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<p>1 Thursday, 1 November 2018 2 (10.02 am) 3 MR POON CHUK HUNG, JASON (on former oath in Punt) 4 (All answers given via simultaneous interpreter 5 except where otherwise specified) 6 MR SHIEH: Mr Chairman and Mr Commissioner, may I start off 7 the day by making an application? 8 By way of background, the Commission will recall 9 that yesterday afternoon, at about 3.23 pm, Mr Poon gave 10 an answer concerning screwing of rebar onto couplers. 11 He went on for a while and then he gave an answer which 12 involved reference to the media. 13 Then Mr Chairman intervened and said -- this is in 14 the transcript of yesterday at page 99, line 20 -- 15 Mr Chairman said: 16 "... with respect, when you say "the media", while 17 I have the greatest faith in the media, indeed I started 18 life as a cub reporter ..." 19 Mr Poon said: 20 "I did not say 'media'. 21 And Mr To echoed: 22 "He did not say 'media'. 23 Then there was some exchange. The point I wish to 24 make -- because at the end, at page 100, line 23, 25 Mr Chairman said:</p>	<p>1 MR PENNICOTT: Are we going to need our headphones on? 2 I don't know how it's going to come out. 3 (Audio recording played) 4 INTERPRETER: I'm sorry, the recording is of very poor 5 quality, the interpreters can't really hear very well. 6 We will just try our best. 7 (Audio recording played) 8 MR SHIEH: Can we rewind for ten seconds, and replay it 9 loudly, please, because Mr Chairman will not know the 10 Cantonese, but it's actually for everyone in the room, 11 and for Mr Poon himself. 12 (Audio recording played) 13 Thank you very much. 14 Cross-examination by MR SHIEH (continued) 15 MR SHIEH: Mr Chairman, I can now proceed to ask some 16 questions of Mr Poon, based on what we have heard. 17 Mr Poon, good morning. 18 A. (In English) Good morning. 19 Q. You heard the playback of the recording yesterday 20 afternoon? 21 A. Yes. 22 Q. Did you or did you not say "(Chinese spoken)", being the 23 Chinese characters for "media"? 24 A. Having heard that, I did say so. 25 Q. You need not hear back before realising you have. You</p>
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<p>1 "Mr Poon, thank you very much. The matter has been 2 resolved. It was a clarification. It was no more than 3 that. Thank you very much." 4 The matter came as such a complete shock to all 5 Cantonese speaking members of this room and the TV room 6 next door, and I daresay members of the media outside, 7 that everyone took a while to digest the impact of that 8 about-turn within one minute. So I now make 9 an application, the relevance of which should be 10 obvious. It is not just a matter of clarification. It 11 is the ability of a person to say "media" in one minute 12 and then immediately to say "I did not say 'media'" the 13 next minute. It goes to credibility. 14 Ordinarily I can well see people saying why go 15 through what may be regarded as something peripheral, 16 but if this Commission had been a bilingual one, then 17 the lie would immediately have been incontrovertible, 18 and what I now seek to do is make incontrovertible that 19 which may have appeared to be a clarification only 20 yesterday. 21 May I ask for permission to play the recording from 22 yesterday afternoon at around 3.23 pm? 23 CHAIRMAN: Yes. 24 MR SHIEH: So Cantonese-speaking members could listen to the 25 Cantonese, maybe.</p>	<p>1 knew full well that you did and you lied in a courtroom, 2 Mr Poon; did you? 3 A. No -- 4 CHAIRMAN: I'm sorry, you said here, "Having heard that, 5 I did not say so"? 6 A. (Chinese spoken). 7 MR SHIEH: He did. 8 MR WILKEN: He said he did. 9 MR SHIEH: He said it, "Having heard back, I did say so." 10 CHAIRMAN: Sorry, I have to go by the English translation as 11 it appears. 12 COMMISSIONER HANSFORD: It's incorrect on the screen. 13 MR SHIEH: Yes. He said, "Having heard back, I did say so." 14 He admits that having heard back, he did say so. 15 CHAIRMAN: Thank you. 16 MR SHIEH: The question I put to you is: You don't need to 17 hear back before knowing you said so. You knew all 18 along that you had said "media", and you lied in court, 19 Mr Poon, did you? 20 A. I did not lie. Mr Shieh, you put it wrongly. If you 21 said something wrong, are you lying? You said a lot of 22 things wrong yesterday; were you lying? 23 Q. Mr Poon -- 24 A. Allow me to clarify, let me clarify. I mentioned -- 25 I said "media", but I said it wrong, I meant the</p>

