetings, whether Mr Poon had any
6 notebook or diary that he used to write in? Do you have
7 any recollection of that?

8 A. 當時唔記得咗喇，一般我哋去開會嗰陣時，有時佢有擺本簿出嚟嘅，我唔記得
9 嗰個當時有佢--自己有冇揸咩嘢，我唔記得。

10 Q. All right. In August, the first month that you were
11 properly working on the site, Mr Chu, do you recall the
12 average sort of number of foremen and other staff who
13 used to attend these meetings, in August I'm talking
14 about, August 2015?

15 A. 8月嗰陣時應該加埋我係四、五個科--四個科文。

16 Q. And Mr Poon?

17 A. 係呀。

18 Q. So we're talking, what, five or six people at a meeting,
19 at a lunch meeting, in August; that would be your best
20 estimate, is that right?

21 A. 唔係，8月四個，當時四個，後起喺8月尾嗰陣時至9月逐漸增加，因為人
22 數嗰陣時釘板就初初我哋埋位嗰陣時得四個人，後起我記得--記唔到時間
23 咩嘛，後起嗰啲飯盒會嗰啲人數越嚟越多，增加到十幾個人，我而家唔清
24 楚嗰陣時啲時間。

25 Q. When do you think the number started to increase? Was

1 it towards the end of August and then into September?

2 A. 嗰陣時啲時間隔得好耐，我都--嗰陣時做完，我忘--嗰啲時間我忘記咗，
3 唔記得咗喇。

4 Q. If I suggested to you, for example, that at a lunch
5 meeting in mid-August, so 15/16 August, let's say, there
6 were 12 people there, would you say I was right, wrong,
7 or you can't remember?

8 A. 嗰陣時應該8月中應該唔啱嘅，因為初初做嗰陣做cap呢就係第一倉，我做
9 第一倉嗰陣時得四個科文，做第二倉開始逐漸係增加嘅，因為嗰陣時唔知--
10 點講呢？呢8月中應該有加入，可能我記得--我忘記咗呢啲嘅嘢。

11 Q. All right. What's the maximum number of people that
12 ever attended one of these lunch meetings that you can
13 recall, at any time?

14 A. 最多嗰陣時--你講多一次，我聽唔係咁清楚。

15 Q. Yes. What's the maximum number of people that attended
16 one of these lunch meetings, at any time?

17 A. 應該係十七、八個人。

18 Q. Okay. Do you recall -- do you have any recollection of
19 when Mr Poon told you to take photographs at the site,
20 generally, not of any particular thing but just
21 generally take photographs?

22 A. 呢啲係科文做嘅，唔係我哋做嘅，因為我係負責釘板呢瓣嘅，除非阻我哋做
23 嘢或者咩嘢工序出錯或者人哋唔收貨，我先影相，先同佢講嘅。

24 Q. Did you personally ever take any photographs at the
25 site, or did you leave that to others?

1 A. 有呀，不過唔係多咁嘛，我影呢，影我個瓣釘板，阻我哋嘅啲嘢我先會影，其
2 他我都唔影嘅。

3 Q. Okay, because I understand the primary purpose that
4 Mr Poon wanted the photographs was to have evidence of
5 the progress and problems that the formwork might have;
6 is that right?

7 A. 嗰啲係個科--我一般嗰啲做嗰陣時，有科文跟住我哋嘅，嗰啲--呢啲動作係
8 科文做，唔係我做阿頭做嘅，我哋負責做嘢嘅。

9 Q. All right.

10 Back to in paragraph 7 of your witness statement,
11 you say that you were assigned to work on the EWL slab
12 in September 2015, and you've indicated that that was in
13 area C.

14 A. 因為嗰陣時嗰啲時間我記得--記錯咗，因為我忘記，嗰陣時落口供嗰陣時，個
15 阿Sir追我都成個禮拜，我都有應承佢，後扞我有得閒先去嘅，嗰陣時如果話
16 時間我9月份入去係我錯嘅，後扞呢份係搵--中科同事搵出嚟，我先知幾時
17 人去地盤嘅。

18 Q. Anyway, you were working in area C in
19 August/September/October?

20 A. 應該做到12月尾嗰度。

21 Q. All right.

22 Now, in paragraph 11 of your witness statement --
23 D973 -- you say:

24 "On a day in or about late October 2015 at around
25 noon, I saw two workers at or about area C ..."

1 Just pausing there, again, Mr Chu, so far as late
2 October 2015 is concerned and the incident that we're
3 just about to look at, can you narrow it down as to
4 whereabouts in area C?

5 A. 應該C區做嗰陣時，做嗰啲層板就一倉一倉做嘅，應該喺層板上面。

6 Q. So we narrow it down to the EWL slab, not the NSL -- so
7 EWL slab; yes?

8 A. 係。

9 Q. But you can't recall that it was C1, C2 or C3?

10 A. 嗰陣時做嗰啲層板嗰啲C幾我唔記得咗喇，嗰啲層板一做，應該做好兩塊嘅，
11 呢啲落好石屎，應該兩塊。

12 Q. All right. Anyway, you go on to say this:

13 "... two workers ... area C wearing dark orange
14 uniforms and reflective safety vests, similar to those
15 worn by Leighton employees, cutting threaded rebars."

16 Pausing there, Mr Chu, you saw these workers, but
17 you can't confirm whether they were or were not Leighton
18 workers; is that the position? They may have been, they
19 may not have been?

20 A. 唔係，佢着呢，着禮頓衫嘅，但係嗰啲工人我唔記得名呀，乜--就唔知道佢
21 做咩嘢工序嘅。

22 Q. All right. I only press you a little bit further,
23 Mr Chu, because you say, about the uniforms,
24 "similar" -- I emphasise the word "similar" -- to those
25 worn by Leighton. I mean, were they Leighton uniforms

1 or not?

2 A. 係呀。

3 Q. All right. And you say:

4 "At that time, I was about 2 to 3 metres away from
5 where they were cutting threaded rebars. The
6 surrounding lighting was sufficient for me to clearly
7 see what they were doing. One of the workers was
8 holding a green grinding/cutting machine ..."

9 Now, are you sure it was green, Mr Chu, and not red?

10 A. 係。

11 Q. "... and using it to cut the threaded rebars. Those
12 threaded rebars were very easy to identify as they were
13 silver in colour whilst the steel threads were dark
14 brown in colour. According to what I saw, the threaded
15 rebars were initially about 7 centimetres long. Around
16 2 centimetres of the threaded rebars were trimmed by
17 these ... workers."

18 So leaving 5 centimetres; is that right, Mr Chu?

19 A. 係。

20 Q. You then say:

21 "The two workers placed the steel threads on the
22 floor after they had finished cutting them."

23 So would I be right in suggesting, Mr Chu, that you
24 never saw these workers, or indeed any other workers,
25 seek to screw those bars into the couplers on the
26 diaphragm wall?

1 A. 同意。

2 Q. Then, in paragraph 14 of your witness statement, you say
3 this:

4 "In one of the lunch meetings in October 2015,
5 Mr Poon mentioned that he saw someone cutting the
6 threaded rebars. He said he would report the matter to
7 Leighton."

8 Mr Chu, do you know whether Mr Poon in fact reported
9 the matter to Leighton in October 2015?

10 A. 嗰陣時我唔知道，呢啲係...

11 Q. And you still have no idea?

12 A. 佢飯盒會有講，但係我唔知道佢有冇做呢個動作，因為我工作好忙嘅，因為我
13 係負責釘板呢瓣嘅，其他我一般都唔會咁理嘅。

14 Q. All right. Then your statement goes on to say:

15 "He also asked all foremen of Chinat to take
16 photographs and report the matter to him if we saw
17 anyone cutting the threaded rebars."

18 Now, with regards to the incident that you have
19 referred to and we looked at in paragraph 11 of your
20 witness statement, did you report that incident to
21 Mr Poon?

22 A. 冇。

23 Q. Did you ever report any incident to Mr Poon, such
24 incident to Mr Poon?

25 A. 我有同潘生講嘅，呢兩件事。

1 Q. Right. The incident that you refer to in late October
2 2015, so far as the EWL slab is concerned -- I know you
3 come on to talk about the NSL slab in a moment -- so far
4 as the EWL slab is concerned, was that the only incident
5 that you witnessed, such incident that you witnessed?

6 A. 係。

7 Q. Which you did not report to Mr Poon?

8 A. 冇。

9 Q. In paragraph 15 of your witness statement, you say:

10 "In another lunch meeting in November 2015, Mr Poon
11 again mentioned that cutting threaded rebars were still
12 ongoing. He said he would report the matter to Leighton
13 again for follow-up."

14 Again, presumably the answer is the same, Mr Chu:
15 you don't know whether Mr Poon reported the matter to
16 Leighton?

17 A. 同意，因為我一般都唔會理呢啲嘢嘅。

18 Q. You go on to say:

19 "He also reminded all foremen of Chinat to take
20 photographs ..."

21 Pausing there, you didn't regard that as
22 an instruction to you personally but to the foremen; is
23 that right?

24 A. 係呀。

25 Q. Then you go on to say:

1 "... and report the matter to him if we saw anyone
2 cutting the threaded rebars."

3 Well, presumably the position is this, insofar as
4 the EWL slab is concerned: you never had any need to
5 report the matter to Mr Poon, because as we know and
6 what you've said, the only incident you saw was back in
7 late October?

8 A. 係。

9 Q. Then in paragraph 16 of your witness statement, Mr Chu,
10 you say this:

11 "In another lunch meeting in February 2016, Mr Poon
12 again mentioned cutting threaded rebars were still
13 ongoing."

14 Pausing there, Mr Chu, we know that by February 2016
15 all the concreting in areas A, B and C had been
16 completed. Do you recall where you were working, which
17 area you were working in, in February 2016?

18 A. 嗰陣時喺水廠嗰度做嘢，大埔水廠，因為2016年2月嗰陣時就我一個月都
19 會過去幾次禮頓呢度開會嘅，喺紅磡站頭。

20 Q. Okay. Sorry, Mr Chu, it's probably my fault. So at
21 some point you left this site and went somewhere else
22 and then came back; is that what you're telling us?

23 A. 係呀，佢潘生要求㗎，我一個月就離開地盤，仲有一班伙記喺呢度嘅，喺
24 紅磡站頭做嘢咁，因為嗰陣時伙記唔聽話，嗰啲工序做到一起唔到貨，
25 佢鬧人咁，所以我就過嚟呢度同佢協商，同伙記。

1 Q. The picture I'm getting, Mr Chu, is that you left the
2 site, the Hung Hom site, in about end of December 2015,
3 and you tell us that you returned in mid-April 2016 to
4 work at the NSL, so that three and a half -- is that
5 right? Just explain it to me.

6 A. 我記得離開地盤應該係12月尾，12月嘍至到4月，2016年4月，嗰陣時應該
7 唔知我--確實日期，唔知4月尾返嚟吓，5月返嚟，因為隔咗好耐喇時間。

8 Q. Right. But in February -- that's the date you're
9 referring to in paragraph 16 -- you say you used to come
10 back for lunch meetings; is that right?

11 A. 係呀。

12 Q. Okay. Got it. All right.

13 You say:

14 "... Mr Poon again mentioned [at this lunch meeting
15 in February that] cutting threaded rebars were still
16 ongoing. He said he would report the matter to senior
17 officers of MTRC."

18 Again, do you know whether he in fact reported the
19 matter to senior officers of MTRC?

20 A. 呢樣我唔知呀，開完會，我就走㗎喇。

21 Q. Okay. Now, moving on to mid-April 2016, so we are back
22 at paragraph 17 of your witness statement, you say you
23 began to work at the NSL; yes? The lower slab.

24 A. 下層層板，我離開嗰陣時，唔知幾時開始，我6月--5月份開始就接手落去。

25 Q. Okay. Then you say at paragraph 18:

1 "In the evening of about mid-June 2016 ... at about
2 area A ..."

3 And you mean area A at the lower deck, ie the NSL,
4 to be clear?

5 A. 係。

6 Q. "... wearing dark orange uniforms and reflective safety
7 vests, similar to those worn by Leighton employees
8 cutting threaded rebars."

9 Again you say:

10 "At that time, I was about 2 to 3 metres away from
11 where they were cutting threaded rebars. The
12 surrounding lighting was sufficient for me to clearly
13 see what they were doing. One of the workers was
14 holding [this time] a red machine and using it to cut
15 the threaded rebars."

16 So am I right in thinking that this machine was
17 different, certainly in colour -- was it different
18 entirely or was it the same type of machine that you saw
19 previously?

20 A. 唔係，呢啲紅色機唔係嘅，嗰啲--呢部係輪剗嘅，輪剗片嘅，呢部機。

21 Q. All right. So the green machine that you had seen
22 previously was entirely different, was it?

23 A. 係呀。

24 Q. Can you describe that machine, the earlier one, the
25 green one?

1 A. 嗰啲手磨機，手磨機有柄嘅，你捱鐵嗰陣時，佢噴出嗰啲火花嘅，呢部紅色
2 機就唔會嘅。

3 Q. You don't see sparks?

4 A. 火花尤其是嗰啲綠色機好大概嘅，嗰啲係沙輪機嚟嘅，呢啲係鐵片機嚟嘅，唔
5 同㗎，兩款。

6 Q. Were you able to tell how quickly the workers cut
7 through with the green machine first and how quickly
8 would it go through the bar?

9 A. 兩、三分鐘嘅。

10 Q. And with the red machine?

11 A. 紅色嗰部又係兩、三分鐘嘅，因為嗰啲嘅火花，嗰啲驚火警，嗰啲好大概嘅，
12 綠色嗰部，嗰啲用沙輪嚟捱同埋鐵片捱唔同㗎嘛。

13 Q. Right. But the time, you think, was about the same?

14 A. 係呀，我覺得差唔多。

15 Q. Again, you describe the length of the thread of the
16 rebar and how much was cut off, similar to the previous
17 incident, and then you say this:

18 "The two workers placed the steel threads on the
19 floor after they had finished cutting them."

20 And again, can I ask you the same question I asked
21 you a short while ago, Mr Chu: did you ever see any of
22 the workers seeking to screw in those cut rebar into the
23 couplers on the diaphragm wall at the lower deck?

24 A. 我有見到，因為我企到個零字我就走喇，睇嗰啲同事做嘢。

25 Q. Finally from me, Mr Chu, can I just ask you this. Could

1 you please be shown page D1/19. This is part of
2 a witness statement of Mr Poon's, his first witness
3 statement, Mr Chu. Have you seen it before?

4 A. 佢有--我有見過。

5 Q. Did someone read it through and translate it to you?

6 A. 有律師讀畀我聽嘅。

7 Q. All right. And you understood it?

8 A. 明白。

9 Q. Could I ask you to look at paragraph 30, first of all.
10 What Mr Poon says in paragraph 30, Mr Chu, is this:

11 "In mid-August 2015, I and 12 other staff of Chinat
12 had an internal meeting at Chinat's temporary offices in
13 the Hung Hom Station construction site."

14 Do you recall, in mid-August 2015, Mr Chu, attending
15 a meeting with Mr Poon and 11 other members of staff of
16 Chinat?

17 A. 嗰陣時幾多人我就唔記得，我有出席嘅，逢午餐會我都有出席嘅，因為我當時
18 記得8月份初初開始係四個管工同埋我，後畀逐漸增加。

19 Q. Yes, and you told the Commissioners earlier that
20 certainly in August, mid-August, the number of people
21 attending would be at four or five people, and that's
22 right, is it?

23 A. 初初係。

24 Q. Then Mr Poon goes on:

25 "Mr Leung reported to me orally that he saw in late

1 July 2015 someone cutting the threaded rebars using
2 cutting/grinding machines at bay 2 and bay 4 of
3 area C1."

4 Do you remember Mr Leung, that's Leung Kin,
5 reporting such an incident?

6 A. 8月份有聽過，確實日期記得--喺邊日我唔記得喇。

7 Q. What Mr Poon then goes on to say is this:

8 "At the same time" -- so we are in mid-August 2015,
9 Mr Chu -- "Mr Chu [that's you] also corroborated with
10 what was said by Mr Leung and told me that he also
11 witnessed similar incidents happening."

12 Now, that can't be true, can it, Mr Chu, because you
13 have told us that the one incident that you saw on the
14 EWL slab was in October 2015?

15 A. 8月份嗰陣時，我聽伙記有講過，嗰陣時開會，科文唔係咁多，所以我有提過
16 我係有聽伙記講嘅，嗰陣時聽過有人轉講緊嗰件事。

17 Q. But you had not witnessed the cutting in August 2015?

18 A. 冇呀。

19 Q. I'll skip over paragraph 31. Let's go straight to 32.
20 Mr Poon says this at paragraph 32:

21 "I suggested to Mr Leung that he should report the
22 matter to MTRC for record purposes. Sometime later,
23 Mr Leung and Mr Chu told me that they had reported the
24 matter to MTRC."

25 First of all, Mr Chu, did you ever report any bar

1 cutting incidents to MTRC?

2 A. 呢段時間我唔記得咗，因為嗰陣時工序好繁忙，我記--唔記得喇，記唔起呀
3 呢件事。

4 Q. I need to put that to you again, Mr Chu, because it's
5 quite important. Did you personally, Mr Chu, report any
6 bar cutting incidents to MTRC?

7 A. 呢啲事情就係科文做嘅，唔係我哋做嘅，一般我--我記憶就記唔清楚有冇講。

8 Q. Is the answer to my question, Mr Chu, "Mr Pennicott,
9 I did not report any bar cutting incidents to anybody at
10 MTRC"? Is that the answer to my question?

11 A. 我話呢件事我記唔起，因為好多嘢都係科文同埋地鐵溝通嘅，因為我係負責
12 嗰啲釘板嗰啲工序嘅，因為嗰陣時似打仗咁樣，日夜開工，加班都加到--
13 有時要加到1點鐘呀夜晚，你話做到二十個鐘嚟，辛唔辛苦吖？一般呢啲嘢
14 我都記唔起我有冇講過呢啲嘢。

15 Q. You see, Mr Chu, it strikes me that had you personally
16 reported a bar cutting incident to MTRC, you would have
17 remembered it. Do you agree?

18 A. 呢啲一般都係科文做嘅，我就...

19 Q. Not by you?

20 A. ...唔記得咗呢個嘅--呢件事。

21 Q. One further question. Going back to paragraph 32, what
22 Mr Poon says -- I will read it again:

23 "... Mr Chu told me that they [that's you and
24 Mr Leung] had reported the matter to MTRC."

25 Did you ever tell Mr Poon that you had reported the

1 matter to MTRC?

2 A. 呢件事，我記唔起呢件事，因為嗰陣時呢段時間就「砧板」就非常繁忙嘅，但係
3 記唔起當時發生咩嘢事，因為我係就做好自己嘅我嗰陣時做嘅嘢。

4 Q. Just focus with me, if you will, Mr Chu. You've told us
5 that you saw the one incident in October 2015, so far as
6 the EWL slab is concerned; yes?

7 A. 係。

8 Q. A direct question: did you report that incident -- you
9 didn't report that incident to Mr Poon, you've already
10 told us that; do you agree?

11 A. 冇。

12 Q. And so on what basis would you have possibly reported it
13 to MTRC?

14 A. 呢啲事情我唔記得咗，就記唔起有呢件事，因為嗰陣時我只負責做嘢嘅，其他
15 嘢就科文同地鐵溝通嘅，同助理科文，有時助理科文都同地鐵溝通嘅，因為我
16 做嘢，就負責前線啲工作嘅。

17 Q. I understand that, Mr Chu, but I think, with respect,
18 you're evading the question. Can I suggest to you that
19 the October incident that you witnessed, that you say
20 you witnessed, you never reported that to anybody,
21 Mr Poon, MTRC, Leighton; you never reported it to
22 anybody?

23 A. 係。

24 MR PENNICOTT: Thank you.

25 Sir, no further questions.

1 MS CHONG: Sir, I have a few questions for this witness.

2 CHAIRMAN: Yes.

3 Cross-examination by MS CHONG

4 MS CHONG: Mr Chu, whenever you encountered Fang Sheung's
5 workers, they were all wearing casual clothing of their
6 own, right; they did not have any uniform?

7 A. 佢着反光衣同埋自己嘅衫嘅，有時都係露體嘅，你知唔知幾熱呀做嘢？唔着
8 衫㗎，預住嗰個反光衣㗎。

9 Q. They did not wear Leighton's uniform; was that the case?

10 A. 呢啲記--當時我記唔到咁清楚，因為我就記得我自己做我啲嘢，因為禮頓--
11 泛迅着就着反光衣、又便服，有時唔着衫。

12 Q. That's your observation of what they wore, and that's
13 why you stated in your witness statement, D971,
14 paragraph 5.2, that they were wearing casual clothing of
15 their own, and you did not state that they also wore
16 Leighton's uniform. Was that the case?

17 A. 我有講過，我記憶中就係着反光衣、自己嘅衫，有時露體嘅，做嘢嗰陣時，
18 因為上身都唔着衣服嘅，嗰陣時好熱嘅。

19 Q. In paragraph 11 of your witness statement, you stated
20 that you observed one incident of rebar cutting in late
21 October 2015. How long, in terms of time, that you
22 observed that bar cutting?

23 A. 喺嗰度，就喺三、四分鐘嘅。

24 Q. And you did not state how many rebars were cut on that
25 occasion, in paragraph 11. So my question is: how

1 many -- did you observe that they indeed cut more than
2 one, or just one rebar was --

3 A. 我話過，錄口供嗰陣時就話兩、三條放喺地下，因為我睇我伙記做嘢，其他
4 嘢我睇完就走㗎喇，因為嗰陣時我係巡地盤，巡我自己做嘢嘢咁嘛，釘板嗰
5 啲工序咁嘛。

6 Q. Yes. According to what you said, it took about two to
7 three minutes to cut one rebar using the hand-held
8 grinder, and you also told us that you were there
9 observing for just three or five minutes -- three to
10 four minutes. So, if we just do a calculation, how
11 could three or four rebars be cut if it took two to
12 three minutes to cut one, and you were there for just
13 three to four minutes?

14 A. 我行過去嗰陣時，地下就有兩、三條嘅，有兩條嘅，嗰日cut緊嗰陣時，
15 應該cut咗一條，我就睇見佢cut，我就走㗎喇，因為呢啲唔關我哋事嘅，
16 都唔關我哋事，我負責釘板咁嘛。

17 Q. Is it fair to say that you just saw one was being cut at
18 that moment, when you were there?

19 A. 切咗一條，另外一條開始，我就走㗎喇。

20 Q. Now, in your paragraph 12, you said:

21 "... it may be common to cut the threaded rebars ...
22 as the threaded rebars might be damaged ..."

23 Do you have any training or qualification for bar
24 fixing or bar bending?

25 A. 因為嗰陣時我哋同步做嘅，釘板同埋紮鐵，做環頭呀，嗰陣時留窿，因為

1 有時我企喺嗰度企好耐嘅，嗰陣時扭條鋼筋扭入去，好難扭嘅，如果有損
2 毀嗰陣時，扭真係難扭嘅，最少都正常扭就三分鐘嘅就扭一條嘅，如果損
3 壞嗰陣時就五至十分鐘扭一條嘅。

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. 分兩部分講嘅，一般啲環頭我紮先嘅，鐵完環頭去紮鐵嘅，然後嗰陣時就有
10 好多啲「瓷頭位」落嚟嘅，點解叫「瓷頭」？喺上邊就係紅砌嗰個體育館
11 咁嘛，嗰啲大「瓷頭」落嚟嘅，嗰陣時要紮板，留空咁嘛，嗰陣時就可以同
12 紮鐵一齊做嘅，因為都唔阻佢。

13 Q. But, under normal circumstances, you, your company, will
14 not work together with Fang Sheung's workers on the site
15 at the same time, when they were doing the rebar fixing?

16 A. 有時同一--同步做嘅。

17 Q. What work progress would that be, that you have to work
18 simultaneously with workers of Fang Sheung?

19 A. 留窿同埋風口，嗰啲有個風口，嗰啲通風口嘅，佢嗰陣時就同步做嘅。

20 Q. Is it fair to say that you did not know the work
21 instructions or the work progress of other
22 sub-contractors on the site, including Fang Sheung,
23 because you only concentrate on your own work?

24 A. 嗰陣時，我就記得有時做留窿位嗰啲--圍嗰啲「瓷頭」位嗰陣時，同

1 泛迅一齊加班㗎，佢加到9點鐘，我有時跟住跟佢9點鐘嘅。

2 Q. But you would not have any -- you would not know how
3 they did their work and why they did their work that
4 way; do you agree?

5 A. 佢啲工序我就唔知。

6 Q. So, when you observed the incident in October 2015, you
7 did not know under what circumstances those bars were
8 treated that way?

9 CHAIRMAN: Sorry to interrupt. I read -- there are two
10 paragraphs which are to the same effect in this regard.

11 MS CHONG: Yes.

12 CHAIRMAN: And I really read the witness as saying, "Look,
13 I don't know why they cut the bars, and it may be
14 common, because they may have to do it if the threading
15 is damaged in any way. So he is not saying, "I know
16 why." He's simply saying, "I'm prepared to give them
17 the benefit of the doubt that there may be compelling
18 reasons to do the cutting."

19 MS CHONG: Yes. Maybe I just clarify why he said "may".

20 CHAIRMAN: Yes.

21 MS CHONG: So, in paragraph 12 and also in paragraph 19, you
22 said:

23 "... it may be common to cut the threaded rebars ...
24 as the threaded rebars might be damaged ..."

25 You said this. Why did you say "may"? Is it your
26 own speculation or what?

1 A. 如果唔損壞嗰陣時，佢割嚟做乜嘢？你如果你扭紋你有損壞，你割係唔正常
2 嚟喇。

3 Q. So that's your own thinking; you have never clarified
4 with anybody as to why those bars were cut that way; is
5 that right?

6 A. 我睇見嗰個步驟咁嘛，因為點講呢？你睇見佢，有冇問佢？根本我哋同紮鐵
7 佬都係唔係幾啱key嚟，同泛迅嗰啲伙記。

8 Q. So you did not ask; right?

9 A. 因為之前嘅原因，我同泛迅發生咗少少衝突，所以我班伙記--我同阿頭--同
10 泛迅嗰啲頭，當時做個工序嗰陣時大家協商做，佢就唔好阻佢，我又唔阻佢，
11 一般都溝通，嗰陣時啲伙記與伙記之間好少嘅，根本都有溝通，咁樣講喇。

12 Q. So the simple answer to my question is, because of
13 previous incidents, you did not communicate with
14 Fang Sheung's workers and you did not ask anything; you
15 did not ask how they did their work, right?

16 A. 冇呀。

17 Q. Please turn to paragraphs 14 and 15 of your witness
18 statement. In paragraph 14, you stated that in a lunch
19 meeting, you were told to take photographs if you ever
20 see someone cutting the rebars, the threaded rebars.
21 That is in one lunchbox meeting.