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<p>1 Commission. I said the Commission should look clearly 2 at the documents submitted by Leighton and the 3 Commission should look at all the documents to verify 4 whether they are true or not. 5 Q. There is a difference between saying, "Sorry, it's 6 a slip of the tongue, it's a Freudian slip, I am too 7 used to blurting my mouth off to the media, I meant to 8 say 'the Commission'"; and on the other hand "I did not 9 say 'media'", a complete denial. Yesterday you said you 10 did not say "media". Mr Poon, is that correct? You 11 said yesterday, in the transcript, and as we have 12 heard -- you said you did not say "media". Was that 13 what you said? 14 A. Yes, I said that, but I meant the Commission, not the 15 media. 16 Q. You did not say yesterday, "I'm terribly sorry, I had 17 a slip of the tongue, I correct myself." You went on 18 combative mood, as always, targeting everybody and even 19 asking rhetorical questions back to me, "When did I say 20 'media'?", didn't you? 21 A. I did not target everybody. Mr Shieh, don't take things 22 out of context. 23 (In English) You are out of context. 24 Q. You only target people who you want to target at that 25 point in time?</p>	<p>1 the opportunistic self as you are, you immediately 2 denied saying "media" to appease the chairman. Do you 3 accept that or not accept that? 4 A. I totally negate what you said. You make two 5 assumptions in your paragraph. That is I'm 6 an opportunist and the other, you said my intention was 7 to mention the media. How would you know what my 8 intention is? 9 Q. Let's move on. Yesterday, when I started my 10 cross-examination, I asked you about your attitude 11 towards making changes or amendments to your witness 12 statement? Do you remember that? 13 A. When? 14 Q. Yesterday afternoon, when I started my cross-examination 15 of you, I asked you about your thinking, your attitude, 16 towards making amendments or changes to your witness 17 statement, when you said you prefer to make changes when 18 you are actually giving evidence. Do you remember that 19 line of questions? 20 A. Yes, I recall that. 21 Q. I was told -- I don't know whether it can be shown on 22 the screen -- that on 18 October, the Commission, either 23 the Commission Secretariat or solicitors for the 24 Commission, sent an email to solicitors for all the 25 parties, asking them -- I don't know whether or not that</p>
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<p>1 A. I did not target everybody. Mr Shieh, you were just 2 telling a lie again. I didn't target everybody. 3 Mr Shieh, did you just say that I targeted everybody? 4 Tell me. 5 Q. I'll give you a list when I get to the end of my 6 cross-examination. You asked for it, you'll get it. 7 But answer my question first. You did not say on the 8 spot, by way of clarification, "I had a slip of the 9 tongue, sorry, I meant to say 'the Commission'." You 10 did not clarify that; correct? 11 A. First, to the Chairman, to the Commissioner, to all 12 present, I would like to offer my apology. I said it 13 wrong. I did say "media" but by "media" I meant "the 14 Commission". 15 Secondly, if I could clarify the lie Mr Shieh just 16 told, I didn't point to everybody. I just said I did 17 not say the media. Mr Shieh said I was pointing at 18 everybody but Mr Shieh is telling a lie himself. What 19 you said in nature is not different than what I said. 20 CHAIRMAN: All right. 21 MR SHIEH: Thank you very much. I suggest to you before 22 I leave this topic -- it's a very short point -- 23 I suggest to you before I leave this topic, you actually 24 intended to say "media". You saw the chairman wasn't 25 too happy about bringing the media in, therefore, being</p>	<p>1 email can be pulled up and shown on the screen. It's 2 an email of 18 October. 3 MR PENNICOTT: We have a couple of hard copies, if that 4 helps. 5 MR SHIEH: There are hard copies, if that helps. 6 MR PENNICOTT: I can give one to the witness; I can't give 7 many around. You've got it? 8 MR SHIEH: It's on the screen now. 9 It's an email on 18 October, the week before the 10 hearing commenced, to everyone on a mailing list. 11 I think we should actually skip all the addresses for 12 privacy problems. Can we just move on? 13 This is from Gloria Abdullah, solicitor for the 14 Commission: 15 "Dear All, 16 [All] witness statements will not be read out at the 17 hearing but will be uploaded onto the Commission's 18 website after the witness has given evidence, the 19 Commission has directed that minor amendments (if any) 20 to witness statements and responsive witness statements 21 should be set out in writing and provided to the 22 Commission before the witness enters the box to give 23 oral testimony. It would be most helpful if the list of 24 minor revisions could be provided to us at least a day 25 in advance so that it may be scanned in readiness."</p>