22 Then, in paragraph 15, in another lunch meeting in
23 November 2015, you were also told to take photographs of
24 people cutting the threaded rebars.

25 Then also, in another lunch meeting, in February

1 2016, were you told to take photographs of people
2 cutting the rebars, on that occasion?

3 A. 可能你記得--記錯咗，嗰陣時我喺大埔水廠，2016年2月我喺大埔水廠，我
4 係有經常過嚟開會。

5 Q. Yes, but you attended the lunch meeting in February
6 2016; right?

7 A. 你叫我點去影相？我都有落去地盤。

8 Q. But, according to your witness statement, in mid-June
9 2016, you said you witnessed another rebar cutting,
10 threaded rebar cutting. Despite all the reminders from
11 Mr Poon in those lunch meetings, is it your evidence
12 that you did not see fit to take any photos when you
13 witnessed the rebar cutting again in June 2016?

14 A. 因為呢啲係中科科文做嘅，我係做阿頭，係負責--專門負責釘板呢瓣嘅，
15 其他嘢就科文做嘅，因為我做啲嘢就係前線做嘢嘅。

16 Q. I see. You were employed also as a foreman but for
17 formwork; was that the case?

18 A. 唔係呀，我喺行內叫「蛇頭」，我哋做啲嘢工作嗰陣時就做好自己啲嘢，
19 其他我唔理㗎。

20 Q. Can you turn to paragraph 2 of your witness statement,
21 you said you joined China Tech as a foreman for
22 formwork.

23 A. 應該嗰陣時同阿Sir 講嗰陣時，佢應該係寫錯咗嚟嘅，我行內講嘅就
24 「蛇頭」，我係做釘板阿頭，就負責啲嘢做釘板嘅，我從來都有講我
25 係中科科文。

1 Q. Then please see paragraph 1. You said you obtained the
2 necessary qualification to become a foreman for
3 formwork. That was stated in your --

4 MR TO: Can I clarify. What he means by "foreman", Chairman
5 and Commissioner, and also my learned friend, is he
6 means "ganger". He was in charge of people, rather than
7 being a foreman, who basically writes reports and all
8 that. So he's a ganger in charge of a group of people
9 who do formwork.

10 CHAIRMAN: I'm sorry, I'm grateful for that, but how do you
11 know that's what he said? Because there's
12 a mistranslation, or because his written document should
13 be read better?

14 MR SHIEH: I think it's evidence from the bar table, because
15 that was not what the witness had said. Mr To was
16 simply trying to explain on behalf of the witness what
17 the word "foreman" might have meant when it was being
18 drafted by whoever responsible for drafting it, but that
19 was not what the witness was trying to communicate.

20 MR TO: I was trying to communicate in terms of
21 "蛇頭". It means "ganger".

22 MS CHONG: If that's the case, that can be saved for
23 re-examination.

24 CHAIRMAN: All right. Thank you.

25 MS CHONG: In paragraph 1, you said you obtained the
26 qualification as a foreman.

1 A. 唔係科文資歷，我係「蛇頭」，講一班人做嘢，我哋就係釘板呢瓣嘅就有
2 資格嘅，我做過嗰啲，承認我係釘板呢瓣嘅，我係嘅，科文就係管人哋嘅，
3 我就管我自己嗰啲釘板呢啲工序嘅，其他嘢，雜項、嗰啲影相嗰啲嘢，就
4 嗰啲科文同埋協助科文做嘅，係中科協助科文同科文做嘅，以上嗰啲事，
5 因為我哋釘板係畀而家泛迅你阻我哋呢，釘板嗰陣時，我係影相，攞畀我
6 中科個科文去同佢交涉嘅，唔係我去交涉嘅，你知唔知？

7 MS CHONG: Just a few questions and then I will finish my
8 cross-examination, Chairman, so maybe I will finish this
9 witness and then we have the lunch break.

10 CHAIRMAN: That's what I thought, yes.

11 MS CHONG: I just have a few more questions.

12 Please turn to D224. This is an organisation chart
13 prepared by your company, China Tech. Under
14 "Superintendent Thomas Ngai" there are five foremen
15 there, and your name, "Chu Ka Kam", the fifth one, the
16 one at the right side, appears to be a foreman there.

17 A. 我係戴黃帽嘅，如果公司--你去查相喇，好多影相嗰陣時，我戴黃帽嘅，
18 中科個科文係白帽嘅，我唔係科文。

19 Q. So are you saying that this chart prepared by your
20 company is wrong, wrongly stated you to be the foreman?

21 A. 佢--點解釋呢？我係專責釘板呢瓣嘅，我直接同潘生承落嘅，公司做嘢嗰
22 陣時，科文邊區要釘板，先至同我溝通嘅。

23 Q. So you are now saying that you were not foreman at any
24 time on the site?

25 CHAIRMAN: Well, perhaps incorrectly I take him to say that

1 whatever is written here, the fact is that he was in
2 charge of the formwork, as a carpenter, the shuttering,
3 and that he would have people who worked with him, and
4 to that extent he was given the responsibility of
5 managing those persons, but he didn't see himself as
6 holding a formal position of foreman.

7 I understand him to be using the word "foreman"
8 there as a form of managerial rank as opposed to
9 a qualification. So you can be qualified as a rifleman
10 but it doesn't necessarily take you a sergeant.

11 MS CHONG: In that case, I will --

12 MR TO: Mr Chairman and Commissioner, if I may, to clarify
13 the matter -- if you go to D2/223, there is also another
14 organisation chart. If you look very closely, "Trade
15 ganger", that column, you'll see "Carpentry ganger", you
16 will see the name, very faintly, his name at the top.

17 CHAIRMAN: Yes, I see that. Thank you.

18 MR TO: Thank you.

19 MS CHONG: Putting aside your work duties, when you observed
20 those two incidents, did you have your phone with you at
21 the time?

22 A. 有。

23 Q. Your boss, Mr Poon, told you to take photographs when
24 you observed rebar cutting again, and he told you
25 repeatedly on the lunch meetings in October, in November
26 2015, and perhaps also in February 2016, and you had

1 your mobile phone with you. Did you think of taking
2 photographs when you observed the incident in mid-June
3 2016?

4 A. 潘先生要求就科文影相，第一，我唔覺得我自己係科文；第二，我同泛迅
5 就係有少少啲磨擦嘅，所以我有諗住影相嘅；第二，我文化低，唔知今
6 日發生咁大嘅件事。

7 Q. In paragraph 18, the incident you stated there, those
8 workers were wearing Leighton's uniform, was it?

9 A. 係。

10 Q. So it had nothing to do with Fang Sheung at that time;
11 right?

12 A. 記唔起個樣呀，而家都，隔得好耐。

13 Q. You said that you had grudges with Fang Sheung so you
14 did not want to take photos of them, but in the incident
15 you observed in mid-June 2016, those workers, they were
16 wearing Leighton's uniform; right? As stated in
17 paragraph 18 of your witness statement.

18 A. 係。

19 Q. So it had nothing to do with Fang Sheung at that time;
20 do you agree?

21 A. 我都記唔起個個樣。

22 Q. Sorry, I can't catch you.

23 A. 我記唔起個個時候個個樣，因為睇見都隔咗咁耐，我記得就着啲嘅禮頓嘅服
24 嘅，睇到刻住。

25 Q. Are you saying that you had vague memories of what you

1 saw on that occasion?

2 A. 唔係，就記憶嗰個人樣就模糊喇。

3 Q. You told us that you were not the foreman so it was not
4 the responsibility of you to take photographs. Is it
5 fair to say that because all the time you were thinking
6 that it was not your responsibility to take photographs,
7 to make a report to MTRC or to Leighton, so, when you
8 observed all these incidents, you did not pay much
9 attention, as it had nothing to do with your work
10 duties?

11 A. 係。

12 Q. And the first time you had to recall all these incidents
13 is in 2018, when you were contacted by the police; is
14 that the case?

15 A. 係。

16 MS CHONG: I have no further questions.

17 CHAIRMAN: Good. Thank you very much.

18 MR PENNICOTT: Sir, there's a transcript glitch back at
19 [draft] page 71, but I will try to sort it out over
20 lunch.

21 CHAIRMAN: Thank you very much.

22 It's now quarter past one, so we will adjourn for
23 an hour and 15 minutes. Thank you.

24 MR PENNICOTT: 2.30.

25 CHAIRMAN: 2.30, yes.

26 (1.14 pm)

1 (The luncheon adjournment)

2 (2.32 pm)

3 MR SHIEH: Mr Chairman and Commissioner, on behalf of
4 Leighton, I wish to ask some questions.

5 CHAIRMAN: Yes.

6 Cross-examination by MR SHIEH

7 MR SHIEH: Mr Chu, I represent Leighton. Can you hear me?

8 A. 聽到。

9 Q. May I ask you to look at your witness statement,
10 bundle D, page 974, paragraph 17. I need to read it out
11 so it gets translated, for your benefit. Paragraph 17
12 of your witness statement says:

13 "In or about mid-April 2016 till early March 2017,
14 I began to work at the NSL, which is the lower deck of
15 Shatin to Central Link."

16 That was what you said. Do you remember that?

17 A. 係。

18 Q. In paragraph 18 of your witness statement, you said:

19 "In the evening of about mid-June 2016, I saw two
20 workers at or about area A wearing dark orange uniforms
21 and reflective safety vests, similar to those worn by
22 Leighton employees cutting threaded rebars."

23 You remember saying that?

24 A. 有。

25 Q. You then, in the witness statement, described one of the
26 workers using a red machine to cut the threaded rebars;

1 do you remember that?

2 A. 係。

3 Q. Mr Chu, so we are now talking about the NSL, area A,
4 which was the area you were talking about in those two
5 paragraphs; yes?

6 A. 係。

7 Q. Do you have any recollection that, of the entire area A
8 of NSL, the last concrete pouring date was 21 May 2016?
9 Do you have any recollection that the last concrete
10 pouring date for NSL area A was 21 May 2016?

11 A. 我唔記得個日子。

12 Q. Right. Let me just help you with some documents.
13 Bundle B5, page 2903. This is a document called the NSL
14 track slab pour plan, and if we -- you may or may not
15 have seen this document before. First of all, have you
16 seen this document before, a big physical sheet that's
17 now in front of you?

18 A. 應該未見過。

19 Q. Okay. But look at the left-hand side of this sheet.

20 I hope he can be given some assistance in having
21 an area pointed out to him, because on the left-hand
22 side there is an area marked "Area A", which is yellow
23 in colour; can you see that yellow area?

24 A. 係。

25 Q. You saw that?

1 A. 係。

2 Q. That area shows the layout of the various bays in
3 area A. Even though you may not be able to read
4 English, you would see the numbers 1, 2, 3, 4 and 5, on
5 the top of each of the white boxes?

6 A. 係。

7 Q. And there is a date in each of the white boxes telling
8 you, at least on MTRC's record and on Leighton's record,
9 the date of the last pouring. So, for example, in the
10 box which says "1", at the top right-hand corner of
11 area A, you will see "03", and then the English letters
12 "Mar" and then "16", meaning the last pour was 3 March
13 2016; that is how you read it.

14 MR PENNICOTT: The 1st.

15 MR SHIEH: Okay? Understand?

16 A. 係。

17 Q. If you then look at all the five boxes for area A, the
18 latest of the last pour dates in the five boxes was for
19 bay number 5, which is the bottom left-hand corner,
20 which is "21st", and then you see the English letters
21 "May", that is the fifth western calendar month of the
22 year, 5月, and then 16, so it's 21 May 2016. That is the
23 last pour date for bay 5 in area A.

24 Now, you have told us you have not seen this
25 document before; right?

1 A. 係。

2 Q. And this document, as I said, was prepared on the basis
3 of documentary record. But does this document and the
4 date mentioned in this document, in particular the date
5 of 21 May 2016, help you or jog your memory as to the
6 approximate date of the last pouring for area A?

7 A. 嗰陣時我返去就係四--可能記憶記錯咗，就係4月尾至5月，但係我返去就係
8 落去A區，佢點分，我就記唔清楚喇，因為呢份文件，我係英文又唔識，下低點分
9 段我又唔記得，因為我好少理呢段嘅，下低我搵下低嗰啲call科文做嘢嘅，
10 所以嗰陣時可能我記得邊區，可能記錯咗又唔知，因為我記得我落口供嗰陣時
11 同阿Sir講嘅，我喺下低見到有人剪鋼筋，但係我下低邊區我係唔記得係點分
12 嘅。

13 Q. Are you now suggesting that you might have got the area
14 wrong?

15 A. 區我就分唔清楚，下低科文呢，我就知道邊個喺邊區，邊個搵邊個，我就知。

16 Q. I will ask again: are you saying that you may have
17 actually got the area wrong and it may not be area A?

18 A. 我真係記唔起，因為邊區，因為嗰陣時，落去嗰陣時我英文唔係咁叻，就根本
19 都係英文係盲嘅，下低點分區呢，就係搵當--下低嗰啲科文先搵嘢做，因為我
20 落過去嗰陣時就4月份先分去禮頓紅磡站先做，但係落去下低，我行多兩個月
21 都唔知，到而家都唔知點分。

22 Q. Can I ask you to look at your Chinese police statement.
23 Bundle D, page 982. I don't think this police statement
24 has an English translation -- it does? It's 27.1, yes.

1 Maybe mine doesn't actually have the English
2 translation. Which tab is it?

3 MR TO: It's at D902.

4 MR SHIEH: It's in another bundle. It's in D2, page 907.1.
5 I'm grateful.

6 A. 因為我同警方講，我係講上層同下層，佢譯嗰陣時唔知點譯，我就話A區、
7 B區，我話呢啲唔係--唔記得，又好少記得邊區點翻譯，因為我落去搵嘢做
8 呢，就當區飯會又好，搵個個科文，下低有中科科文喺嗰度，識搵佢做嘢。

9 Q. The lower floor is what we call NSL; you know that? The
10 upper floor is EWL; do you agree?

11 A. 係呀。

12 Q. But there's no dispute that you were on the lower
13 floor -- let's get this out of the way first -- you were
14 on the lower floor?

15 A. 係。

16 Q. Can I ask you to look at your police statement. The
17 English is 907.4. The Chinese is 983, paragraph 7. For
18 the English, it should be 907.4. The Chinese version --
19 I'm sorry, it's actually paragraph 6, my mistake. The
20 Chinese is 982, and the English is 907.3.

21 At the bottom of 907.3 -- and if you're looking at
22 the Chinese one, it's in the middle of D982 -- there are
23 the words -- in Chinese do you see:

24 "另外，於2016年6月中某日晚上時分，我於下層A區位置，確實位置已
25 忘記，施工期間"

1 The English version:

2 "Besides, at one night on a certain day in mid-June
3 2016, whilst I was working in area A at the lower deck
4 (the exact location forgotten), I walked past the area
5 and again saw 2 construction workers ..."

6 Do you see that, your Chinese statement, 982?

7 A. 係。

8 Q. So there you mentioned the lower floor, for which
9 there's no dispute. You also mention area A. Mr Chu,
10 you saw that?

11 A. 如果喺A區割嘢，你--我覺得正常嘅，點解呢？你割幾條鐵，你搬去邊度我
12 都唔知，係咪呀？我有話過扭上去㗎。

13 Q. But if you look at the entirety of the NSL, if you look
14 back at the big sheet of paper that you have been shown,
15 bundle B5/page 2903, I can tell you that of all the
16 areas, whether it's A or B or HKC or whatever, the
17 latest pour date was 28 May 2016. That can be found in
18 the left-most part of this diagram, under the heading
19 "SAT", and then you can see it's a pink area with two
20 boxes. The left-hand box is bay 1, the other is bay 2,
21 and you can see, under bay 2 of SAT, you can see the
22 date "28-May", that is the five month of the year, "16",
23 that's 2016; all right?

24 So this document shows us that as far as the NSL is
25 concerned, the final pour date was 28 May 2016.

1 A. 我肯定同你講吓，有留窿、水井都未做好嘅，嗰啲全部都係coupler扭出嚟嘅。

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. 大份嘢就落晒，但係我記得個水井個位，水井位喺A區，而家呢啲火車頭呢啲
6 行緊，喺下低過海嗰個角落位，有一個大水井，嗰陣時都未落嘅。

7 Q. So you now remember it is in area A?

8 A. A區，係呀，A區睇，但係你下低，你話大份嘢落嗰陣時，我記得仲有兩個大井
9 都未落嘅，最後一批喺嗰面唔知...

10 Q. So you are saying that there is still concrete to be
11 poured after May?

12 A. 係呀。

13 Q. Can I show you 2905. This is all in English; it's not
14 even in the form of a picture. But I can tell you that
15 this is a summary of the documentary record for the
16 pouring of various areas. And this table, you can see
17 on the left-hand side there is a column with various
18 locations, and then you can see -- it starts with SAT,
19 and under SAT you can see there is area A, A區, and if
20 you move to the right-hand-most -- not the right-hand-most
21 -- if you move to the right, you can actually see the top
22 numbering is "6 post-concrete survey check" -- may I ask
23 that to be pointed out to the witness? Sorry, "Concrete
24 pour date", the white column next to it, "Concrete pour
25 date". You can from the third entry onwards, that would

1 be the date of the concrete pour date for area A. So, for
2 the next five entries, starting with 3 March 2016, those
3 five entries were the pour dates for area A, and all we
4 can see was 21 May 2016.

5 Mr Chu, you are still saying to us that by mid-June,
6 which was the date when you said you were in area A of
7 NSL, you saw people still cutting rebars; is that what
8 you are still saying?

9 A. 係呀。

10 Q. I suggest to you one more time that area is all
11 concreted by mid-June, and there would be no scope for
12 anyone to cut any rebars in that area. Do you accept
13 that?

14 A. 呢啲係「大砧板」落完啫，你間牆，好多couple扭出嚟，地方好--用咗好
15 多啲，唔係單單啲啲「大砧板」先有coupler 嚟，你知唔知呀？

16 Q. So you are now saying that the steel bars are being cut
17 for purposes otherwise than being used for reinforcement
18 purposes in the slab?

19 A. 我睇見啲啲剪啲啲鋼筋啲啲鐵好多樣--好多方法用呢，都「砧板」又冇用，
20 間牆都有用，唔係單單落去啲啲「大砧板」，可以扭落去，先講--一個size
21 啲啲鋼筋嚟嘅，啲啲間牆啲啲都有，都有扭啲啲coupler出嚟嚟。

22 Q. I repeat, you are suggesting that the reinforcement bars
23 that are being cut may well be used not for
24 reinforcement purposes in the slab? Are you saying
25 that?

1 A. 係呀。

2 Q. Can I ask you then to look at bundle C34, page 25954.

3 Again, this is an English document, but in view of your
4 answers earlier I hope it's not controversial. This is
5 a concrete cube test report, which records the result of
6 testing of concrete sample on the date when concrete was
7 poured. This document, and the documents that follow
8 from this document -- I'm not going to take you through
9 all that -- tells us that an NSL track slab bay number 5
10 was poured on 21 May 2016.

11 You have no reason to doubt the date recorded in
12 these documents as being the last pour date of bay
13 number 5 of area A, do you?

14 A. 係呀。

15 Q. Can I move on. This morning, you were asked about
16 whether you have mentioned the two incidents about
17 cutting to anyone. Can I ask you to look at bundle D2,
18 page 906. That is your Chinese police statement. The
19 English police statement, the translation, is 907.4.
20 The paragraph I want you to look at is paragraph 6.

21 In the final sentence of paragraph 6 -- and you can
22 look at the Chinese one -- you said -- I will read the
23 English:

24 "Regarding the 2 incidents of someone cutting the
25 threaded ends of rebars as stated above, I have not
26 mentioned them to anybody."

1 In the Chinese:

2 "所以就上述兩次有人剪鋼筋螺絲頭事件, 我都沒有向任何人提及."

3 Do you see that?

4 A. 係。

5 Q. That was what you told the Hong Kong Police Force;
6 correct?

7 A. 係。

8 Q. That is correct, yes? That is true; correct?

9 A. 係。

10 Q. So you are telling the truth to the police?

11 A. 係呀。

12 Q. That being so, can I then ask you to look again at what
13 Mr Poon had said. Bundle D1, page 19. Mr Pennicott
14 showed this to you this morning, but I won't just show
15 it to you, I will read it to you and have it translated.
16 I think you also had it read to you and translated but
17 I will do it again. Page D19, paragraph 30, Mr Poon
18 said:

19 "In mid-August 2015, I and 12 other staff of
20 China Tech had an internal meeting at China Tech's
21 temporary offices in the Hung Hom Station construction
22 site. Mr Leung reported to me orally that he saw in
23 late July 2015 someone cutting the threaded rebars using
24 cutting/grinding machines at bay 2 and bay 4 of area C1.
25 At the same time, Mr Chu [that's you] also corroborated

1 with what was said by Mr Leung and told me that he also
2 witnessed similar incidents happening."

3 You may not understand the English there, but I have
4 read out what he said to you, it's been translated to
5 you in Chinese -- that was what Mr Poon said in his
6 witness statement. What he was saying there is not
7 correct; do you agree?

8 A. 唔係，因為8月份我聽我伙記有講畀我聽，嗰陣時開會，我有符和過嘅，
9 我話剪鋼筋，我話我啲伙記都有睇見有人剪鋼筋，咁樣講咩嘛。

10 Q. That sentence said, "Mr Chu corroborated with what was
11 said by Leung and told me". So Mr Chu told Mr Poon that
12 Mr Chu also witnessed similar incidents happening. That
13 was what you said Mr Poon said.

14 A. 我有見過，我有見過，不過我伙記有見過。

15 Q. Right. So you did not tell Mr Poon that you had seen
16 similar incidents happening? You did not tell Mr Poon?

17 A. 我有講。

18 Q. Thank you.

19 Then page 19, paragraph 32, this is another
20 paragraph which was read out to you. Mr Poon said:

21 "Sometime later, Mr Leung and Mr Chu told me that
22 they had reported the matter to MTRC."

23 Right. So Poon said you told him that you had
24 reported the matter to MTRC.

25 A. 我記憶中，我一般呢啲嘢都唔會做嘅。

1 Q. Mr Chu, it is not just a matter of whether you would
2 normally do something like that, because in your police
3 statement you have clearly said you did not tell anyone.

4 Do you remember? You did not tell anyone?

5 A. 係。

6 Q. Therefore, you did not tell MTRC; correct?

7 A. 係。

8 Q. So you did not tell Mr Poon that you had told MTRC;
9 correct?

10 A. 呢段嘢我又唔記得咗究竟梁先生有冇我跟佢去搵港鐵，嗰陣時做嘢，應該
11 啱啱開始做「大砧板」咁嘛，嗰陣時好忙㗎，我唔記得咗呢段記憶有冇同
12 佢一齊去搵港鐵。

13 Q. Okay. So now you are saying you might have followed
14 Mr Leung to speak to MTRC?

15 A. 係呀。

16 Q. Contrary to what you have said in the witness statement,
17 when you said you did not tell anyone about the
18 incident?

19 A. 唔係，因為嗰陣時做嘢嗰陣時就係科文唔係咁多，得六、七個科文管幾
20 區，有時佢叫我幫手去跟佢去睇點，其他管理、其他嘢我一般都唔係咁
21 理嘅，影相嗰啲嘢。

22 Q. So you are now saying for whether you had followed
23 Mr Leung to tell MTRC, you can't remember?

24 A. 係。

25 Q. Can you look at the beginning of your witness statement,

1 at bundle D2, page 971. At paragraph 4, you said:

2 "I have had the opportunity to read the witness
3 statement and the supplemental witness statement of
4 Mr Poon dated 3rd September ..."

5 That was the one I was just showing you.

6 "I agree that the facts deposed therein are true."

7 But we have seen just now that you disagree with
8 what Mr Poon had said, when he said you had told him
9 that you had seen people cutting, and you say you can't
10 remember whether you followed Mr Leung to tell MTR.
11 I suggest to you that you simply can't possibly agree
12 with Mr Poon had said in his witness statement; do you
13 accept that?

14 A. 你講多一次。

15 Q. You could not possibly agree with what Mr Poon had said
16 in his witness statement?

17 A. 唔同意，因為我8月份都聽過伙記講咗，同潘先生有講咗，我符和過嘅，嗰陣時
18 開會嗰陣時，但係究竟我同梁先生有冇同港鐵講，去同佢跟進呢件事，我唔記得
19 咗嘅，因為嗰陣時做嘢真係好忙、好忙，嗰陣時。

20 Q. I'm not going to spend more time with you. I'm
21 suggesting to you that you were just content to sign
22 whatever form of witness statement put in front of you,
23 without trying to understand its content. Do you accept
24 that?

25 A. 可能有時我聽唔明，有律師翻譯畀我聽。

1 Q. But the lawyer -- did the lawyer explain or translate
2 Mr Poon's witness statement to you, when you signed your
3 own witness statement?

4 A. 係。

5 Q. He did?

6 A. 係。

7 Q. So the lawyer told you or explained to you that Mr Poon
8 said you and Mr Leung went to the MTR?

9 A. 有，但係我記憶中又記唔起。

10 Q. I will suggest one more time that you were just content
11 to sign whatever the lawyer had put in front of you and
12 explained to you, and you were just happy to sign it
13 without bothering with whether it was true or not. Do
14 you agree?

15 A. 唔同意。

16 MR SHIEH: Thank you very much, Mr Chu. I have no further
17 questions for you.

18 Cross-examination by MR BOULDING

19 MR BOULDING: Sir, I just have one or two questions, if
20 I may.

21 Good afternoon, Mr Chu. I'd like to ask you one or
22 two questions about your witness statement. That's in
23 bundle D2 at page D970. If you would be kind enough to
24 go to D971, I'd like to ask you about what you said in
25 paragraph 5.2. There you say:

1 "Workers of Fang Sheung did not wear any form of
2 uniform, they usually wore casual clothing of their own
3 or did not wear any upper clothing. Workers of
4 Fang Sheung also wore red safety vests sometimes."

5 Do you see that, Mr Chu?

6 A. 係。

7 Q. Today, you told the learned Commissioner that sometimes
8 Fang Sheung workers wore reflective vests; do you
9 remember that?

10 A. 反光衣咁嘛，反光衣同埋衫嗰啲反光嘅唔一樣㗎，反光衣，你喺馬路都睇見
11 喇，有人着件--入邊着衫、出面着件反光衣咁嘛，呢啲叫反光衣咁嘛，背心
12 係背心，有時，紅色反光衣有時。

13 Q. Mr Chu, I might be a lawyer but I can tell you I know
14 what a reflective vest is; okay?

15 You also said that sometimes the Fang Sheung people
16 were bare-chested; do you remember telling the learned
17 Commissioner that?

18 A. 你講多一次咩。

19 Q. Yes. You also said that sometimes the workers were
20 Fang Sheung were bare-chested; do you remember saying
21 that?

22 A. 係。

23 Q. Lastly in this context, you said that sometimes they
24 wore casual clothing; do you remember saying that?

25 A. 係。

1 Q. Good. So far, so good.

2 Now, my learned friend Mr Shieh has already drawn
3 your attention to paragraph 4 of your witness statement,
4 where you say that you agree that the facts deposed to
5 by Mr Poon in his first and second statements are true.
6 Do you remember Mr Shieh putting that paragraph to you?

7 A. 問咗咩嘢呀?

8 Q. Mr Shieh took you to paragraph 4 of your witness
9 statement and read it to you. Do you want to go and
10 have another look at it?

11 A. 你讀多一次畀我聽。

12 Q. I'm very happy to do that, Mr Chu, because it is
13 an important statement from you:

14 "I have had the opportunity to read the witness
15 statement and the supplemental witness statement of
16 Mr Poon dated 3 September 2018 and 14 September 2018
17 respectively."

18 Then you go on to say, rather importantly, some
19 might think:

20 "I agree that the facts deposed to therein are
21 true."

22 A. 係。

23 Q. Now, we've looked at one or two paragraphs in Mr Poon's
24 statement, but could I trouble you, please, to go to
25 paragraph 86 in D36 -- page D36. Presumably, you would
26 like me to read that to you again, would you?

1 A. 係呀。

2 Q. "Representatives of the MTRC then asked me if I may
3 produce any further information proving that those
4 persons involved in the cutting of the threaded rebars
5 were staff members of Leighton. I told them that staff
6 members of Leighton can easily be identified from staff
7 of other sub-contractors by their uniforms. As staff
8 members of Leighton were all dressed with Leighton
9 T-shirts and reflective vests."

10 Now, it's the next sentence I'd like you to
11 concentrate on, please:

12 "On the other hand, staff of Fang Sheung were all
13 rebar fixers and their uniforms were heavily
14 contaminated by sweat and rust in dark brown colour."

15 So you can see there, can you not, that your boss,
16 Mr Poon, is going to tell the Commission, when he gives
17 evidence later this afternoon, that the uniforms worn by
18 Fang Sheung were dark brown in colour and contaminated
19 by sweat and rust? Do you see that?

20 A. 見到。

21 Q. Who's right, Mr Chu? Are you right that Fang Sheung
22 wore reflective vests or were sometimes bare-chested or
23 had casual clothing on, or is your boss, Mr Poon, right,
24 namely that they had dark brown uniforms that were
25 heavily contaminated by sweat and rust? Who's right?

26 A. 嗰啲便服，點講呢？泛迅嗰啲好雜嘅，我就冇--記唔清楚喇，因為嗰陣時

1 紮鐵佬同我就唔係咁啱key嘅，因為我哋除咗同佢溝通，爭啲啲位置阻唔
2 阻，阻唔阻我釘板啲啲嘢嘅，其實我喺佢哋度行來行去啲啲制服，佢好雜
3 嘅，我同意潘先生咁講嘅，佢啡色都有。

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. 我有反對，因為呢啲衫着，我就唔記得咗有冇深啡色，呢啲嘢啲啲着嘅衣服，
7 啲啲泛迅係好雜嘅，因為做嘢啲陣時，有時自己做做下，污糟咗，都剝晒衫，
8 着件啲啲反光衣喺啲度做嘢，我又唔記得起佢究竟有冇追問啲啲嘢，泛迅就
9 冇統一啲啲制服嘅。

10 Q. I'll give you one more opportunity, Mr Chu. What your
11 boss, Mr Poon, says is that their uniform were dark
12 brown in colour.

13 CHAIRMAN: I would, with respect, just put one cautious
14 caveat to that, because on a reading in English it could
15 be, it seems to me, that it's not a description of the
16 colour of the uniform; it's a description of the result
17 of rust and dirt.

18 MR BOULDING: Well, we will no doubt investigate that with
19 Mr Poon.

20 CHAIRMAN: That's why I say I make one cautious caveat, but
21 perhaps experience in translation between colloquial
22 Cantonese and Chinese dialects into English can
23 sometimes cause syntax difficulties.

24 MR BOULDING: I take your point, sir, but going back to the
25 sentence in question, what is indisputable, I suggest,

1 Mr Chu, is that your boss is saying that Fang Sheung
2 wore uniforms; do you see that? "Fang Sheung were all
3 rebar fixers and their uniforms".

4 A. 泛迅嗰啲制服就反光衣，紅色反光衣，然後佢着嗰啲衫就好雜嘅，我咁記
5 得，究竟係咪深啡色呢？我就記唔起喇。

6 Q. Mr Chu, a reflective vest and their own clothing is not
7 a uniform, I suggest, is it? That's not a uniform?

8 A. 如果有反光衣，點入地盤？

9 Q. I think you've got my point, Mr Chu. I'll move on.

10 You deal with occurrence 1, the first alleged
11 occurrence of bar cutting, and that took place in late
12 October 2015. You give evidence on that in
13 paragraphs 11 to 13 of your witness statement. That's
14 page D973.

15 In paragraph 12 of your statement, you state that
16 "it may be common to cut the threaded rebars of a steel
17 thread as [it] might be damaged"; that's correct, is it
18 not?

19 A. 係。

20 Q. You go on to say that they cut the threads so they can
21 be screwed into the coupler; that's what you say, isn't
22 it?

23 A. 係。

24 Q. But you've already told the learned Commissioner, have
25 you not, that you never saw anyone on site trying to

1 screw threads, which had been cut, into couplers; you
2 never saw anyone trying to do that, did you?

3 A. 我有見過人哋裝上去嘅，但係我見過人哋剪。

4 Q. Can I suggest to you, Mr Chu, that the reason you've put
5 forward, namely that they were cutting the bars so they
6 could screw them into the couplers, that's pure
7 speculation on your part, isn't it? Pure speculation.

8 A. 如果損壞，都好難扭啲嘢，我諗啲--當時我諗係正常嘅。

9 Q. Well, in paragraph 13, you tell the learned
10 Commissioner:

11 "That said, I did not check whether the threaded
12 rebars were actually damaged when I witnessed the
13 cutting of the threaded rebars. I did not inquire into
14 the matter as it was not within my job scope and duties
15 to do so."

16 So, obviously, you do not know whether the threads
17 on the rebar were damaged or not, do you?

18 A. 如果有損壞，點解要剪呢？

19 Q. I'm the one who asks the questions. And I suggest to
20 you -- and I've suggested it once; I will put it
21 again -- you are speculating, are you not, as to why
22 those rebars were being cut?

23 A. 佢剪鋼筋，我見到，的的確確睇見佢剪，但係我同你咁樣，咁遠兩、三米，
24 我都見得到，但係佢點解要剪，呢啲理由我就唔知，因為一般正常啲嘢...

25 Q. That will do.

1 A. ...一般正常嗰啲扭紋就唔會剪嘅，正常，如果好好地，又嗰啲鋼筋頭要
2 扭入嗰啲couple嗰啲，正常唔會剪嘅。

3 Q. Well, you gave the answer I wanted but I'll put it to
4 you once again: it's pure speculation on your part as to
5 why those bars were being cut because, as you say, you
6 didn't check to see whether they were damaged, you
7 didn't enquire into the matter, so you are speculating,
8 are you not?

9 A. 呢啲唔係我做嘍，因為我係做釘板嘍。

10 Q. I've heard that, Mr Chu, but you are pretty good at
11 evading questions, and I'll put it to you again. You do
12 not know why they were cutting the rebars, do you? You
13 don't know?

14 A. 我見到剪鋼筋，但係咩嘢理由我唔知，因為我--唔屬我呢瓣。

15 MR BOULDING: Thank you, Mr Chu.

16 Cross-examination by MR KHAW

17 MR KHAW: Just a few questions.

18 I'm acting for the government.

19 On the last point that Mr Boulding asked you about,
20 regarding your evidence in relation to the damaged
21 threads --

22 A. 係。

23 Q. -- while you were working in the Hung Hom Station for
24 this particular SCL project, were you actually aware of
25 any incident where you were told or you heard that the

1 threaded parts of the couplers were damaged?

2 A. 冇。

3 MR KHAW: I have no further questions.

4 CHAIRMAN: Thank you.

5 MR PENNICOTT: Sir, before Mr To re-examines, if that's
6 indeed what he's going to do, I wonder if I might just
7 be permitted to ask a few more questions.

8 The point is this, that the witness gave some
9 answers to Mr Shieh regarding, it seemed to me, work
10 that was carried out post the completion on 28 May 2016
11 of the last part of the NSL slab, and he referred to
12 holes and various other, if I might euphemistically say,
13 bits and pieces that needed to be done.

14 CHAIRMAN: Yes.

15 MR PENNICOTT: I just wondered whether it might help us to
16 understand what further work Fang Sheung and indeed
17 China Technology had to do beyond just the slab.

18 Now, of course we are 100 per cent primarily
19 concerned with the EWL slab and the NSL slab, but it
20 does seem to me, subject obviously to asking this
21 witness and perhaps some of the Fang Sheung witnesses
22 precisely what the position is, that there were other
23 works -- there was reference to core walls and other
24 aspects of work that still needed to be done -- which
25 perhaps also required rebar, reinforcement in the core
26 walls and so forth. And if it's right that this witness

1 saw rebar being cut in June 2016, as he says, then it's
2 possible, I suppose -- it's got absolutely nothing to do
3 with either the EWL or the NSL slab, but it may have
4 something to do with these other bits and pieces, for
5 want of a better expression.

6 I just wondered if that might be helpful, if
7 somebody else -- I'm quiet happy to do it myself, or if
8 you want to reflect on it and have a break. It's up to
9 you.

10 COMMISSIONER HANSFORD: Are you suggesting, Mr Pennicott,
11 that some of these other bits and pieces might involve
12 couplers?

13 MR PENNICOTT: That's also another question that I wanted to
14 ask, because it arose in the context of that very answer
15 that he gave, which you obviously picked up, and I was
16 going to ask him about that as well. That was my
17 lead-in.

18 COMMISSIONER HANSFORD: I think that would be helpful.

19 CHAIRMAN: Yes. Thank you.

20 Further examination by MR PENNICOTT

21 MR PENNICOTT: Mr Chu, I'm sorry, but I get to have a few
22 more questions.

23 Could I ask you to be shown the transcript for
24 earlier this afternoon at [draft] pages 88 and 89. Has
25 everybody got that? Let me just read it out again.
26 Mr Shieh, at [draft] page 88, line 23, finished the

1 question with these words:

2 "So this document shows us that as far as the NSL is
3 concerned, the final pour date was 28 May 2016."

4 And your answer was this:

5 "I can tell you for sure. There were holes and
6 other ducts not yet done and they all had to do with ...
7 couplers."

8 Now, first of all, Mr Chu, could you explain your
9 reference to couplers there? What did you mean by that?
10 What were you referring to?

11 A. 有時，間牆留窿或者啲「大砧板」啲啲水井後落嘅，啲啲有幾個大水井，下
12 低，我記憶應該有三個嘅大水井，啲啲有留窿嘅，留窿啲啲後落嘅，後落啲
13 陣時都有扭coupler出嚟嘅。

14 Q. All right. So you had to use couplers. That suggests
15 obviously you were using reinforcement and -- sorry, not
16 you were using, but you saw reinforcement being used?

17 A. 係。

18 Q. This was work being done by Fang Sheung; is that right?

19 A. 呢啲唔係我哋嘅工作範疇，一般我都有去了解嘅，因為我做好我自己啲嘢啫。

20 Q. With regard to those holes and ducts you were talking
21 about, were you responsible for doing the formwork in
22 relation to that, to those holes and ducts?

23 A. 一般要釘板，我都要做嘅，呢啲因為下低全部釘板都係屬於我一個人管嘍嘛，
24 去安排啲啲師傅去做嘢。

25 Q. Okay. Could I just ask you, please, to be taken to some

1 documents in the e-bundle. I'm afraid we don't have
2 them in the hard-copy versions, but I'm told that if we
3 look at B5, document 45.13 -- that's the folder -- "Site
4 diaries", then 45.77. That should be the MTRC diary,
5 starting on 1 June 2016.

6 So, Mr Chu, I doubt this is a document you have seen
7 before, but it is an MTR site diary. You can see that
8 from the very top, on the left-hand side. Do you see
9 that?

10 A. 係。

11 Q. And on the top right, you can see it's for 1 June 2016.

12 If we can go to the writing, the typescript on the
13 left-hand side, please, and pause there, you will see,
14 at item 2, it says:

15 "CTC", which I imagine is China Technology,
16 "-- dismantling of walings and struts to core wall ...
17 on NSL track slab.

18 -- scrabbling to form vertical CJs to core wall ..."
19 Reference is given.

20 Then if we move down to item 4 there, we see:

21 "Fang Sheung -- rebar fixing to core wall A-W4-1,
22 A-W5-2, A-W14-1 on NSL track slab."

23 Mr Chu, is this the type of miscellaneous work, for
24 want of a better expression, that you're referring to,
25 were referring to just a moment ago?

26 A. 雜項啲就唔識點分，啲鐵啲就泛迅啲負責嘅，因為我係負責釘板嘅，

1 呢啲係唔同工序嚟嘅，因為--點講呢？唔同分判商。

2 Q. Yes. This is clearly not rebar that is being fixed on
3 the NSL slab itself, but clearly there are items of work
4 called core walls which clearly require rebar, according
5 to this diary?

6 A. 我記憶就有人剪，但係個用處用去邊度呢，我就唔知。

7 Q. Yes, I understand that. These core walls, is this the
8 sort of work you would be doing your formwork for, the
9 core walls; you would be involved in that, would you?

10 A. 有呀，我有做呀。

11 Q. Right. I don't know if you can find 2 June, the next
12 day, it's SD8350 on my hard copy. This is 2 June,
13 Mr Chu; do you see that?

14 A. 係。

15 Q. If we go back to the left-hand side, we can see again
16 a similar entry as to CTC, and again on 2 June at
17 number 4, we can see the rebar fixing to the core walls
18 is still continuing.

19 A. 係。

20 MR PENNICOTT: Right. I think I've taken that as far as
21 I want to for now. We can perhaps discuss it with
22 Fang Sheung in due course as well.

23 CHAIRMAN: Thank you.

24 Anything arising from those questions? Good. Thank
25 you.

1 Re-examination by MR TO

2 MR TO: Okay, Mr Chu. I just have two questions to
3 re-examine you on. Can I show you a diagram called C40.
4 Before you say anything, Mr Chu, can I remind you of
5 your witness statement, paragraph 11, at page D973, as
6 well as D975, paragraph 18. Remember you were asked
7 questions relating to a machine? Now look at C40 again.
8 Is this the type of machine that you are referring to in
9 paragraph 18 of your witness statement on page D975?

10 A. 係，6月份嗰日見到就呢部機，呢類型嘅機器，就係同一款嘅。

11 Q. Thank you.

12 Another question, can I take you to -- this is to do
13 with Mr Shieh's question asking about the slabs, the EWL
14 slab and also the NSL slab. Can I take you to H2,
15 page H534.

16 Just by looking at this diagram, Mr Chu, can you
17 tell us how many slabs are there?

18 A. 我睇唔清楚呀，呢啲直情。

19 Q. Okay. If we move on to H536, how many slabs are there;
20 can you see?

21 A. 嗰度有三塊「砧板」。

22 Q. So can you tell us the first slab at the very top, what
23 slab is that?

24 A. 上邊就行車嘅，下低又行車嘅，中間就風槽位嚟嘅，中間嗰座有三層嘍嘛。

25 Q. So, when you say certain people were still doing work,

1 do you mean the middle one or the bottom one or the top
2 one?

3 MR BOULDING: This is leading.

4 MR TO: Sorry, I will rephrase. I apologise for that.

5 When they were doing rework, which slab were you
6 meaning?

7 MR SHIEH: Sorry, I'm not even sure whether the witness --
8 first of all, I'm not sure which part of Mr Chu's
9 evidence Mr To is re-examining on, and secondly, I'm not
10 even sure whether or not the witness had linked up that
11 part of his evidence purportedly re-examined on with any
12 diagram. And the witness, upon being shown this
13 diagram, could well feel obliged to refer his evidence
14 to something on this diagram. There's no foundation for
15 doing that.

16 MR PENNICOTT: Sir, with respect, I think it would be
17 appropriate, if Mr To is on the topic I think he's on,
18 which was the one I asked some questions about at the
19 end, if the question simply is, "From this diagram, can
20 you point out what work was being done in June 2016 and
21 afterwards", I think that's a perfectly appropriate
22 question, if that's the question he's trying to get at.

23 MR TO: Chairman and Commissioner, that's correct. Thank
24 you, Mr Ian Pennicott, for putting that. So I will just
25 ask the witness, if that's okay.

26 Mr Chu, can you tell us what work was done in June

1 afterwards, in which area? Can you point out to us?

2 A. 我下低呢啲釘板，A區又有人釘，因為點講呢？我就南北方上去--行落去下低
3 呢啲樓，有時都好難分嘅，因為一日有時行到七轉咁嘛，頭尾，因為我下低就
4 伙記就拆檔拆得多，因為嗰陣時有二、三十個人喺下低做嘢，釘板嗰啲工序就
5 跟住嗰啲層板、間牆都有人做緊嘅嗰陣時，但係我記得就A區嗰度cut鐵，有人
6 有cut嘅，但係下低嗰啲工序，而家--嗰陣時已經打仗咁樣，我都好難分清楚，
7 因為嗰陣時好忙嘅，一個人有時行上、下兩層，但係釘板啲嘢，下低呢啲6月開
8 始應該有人釘緊嗰啲間牆，嗰啲大嗰啲剪力牆。

9 Q. I understand. Just looking at this diagram, can you
10 just point to us -- I'm just asking you a simple
11 question -- just point to us where other work was done
12 after June?

13 A. 兩邊嗰啲中間嗰啲間牆，中間兩條間牆喺A區嗰陣時，由頭嗰陣時又起兩條
14 剪力牆，其實都係metre零嘅，當然連接三層嘅嗰條上力牆又做緊，開始做
15 緊嗰個下低個加固嗰啲剪力牆嘅，就係中間嗰樑，呢啲中間嗰樑有兩條剪力
16 牆嘅，就呢度咁嘛。

17 Q. Can someone see where he is pointing so he can show us, --

18 A. 就係呢...

19 Q. maybe in hard copy.

20 Mr Chu, there is a hard copy in front of you. Can
21 you show us?

22 A. 係呢兩條剪力牆都有人做緊嘅，呢條，呢條。(indicating). 中間呢樑
23 就係剪力牆開始有人做緊嘅，中間呢樑。

24 Q. I understand.

1 INTERPRETER: It could be shear wall, it could be structural
2 wall, because the witness has an accent.

3 MR TO: Thank you very much.

4 A. 呢兩邊就唔係咁嘛，就係呢中間點，承托呢兩條瓢嘅。

5 MR TO: I don't have anything further to re-examine.

6 CHAIRMAN: Good. Thank you very much indeed, Mr Chu. Your
7 evidence is now completed. You can go. There is
8 a possibility that you may be recalled at some stage, if
9 there are any further questions which the Commission
10 would like to ask you, but at the moment I think you can
11 work on the basis that you're free to go and will not be
12 called upon again. Thank you very much.

13 MR SHIEH: Chairman, can I just place on the record, because
14 when the witness pointed at the hard copy, the way he is
15 pointing doesn't actually show on the transcript. Can
16 I have it on the record that he is pointing in
17 a vertical direction?

18 CHAIRMAN: Yes, of course. He is pointing at the vertical
19 drawings.

20 Good. Thank you very much indeed, Mr Chu.

21 (The witness was released)

22 MR TO: Mr Chairman and Commissioner, would it be possible
23 if we have 15 minutes' break so I can consult with our
24 client before he comes at this stage?

25 CHAIRMAN: Yes.

26 MR PENNICOTT: Sir, it's 3.45 so I would have thought it's

1 an ideal time for a break.

2 CHAIRMAN: Yes, we'll do exactly that. 15 minutes.

3 (3.46 pm)

4 (A short adjournment)

5 (4.05 pm)

6 MR PENNICOTT: Sir, the next witness is Mr Poon.

7 CHAIRMAN: Yes.

8 MR TO: If we may, Mr Chairman and Commissioner.

9 MR POON CHUK HUNG, JASON (sworn in Punti)

10 Examination-in-chief by MR TO

11 Q. Mr Poon, correct me if I am wrong, you have made five
12 witness statements; am I correct?

13 A. 係，總共五份。

14 Q. Can I take you to D10.

15 A. 係，係。

16 Q. That's your first witness statement. Can I refer you to
17 D41.

18 A. 係。

19 Q. Is that your signature on this page?

20 A. 係。

21 Q. And the date is dated -- the previous page, D40 --
22 3 September 2018; correct?

23 A. 係，9月3號。

24 Q. And the second witness statement, can I take you to
25 that: it's D889.

- 1 A. 係。
- 2 Q. Can you look at D890.
- 3 A. 係。
- 4 Q. Is that your signature on this page?
- 5 A. 係，對嘅。
- 6 Q. And it's dated 14 September 2018?
- 7 A. 係。
- 8 Q. Can I take you to your third witness statement. That's
- 9 D1001.
- 10 A. 係，喺度。
- 11 Q. Can I refer you to D1004.
- 12 A. 係，喺度。
- 13 Q. Is that your signature on D1004?
- 14 A. 係。
- 15 Q. And this witness statement is dated 11 October 2018?
- 16 A. 對。
- 17 Q. Can I take you to your witness statement number 4. It
- 18 is D2/D1058.
- 19 A. 係，喺度。
- 20 Q. Can I refer you to D1064.
- 21 A. 喺度。
- 22 Q. Can you see your signature on this page?
- 23 A. 係。
- 24 Q. And the date of this witness statement is 25 October

1 2018?

2 A. 係，對嘅。

3 Q. Can I take you to your last witness statement, number 5.

4 That's D1082.

5 A. 係。

6 Q. Can you go to D1089.

7 A. 係。

8 Q. Can you see your signature there?

9 A. 係。

10 Q. So this witness statement is dated 28 October 2018?

11 A. 係，對嘅。

12 Q. On top of that, you have an amended version which you
13 handed to the Commission on 29 October 2018; is that
14 correct?

15 A. 喺。

16 Q. And your signature is on that as well?

17 A. 係。

18 Q. Mr Poon, do you wish to adopt these witness statements,
19 the five of them, including the last one, the amended
20 one, as part of your evidence?

21 A. 係，對嘅。

22 Q. So, Mr Poon, if I may, I'm going to ask you some
23 questions.

24 A. 好。

25 Q. Mr Poon, can I refer you to a diagram called H534.

- 1 A. 係，喺度。
- 2 Q. Can you tell us something about this diagram?
- 3 A. 呢個diagram其實就show到我哋建築嘅紅磡站嘅A區，A1區。
- 4 Q. Mr Poon, can you slow down a bit.
- 5 A. Okay.
- 6 Q. Continue.
- 7 A. 呢個圖則就係我哋紅磡站A1區嘅剖面圖，呢個圖則裏面有個特色嘅，就係只有
- 8 A1區先至會有mass concrete filling嘅，就係我哋喺圖則上面，如果我哋
- 9 喺最低塊層板睇起，個層板嘅左右兩邊同埋中間有少少位置都會有啲...
- 10 Q. Can you slow down, because it's getting translated, you
- 11 see.
- 12 A. I don't think -- 冇咗translation，係咪呀？我聽唔到translation。
- 13 Q. But you are going too fast so he can't translate it.
- 14 Can you tell us anything further about this diagram?
- 15 A. 等一等，我係完全聽唔到有translation，哦，因為英文版，okay，明白。
- 16 Q. You need to press this.
- 17 A. Okay。我哋睇啲啲的一點點用三角形--大細三角形，仲有一點點嘅地方，其實
- 18 就係一啲mass concrete。
- 19 Q. Anything further?
- 20 A. 呢一個A區層板有個特色嘅，除咗我哋最底層見到嗰個NSL track slab
- 21 之外，同埋一塊比較長、大概EWL track slab，中間其實多咗一層。
- 22 Q. Can I take you to H536.
- 23 A. 係，喺度。
- 24 Q. You have mentioned about the middle layer. Can you

1 show us where that middle layer is on the diagram?

2 A. (Indicating) 就像呢層。

3 Q. So you are pointing at the location between which ones?

4 A. Between個NSL slab、NSL track slab同埋EWL track slab，我哋
5 仲有一份中層。(indicating)。

6 Q. Thank you. I'm going to show you next some photographs,
7 if I may. I'm going to show you six photographs and
8 then you can tell us something about those.

9 Can I refer you to D591.

10 MR PENNICOTT: Sir, I don't mind if Mr To wishes to show
11 photographs and ask specific questions. I don't just
12 want the question "Tell me about this photograph" and
13 then get a prepared speech. If he wants to ask
14 a specific question on a specific point, that's fine,
15 but I don't want any more prepared speeches, please.

16 MR TO: Got it.

17 In diagram D591, can you see four persons there?

18 A. Yes.

19 Q. Can you see some of them are wearing uniforms and some
20 of them are not?

21 A. 係，睇到。

22 Q. The ones wearing uniform, are they wearing any special
23 clothing?

24 A. 佢哋分別着咗一件紅色同埋一件藍色，就像禮頓嘅大--直接員工嗰啲制服。

25 Q. And what about the other two with yellow safety helmets;

1 what are they wearing?

2 A. 佢哋係冇着衫嘅，淨係着咗件反光衣，嗰件反光衣一般就係泛迅嘅工人嘅特色
3 嚟嘅，因為佢哋成日唔着衫，所以就畀安全部會罰，所以佢哋習慣喺唔着衫嘅
4 時候就擺件反光衣着喺面。

5 Q. In this diagram, you can see there are lots of red
6 bubbles or square boxes. Why were there lots of bubbles
7 and square boxes showing certain locations?

8 A. 呢個係本來我哋公司想喺呈交每一張相片嘅時候做嘅annotation嚟嘅。

9 Q. So the one you pointed at the very bottom there
10 called -- can you see the box, it says "Normal threaded
11 bar"?

12 A. 係。

13 Q. So what do you mean by "Normal threaded bar"?

14 A. 因為每一條threaded bar，其實佢除咗扭落個螺絲頭，即係coupler之
15 外，佢仲有一個要求，個要求就係個lapping length，喺我哋相片上面
16 見到條鐵，大概就係T40，而計埋lapping length，呢條鐵應該長大概
17 兩米，喺我做咗地盤咁耐經驗，呢條係一個normal嘅一個--正常嘅一條
18 Threaded bar。

19 Q. If you go down, you will see there's a longer sort of
20 a square box that says, "These long bars are suspecting
21 fake thread bars ..."

22 What do you mean by that?

23 A. 呢一個就係我睇到比較唔正常嘅一啲threaded bar，其實我都懷疑呢條鐵
24 尾其實有冇threading嘅，個原因就是係一條正常嘅鐵佢擺去做個絞牙程序係

1 會受到空間限制，絞牙本身係一部機器去絞，係需要將啲鐵好似刨鉛筆咁塞
2 落去個機器度刨嘅，而一般情況之下，包括我所知，BOSA嗰地盤嘅workshop
3 係用個貨櫃建成嘅，貨櫃長度最長係6米，當我見到有鐵，尤其是駁落去
4 coupler嘅鐵長過6米呢，我都有合理懷疑呢條鐵係假裝嘅，長過6米嘅鐵除
5 非佢絞牙機係放喺一個露天而有四周可限制嘅空間，否則，基本上絞唔到牙。

6 Q. Okay, Mr Poon. Can I take you to another diagram or
7 photo. It's at D593.

8 Can you rotate it around?

9 MR SHIEH: Mr Chairman and Mr Commissioner, can I lay down
10 a marker, because Mr Pennicott said no prepared
11 speeches. We have just had a prepared speech which did
12 not form the subject matter of any witness statement,
13 and my learned friend cannot pretend that this is some
14 kind of a top-up evidence by pointing at some point of
15 bubble, because in this Inquiry we have rules,
16 hopefully, which are supposed to be obeyed, and if the
17 rules are that if people have to put what they want to
18 say in the form of a witness statement, we work on the
19 basis of their witness statement, not on some bubbles
20 which some unknown person had chosen to slip into one of
21 several photographs, the provenance of which is not
22 proven, and then this witness seeks to expand on. He
23 has had legal advice, he has had five chances to put in
24 witness statement.

25 I just lay down a marker because what he has said

1 has been said, and we know the issues in this case are
2 about cut threaded ends of rebars, and what this witness
3 had just said in relation to the bubbles, as far as
4 I can see, doesn't bear any relationship to any issues
5 that we can find in the witness statements. I just lay
6 down a marker here. I can't erase what this witness has
7 said, but if this witness doesn't control himself or if
8 Mr To doesn't control his client, there could be many
9 occasions like this, from numerous parties, I gather.

10 MR BOULDING: Sir, I would adopt those submissions and make
11 one further point: had this evidence been in a witness
12 statement, it is likely, to say the least, that someone
13 would have wanted to say something in response to it,
14 but of course we are hearing it for the first time
15 in-chief in circumstances where there is not a scintilla
16 of this sort of evidence in his witness statement.

17 MR SHIEH: And this witness and his company has had legal
18 advice, so he can't hide behind something like "I don't
19 know the procedure", so he knows full well the
20 procedure. He cannot say, "I am minded to assist."
21 This is not helpful at all.

22 CHAIRMAN: Mr To.

23 MR TO: Mr Chairman and Commissioner, I have got the point,
24 and I'll try to be fast, in terms of maybe ten minutes
25 at the most in terms of my examination-in-chief.

26 CHAIRMAN: I don't think that's the point. I don't think

1 anybody is trying to limit you to a time period. The
2 point is -- and I confess I am still a little puzzled by
3 what came out just now, because it doesn't seem to link
4 in with anything -- I think the point is that statements
5 have been made already. Those contain copious amounts
6 of material. If there are new matters, then they should
7 not just come in right at the beginning of
8 examination-in-chief, unless they are of such small
9 moment that one wants to merely use them in order to
10 clarify something that's already there. But this could
11 be, from what I can see, something of potential
12 materiality, and it puts other parties at a disadvantage
13 in being able to understand what is said, being able to
14 know what they can expect to be said, because it's
15 already appeared in a coherent and rational form in
16 writing.

17 MR SHIEH: And if I may say so, this is no small matter,
18 because the last thing we would wish to happen is for
19 this witness -- we have something to say about this
20 witness -- the last thing we want to do or see is if
21 this witness, if things turn against him, then turns
22 around and says, "I was only trying to be helpful and
23 I am stopped from doing so by the chairman by some
24 technicality. Rules have been made. Procedures have
25 been made. He is legally advised and he knows full well
26 the rules of this Commission.

1 CHAIRMAN: Mr To, that's clear. If a matter arises in this
2 Inquiry, which I emphasise again, it is, it's an attempt
3 for this Commission to be able to assist the Hong Kong
4 public at large in finding out whether there are grounds
5 for real concern about the building of these structures,
6 but if there are extra matters that must, in the public
7 interest, come forward, then there is a way of bringing
8 them forward, as happened for example over the weekend,
9 so that one would need to be able to say, "This is
10 fresh, this could be of materiality, we need to put it
11 down in writing in a rational way and give
12 an opportunity for it to be answered."

13 I appreciate that you've got some difficulties
14 because you now have the witness about to give evidence,
15 but with respect, if there were matters that still
16 needed to be dealt with, then whatever frowns of
17 criticism or lashings of the tongue that you may
18 receive, it would have been your obligation to say,
19 "Look, other matters have come up, we do need to put
20 them into writing and present them in a proper form;
21 could we have another half-day or something like that?"

22 MR TO: I understand, Mr Chairman.

23 Okay, Mr Poon, can I show you just a few
24 photographs, just to make things in perspective. These
25 relate to your witness statement.

26 Can I go to D594.

1 A. 係。

2 Q. In this diagram -- I will ask you a question -- you said
3 in your witness statement that the couplers were not
4 screwed in properly. What can you see from this
5 diagram?

6 A. 呢張相，我想補充下，其實喺相中間嘅位置，...

7 Q. Can you be brief?

8 A. 喺相中間呢個位置，其實就接合器都拆埋出嚟嘅。

9 Q. Okay.

10 A. 呢個係除咗剪鋼筋之外，喺呢個鋼筋接駁落去個連續牆其中一種，我就係唔睇...

11 CHAIRMAN: Sorry, I do apologise. Could you help me,
12 actually. I've got this photograph. I obviously have
13 a recognition of it but there's an awful lot of
14 photographs, there's an awful lots of diagrams. Can you
15 tell me in what context did this come before us
16 originally?

17 MR TO: This came in his witness statement in terms of the
18 couplers not being screwed in properly.

19 CHAIRMAN: Okay. So which witness statement is that? It's
20 better perhaps -- we have to say, "Look, in your witness
21 statement, you attached a particular photograph", then
22 I know that it's something that everybody has had
23 an opportunity to view already. Then what you are
24 asking the witness to do is not to do anything other
25 than to amplify, effectively, and further explain his

1 evidence that has already been put down in writing.

2 That way around, the matter proceeds in an orderly
3 fashion, in addition to which I'm not confused.

4 MR TO: I understand. Sorry. This photograph was not
5 mentioned in his witness statement, but in terms of the
6 words that were mentioned, in terms of couplers were not
7 screwed in properly.

8 CHAIRMAN: All right. So are you saying this is
9 a photograph which nobody has seen yet?

10 MR PENNICOTT: No, sir, that's not right. What's happened
11 is in Mr Poon's first witness statement, 3 September
12 2018, he only exhibited seven photographs, and Mr Shieh
13 was emphasising this point during the course of his
14 opening.

15 CHAIRMAN: Yes.

16 MR PENNICOTT: What then happened was that China Technology
17 disclosed a quantity of documentation.

18 CHAIRMAN: That's right, yes.

19 MR PENNICOTT: Not referred to in anybody's witness
20 statement but just, "Here we are, here are some
21 documents", and this photograph certainly is included in
22 that general run of material that was supplied. Nobody
23 speaks to it, and as Mr Shieh has already said, and no
24 doubt we will all be cross-examined in due course about
25 it, nobody has proved it, we don't know where it comes
26 from, we don't know who took it, we don't know what its

1 provenance is, we don't know who's put the writing on,
2 we don't know anything about it. It's not spoken to in
3 any witness statement.

4 As it happens, and I hesitated on the other one but
5 Mr Shieh got there first, but this one has no
6 annotations, not that have been superimposed on it. One
7 can see "EH19", so we know where we are in terms of
8 diaphragm walls and so forth.

9 But again, Mr Shieh has made the point, Mr Boulding
10 has made the point, I've made the point: if there's
11 a specific question that needs to be addressed, let it
12 be put, but we can't just have this general -- I'm
13 afraid it is -- speech preparing. This has all been
14 prepared, it's quite obvious it's all been prepared, and
15 this is not, as both my learned friends Mr Shieh and
16 Mr Boulding have said, this is not the way to do it, I'm
17 afraid.

18 MR TO: Okay, Mr Chairman and Commissioner. Maybe I will
19 just go for one photograph and maybe this will clarify
20 my opening in terms of examination-in-chief, and that's
21 the finish.

22 CHAIRMAN: Mr To, let me emphasise that, as far as I am
23 concerned, as the Chairman of this Commission, my
24 overriding objective is not to determine, as I said this
25 morning, litigation of the classic kind, but as
26 an Inquiry for the public good. So what we need to try

1 and do is to understand the evidence and be able to come
2 to the truth of it, so that we can make recommendations
3 to the Hong Kong public via the Chief Executive, that
4 have some meaning and may be acted upon.

5 In order to do that, there has to be an internal
6 regularity to the proceedings, because if there isn't,
7 I'm going to be all over the place. I'm going to end up
8 in mid-December trying to remember what photograph said
9 what and without any ability by going to the transcript
10 to be able to identify a flow of evidence. Do you see
11 what I mean?

12 MR TO: Yes.

13 CHAIRMAN: So I think that's why -- people are not saying
14 this to you or to Mr Poon on the basis of just purely
15 and simply attempting to be difficult. It's not that.
16 It's just that everybody needs to be able to test the
17 evidence, so everybody needs to know what evidence is
18 coming so they can prepare themselves to test it, and,
19 as I say, at the end of the day I'm in a position where
20 I need to be able to consider it, in conjunction with
21 Prof Hansford, in a rational way.

22 MR TO: Got it.

23 CHAIRMAN: Good. I hope that assists you.

24 MR TO: It does, Mr Chairman.

25 CHAIRMAN: This is not criticisms out of the air. They are
26 an attempt to ensure an orderly investigative process.

1 MR TO: Thank you, Mr Chairman.

2 I just have one question to ask Mr Poon. Can I show
3 you the diagram D600, this last diagram.

4 CHAIRMAN: Sorry, what about this one we've just looked at?

5 Are you going to drop that one?

6 MR TO: I'm going to drop it.

7 CHAIRMAN: What the witness is doing now, the witness is
8 saying these show a coupler that is uncoupled or
9 whatever the term is. I'm not sure what he's meaning.
10 Is he meaning that this is where you remove a coupler
11 from the diaphragm wall, because it's damaged in some
12 way and has to be replaced? So we've heard evidence
13 already that you take out the old coupler that's
14 damaged, you feed in a new coupler, you cement it in
15 with epoxy resin or whatever it is you use, and that way
16 around you've now got a new coupler in place, ready to
17 be threaded.

18 So I'm left a bit up in the air.

19 MR TO: I will maybe ask this question, if you want.

20 Mr Poon, can you see on the floor of D594.

21 A. 係。

22 Q. What can you see on the floor in terms of the --

23 A. 個地下有部分未扭落去嘅...

24 CHAIRMAN: No, sorry, again, we're going around -- if you
25 said to me, "This photo will be coming up later, can
26 I reserve on my position on this", then I would be

1 sitting back happily. But neither myself nor
2 Prof Hansford -- and it is an Inquiry, and it must have,
3 to some degree, a colouring of being inquisitorial,
4 where we can ask questions and try to get -- we don't
5 want what could be of real importance just kicked into
6 touch because you're not quite sure, with the greatest
7 of respect, how to deal with it technically. That
8 doesn't help me or Prof Hansford.

9 MR TO: So, Mr Chairman, can I reserve this photograph so
10 that it can be cross-examined by my fellow --

11 CHAIRMAN: You can do that with the greatest of pleasure.

12 MR WILKEN: I'm terribly sorry, sir, but we can't do that
13 because Mr Shieh would be cross-examining in a vacuum.

14 CHAIRMAN: I see. You are quite right.

15 MR WILKEN: The other issue of course is the extent to which
16 this witness is now straying, not into factual evidence,
17 but into expert evidence as to his opinion drawn from
18 a photograph which is not proven.

19 CHAIRMAN: Yes.

20 Mr Pennicott, we are going around in circles here.

21 MR PENNICOTT: We are, sir, yes.

22 CHAIRMAN: In all honesty, are we going to simply say,
23 "Fine", because it's now 4.30, I would rather adjourn
24 and have a situation -- I know it means burning the
25 midnight oil, but this witness has only just started his
26 evidence in the sense that nothing has actually been

1 said other than who he is.

2 MR PENNICOTT: Yes.

3 CHAIRMAN: And perhaps we could put in, by a proper process
4 of putting in a further statement.

5 MR PENNICOTT: Sir, ultimately of course I'm in your hands.
6 I'm bound to say that whilst I am counsel for the
7 Commission, and I am doing my best to be as independent
8 and patient as I possibly can, and I do regard myself as
9 a rather patient individual, generally speaking, I'm
10 afraid even I'm beginning to lose it. Having burned
11 some rather serious midnight oil last night, I'm not too
12 keen on doing it tonight, quite frankly.

13 Sir, of course, if one goes to this photograph, and
14 the problem that one has of course is because it's not
15 been proven in the proper way -- I mean, there is no
16 guarantee that I or Mr Shieh or Mr Boulding or Mr Khaw
17 or Ms Chong will actually go to this photograph in
18 cross-examination. We might think we don't need to.
19 This is a photograph, a snapshot, taken apparently on
20 22 September 2015. We can see the two diaphragm walls,
21 so we can locate it, we can find out which area it's in,
22 we can find out when the rebar started, when the rebar
23 completed. This is probably just a few days into the
24 rebar. I've no idea because I was just about to check
25 before you asked me to stand up again. So this is some
26 incompleted rebar; what does it tell us? Not a lot,

1 frankly, and that's the problem.

2 CHAIRMAN: That may be. The problem that I face -- and let
3 me emphasise this again -- this is a Commission of
4 Inquiry.

5 MR PENNICOTT: Yes, sir.

6 CHAIRMAN: And what Prof Hansford and I have to do is we
7 have a responsibility on us to be answerable to the
8 public, so that anything that we may put down in
9 a report cannot be undermined substantially by people
10 who have perhaps listened and read the transcript,
11 saying, "There is a lot of clever lawyer points gone on
12 here, and as a result of those clever lawyer points some
13 dramatically important evidence has been missed", and we
14 are in danger, as a result, of a finding which can be
15 overturned on the basis that there are structural
16 concerns.

17 Now, I'm not in any way suggesting that the points
18 raised already have been merely clever lawyer points,
19 and I'm not suggesting that they will be. I am
20 fortunate to have counsel of very considerable
21 experience before me. But counsel have to appreciate
22 that Prof Hansford and I also have a solemn duty to
23 fulfil.

24 Now, if I'm suddenly confronted or Prof Hansford is
25 suddenly confronted with a photograph that's meant to
26 show perhaps that there's a failure to replace faulty

1 couplers where they should be replaced, or perhaps it's
2 a nothing, perhaps this is just another photograph among
3 many hundreds of photographs that once we examine it
4 will not prove anything. But I just need to have some
5 orderly process where those kinds of decisions can be
6 made by Prof Hansford and myself.

7 Please forgive me, I appreciate it's a bit of
8 a judicial tirade and I don't mean it to be, but
9 I'm just saying it has to be a combined exercise, where
10 you appreciate what Prof Hansford and I are dealing
11 with, and we are not dealing with, "Have you proved your
12 case and are you entitled to damages?" We are dealing
13 with something a bit more profound than that, in the
14 public interest.

15 MR PENNICOTT: Yes.

16 COMMISSIONER HANSFORD: Can I add to that -- I'm struggling
17 with this a little in that we received a fifth witness
18 statement at -- well, this morning.

19 MR PENNICOTT: As far as you are concerned, yes.

20 COMMISSIONER HANSFORD: As far as I'm concerned, yes.

21 I think it was still this morning, just after midnight,
22 but anyway, extremely recently.

23 MR PENNICOTT: Yes, sir.

24 COMMISSIONER HANSFORD: Which referred to a number of
25 photographs.

26 MR PENNICOTT: Yes.

1 COMMISSIONER HANSFORD: And now we are here seeing some
2 other photographs.

3 MR PENNICOTT: Yes, sir.

4 COMMISSIONER HANSFORD: And I'm wondering why they weren't
5 included in the last witness statement that we received.

6 MR PENNICOTT: Sir, that is I think the point that I am
7 making and Mr Shieh and Mr Boulding and so forth, that
8 everybody accepts that these photographs have been
9 there, as it were, since day one, since they were
10 disclosed, and certainly I sort of accept the general
11 proposition that it would be most helpful if this
12 witness -- China Technology generally, but it sounds as
13 though it's this witness in particular -- if they want
14 to use these photographs to make a series of points --
15 well, they could do so. I think the point that's being
16 made is that they've had plenty of opportunity to do so,
17 and obviously Mr To has taken the witness to a couple of
18 photographs, but I can tell you that if one turns up in
19 bundle D2 where these photographs start, there's
20 probably, I don't know, maybe 10, 12, 15 photographs
21 there, one or two of which are attached to the witness
22 statement, but certainly the couple we have looked at
23 are not attached to the witness statement and not spoken
24 to.

25 So if the intention now is that this witness wishes
26 to speak to each of these photographs insofar as he

1 hasn't already, really it's a matter for the Commission.
2 If the Commission feels it would be helpful to have that
3 evidence, then I'm afraid it's going to be time out
4 again in order for that to take place, and of course
5 I would say, on behalf of the Commission, that I am
6 going to then need time to digest it to see what
7 questions I need to ask and no doubt my learned friends
8 for the other parties will need the same indulgence.

9 I appreciate entirely what the chairman says, but
10 the problem everybody is finding themselves in is it
11 seems to be every time we make a move forward, China
12 Technology seem to bring us back again. It doesn't seem
13 to be anybody else, as far as I can work out.

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

24 CHAIRMAN: I appreciate that.

25 MR PENNICOTT: So it's a real last-chance saloon. As I say
26 and Prof Hansford says, four photographs that we had on

1 Friday grew into 11 photographs that we had last night,
2 and now we are being able to another couple of
3 photographs, but I know that there are a number of other
4 photographs in this run, some of which I accept are
5 already spoken to by Mr Poon but not by any means all of
6 them. It really is a matter for Mr To and Mr Poon and,
7 as you say, if you are going to be helped.

8 CHAIRMAN: That's exactly it.

9 Forgive me, Mr Shieh, just a second.

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

21 So what I would much rather have is a situation
22 where Mr To tomorrow can come back and say, "We are not
23 going to make anything of this." Then I can say it
24 hasn't been dropped because there's been a legal
25 skirmish and somebody has been wounded. No, it's been
26 dropped because it's been considered, it's been

1 discussed, and it's not going to help anybody", and
2 I can rely then on Mr To's expertise to give me that
3 satisfaction.

4 Now, what does that mean? That means that, just as
5 you have said, I think Mr To has to be able to look at
6 the rest of these photographs and discuss them with
7 Mr Poon, and something has to be put in writing, so that
8 we know where we stand, and if anything further is going
9 to come in, it needs to be included, and if anything
10 thereafter should suddenly arise, well, if there's
11 compelling reason in the public interest that it should
12 be entered into evidence, we will allow that, subject to
13 proper process.

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

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

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

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

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

4 MR SHIEH: Mr Chairman --

5 CHAIRMAN: Sorry, Mr Shieh, yes.

6 MR SHIEH: -- before Mr To embarks on that exercise, may
7 I just seek to assist, and it is genuine assistance.

8 First of all, it is reassuring to hear that
9 Mr Chairman did not intend to say that any one of us are
10 taking clever lawyer points, because there are media out
11 there, probably some of which are fanned by Mr Poon to
12 capitalise upon each and every word that could be
13 twisted in his favour, so it is reassuring to be on
14 record that Mr Chairman is not suggesting that Leighton
15 or MTRC are taking clever lawyer points.

16 CHAIRMAN: No. In fact, let me emphasise that. A lot of
17 witnesses have given their evidence already. I haven't
18 stopped anybody on the basis that their line of
19 questioning is improper. I like to think I fully
20 understand the fundamental point which is one going to
21 credibility, and the questioning has been put by
22 experienced counsel and it's been put quite properly,
23 and continues to be.

24 MR SHIEH: Thank you, Mr Chairman, but more importantly,
25 when I say I'm trying to assist, we've heard what has
26 come from the Commission as to the need for maybe

1 further evidence, but first I wish to repeat to this
2 Commission what I had said in my opening concerning
3 Leighton's view of what this witness and China Tech is
4 trying to achieve. So that is something -- of course,
5 we are not seeking to ask the Commission to make
6 a finding now, in the middle of a hearing, but one must
7 bear in mind that there is the background of what we say
8 this witness is trying to achieve.

9 Secondly, we absolutely share the Commission's view
10 that the credibility of this Inquiry is paramount, and
11 therefore we will not wish it to be said that this
12 Commission has somehow shut out material evidence which
13 this witness is eager to put before the Commission, but
14 some clever lawyer is desperately trying to exclude, but
15 as against that, can I remind this Commission of Day 1
16 transcript -- it can be put up, hopefully -- page 88.

17 Can I just tell the Commission what the point is?
18 The Commission will remember, on Day 1 of the hearing,
19 Mr To actually prefaced or attempted to put in 40-odd,
20 he said, or 20-odd, I forgot the precise number,
21 photographs that he said at some stage were in a USB
22 given to the police or whatever, and then it turned out
23 that he said, and I read from page 88 of the
24 transcript -- he said:

25 "Mr Poon merely just wants to disclose any
26 information that is available to himself [to] the

1 Commission, if they want to look at it. He doesn't
2 really want to rely on them at all."

3 That is on record. Day 1, Mr To said he really
4 doesn't want to rely on them at all.

5 CHAIRMAN: I remember that.

6 MR SHIEH: And we know what the rules are if you rely on
7 anything you prove it in a witness statement and you
8 explain it.

9 Now, having committed to the statement that he
10 doesn't really want to rely on it at all, for Mr Poon to
11 rely on the four on Friday which grew to 11 is already
12 an about-turn on what he, through his counsel, had said
13 on Day 1.

14 For him now to say "Actually, there may be more"
15 stands the risk of actually hijacking this Commission.
16 It becomes a heads he wins, tails we lose kind of
17 situation, because whatever happens is he would always
18 stand firm and he would spin it to the media, "I have
19 tried my very best to help the Commission, it is just
20 that they won't do their homework and look at it, and
21 therefore I am being unfairly treated." I am disclosing
22 some of my hand but I feel I am obliged to say this.

23 So, Mr Chairman and Mr Commissioner, in making any
24 decision one must always bear in mind the undercurrent
25 that anything said to have been done or decided could be
26 twisted and spun against the Commission, despite all

1 good wishes, and despite the absolute about-turn that
2 China Tech has engaged in since Day 1. It is not
3 an excuse for them to say, "We are only now forced to go
4 through 40,000-odd photographs", because they've had
5 whatever number of photographs in their possession since
6 they began to write emails in January, and then in
7 September 2017, in May 2018, on 10 July. We can take
8 numerous dates. If they were to go through 40,000-odd
9 photographs, there's ample number of minutes and
10 workforce for them to be able to do so, and Mr To's
11 statement on Day 1 -- I'm going to repeat that numerous
12 times for the media to copy -- Mr Poon did not want to
13 rely on them last Monday.

14 I'm sorry, I don't wish to go on some kind of
15 counsel's tirade, but this is something that we
16 absolutely wish the Commission to bear in mind. No
17 finding is needed but this is going to be one of the
18 possibilities that we would ask the Commission to pitch
19 every decision against. We are up against someone who
20 is keen to exploit everything and spin the media to his
21 advantage.

22 CHAIRMAN: Thank you.

23 MR BOULDING: Sir, I do not intend to labour the point, but
24 I do associate myself with the remarks and observations
25 of my learned friend Mr Paul Shieh.

26 You will recall, in my opening, now a week ago

1 I think, that I said to the Commission, and I meant it,
2 that MTR considered that the criticism that had been
3 made of it in the press was simply unjustified and
4 unsubstantiated.

5 Whilst you have been kind enough to retract any
6 suggestion that I or indeed my learned friends are
7 engaging in any clever lawyer points, I do want to
8 emphasise that I'm not and I do not regard my learned
9 friends as doing that either. I would like to emphasise
10 again that we are here, MTR are here, to enable you to
11 get to the end of this Commission of Inquiry and make
12 such recommendations as you consider appropriate. We
13 are here to assist and we will assist.

14 But one of my functions is to ensure that there is
15 fair play, certainly fair play so far as the MTR is
16 concerned. We were at photograph D594 and, as has been
17 pointed out already, Mr Poon was just about to give some
18 sort of opinion as to what one could see in the picture,
19 and I anticipate that shortly after that, there would
20 have been some criticism of Fang Sheung and/or Leighton
21 and/or MTR.

22 Now, if that's the purpose of Mr To's
23 examination-in-chief -- and I suspect it is -- we've
24 obviously got to have a proper opportunity to deal with
25 that.

26 So I'm sorry to labour the point but that's what

1 I would like to say, sir.

2 CHAIRMAN: No, that's perfectly all right. You are entitled
3 to make whatever statement you wish. If I have been
4 misinterpreted, please forgive me, but I think if you go
5 back on the transcript I did not suggest at any stage --
6 at any stage -- that you had indulged in lawyer tricks.
7 What I said was, if you go back to the transcript, I did
8 not want a situation where this Commission at a later
9 stage was criticised on the basis that it had allowed
10 certain evidence to be kicked into touch through lawyer
11 tricks. I had made it quite clear that the questioning
12 so far, in my view, has been entirely proper, because
13 I understand the nature of it. And you can take it from
14 me that if I felt that it was not, I would have stopped
15 you, on the turn.

16 I hope I make myself understood.

17 MR BOULDING: It's very clear.

18 CHAIRMAN: And criticisms, indirect, of that kind, in order
19 to try to gain some advantage is not acceptable.

20 I have not said anything in this Commission intended
21 for the benefit of the press. That is not the purpose
22 of myself or Prof Hansford. Our purpose is to try to
23 get to the truth, to act in the public interest. That's
24 the burden that's been put on our shoulders and that's
25 the burden we will deal with.

26 If I had criticised you in any way, then I would

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,
26 Mr Poon.

1 CHAIRMAN: Good.

2 Then I think, Mr Pennicott, you wish to
3 cross-examine, and perhaps it's best for us to deal with
4 that tomorrow morning at 10 am.

5 MR PENNICOTT: Yes, thank you.

6 CHAIRMAN: Good. Thank you all very much.

7 (5.11 pm)

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

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