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<p>1 Mr Poon, are you aware that this email had been sent 2 to the parties beforehand? 3 A. I don't remember that. 4 Q. You are not suggesting that your solicitors have failed 5 in their duties to apprise you of requests or 6 requirements from the Commission which must be treated 7 seriously, are you? 8 A. I believe our solicitor would send every email to our 9 account, I believe. 10 Q. Thank you. Therefore, I suggest to you that if you have 11 any minor amendments such as errors in the date or the 12 month, you ought to have put that in writing beforehand, 13 before you entered the box to give oral testimony. Do 14 you accept that? 15 A. Yes, this is what this email says. 16 Q. If it's anything major, then I suggest you should 17 actually do it by way of a further witness statement, 18 backed up with a statement of truth, to be verified on 19 oath in the witness box. Do you accept that? 20 A. For major amendments, where do they appear here? 21 Q. No, it's not in this email. I'm suggesting to you as 22 a matter of common sense and procedure. If you don't 23 agree or if you don't understand, you can just tell me; 24 I will move on. The record speaks for itself. 25 I repeat my question. If it is something which is</p>	<p>1 you on 22 September on site have been taken by you at 2 all; do you accept that? 3 A. I don't want to repeat, going in circles. I already 4 said those seven photos were taken by me and have also 5 explained why I could recognise these seven photos. Two 6 of the photos showed workers stopping me from taking 7 photos. 8 Q. Can you look at page 228. Do you see that, Mr Poon? 9 A. Yes. 10 Q. This is one of the seven photographs. We see a man 11 kneeling down or squatting, holding a kind of equipment. 12 Then we actually see a spark; do you see that? There is 13 a spark. 14 A. No, I don't see any spark. 15 Q. No, some reflection, I reframe myself, yes, you are 16 right. There's some reflection, bright reflection? 17 A. (In English) Not a spark. 18 Q. A bright spot on this photograph; do you see that? 19 A. Why don't you point it out for me, if you referring to 20 this blueish white part in the middle of the photo? 21 Q. Yes, the part in the middle, I think we are all thinking 22 about the -- that part which you say represents the 23 thread, there is a bright spot there; correct, Mr Poon? 24 A. Yes, I see that. 25 Q. That is what you say to be the part of the thread; that</p>
<p>Page 10</p> <p>1 not minor, then you ought to have put it in the form of 2 a proper witness statement, backed up with a statement 3 of truth, signed by you, verified on oath in the witness 4 box? You can either say, "I know it", or you can say, 5 "I don't know, nobody ever told me", or you can say, 6 "I don't agree." 7 A. Mr Shieh, this email refers to minor amendments, minor 8 changes. I don't see "major" here. Please, if you are 9 talking about two separate points, please separate them. 10 Don't link it to this email. 11 Secondly, I thank you for your advice but you are 12 not my counsel. 13 Q. Finally, what you said about your plan or decision not 14 to file any corrective witness statements beforehand but 15 only to correct your evidence as you give evidence at 16 the hearing is a flouting of the rules of this 17 Commission. Do you accept that? Flouting, 18 disobedience, knowing disobedience. 19 A. No, I don't agree, Mr Shieh. Can you point out which 20 rule that I flouted or did not obey? 21 Q. The record speaks for itself. If your counsel wants to 22 re-examine you, he is at liberty to do so. 23 Can I ask you to look at bundle D1. Before I do 24 that, can I formally suggest to you that none of the 25 seven photographs which you said to have been taken by</p>	<p>Page 12</p> <p>1 is your evidence, correct? 2 A. Yes. 3 Q. Slightly to the left, we can see there is actually the 4 end of a rebar; do you see that? To the left of that 5 spark, there is actually -- you can see what appears to 6 be the end of a rebar, to the left, (Chinese spoken), 7 left? 8 A. (In English) Top left. 9 Q. A little bit -- 8 o'clock. 8 o'clock to that spark, 10 there appears to be the end of a rebar? 11 A. Are you referring to this part? (Indicating). 12 Q. Yes. 13 A. No, not true. That's another rebar. 14 Q. Another rebar? 15 A. (In English) No, it's not end. 16 (Via interpreter) Because the wooden plank was 17 attached to the top of another rebar. 18 Q. But on top of that block of wood, there seems to be the 19 end of another rebar? 20 A. (In English) On the bottom of that particular wooden 21 section. It should be the bottom. 22 Q. You think that's the bottom? 23 A. (In English) Yes. 24 CHAIRMAN: Sorry, can I state what I see and then we can 25 move ahead.</p>

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<p>1 MR SHIEH: Yes.</p> <p>2 CHAIRMAN: I can see the brightness in the middle, which has</p> <p>3 been variously described as a spark or a light patch or</p> <p>4 the thread. 8 o'clock to that, there is what appears to</p> <p>5 me to be the end of a rebar which is resting just on top</p> <p>6 of a wooden block or what appears to be a wooden block</p> <p>7 or the edge of that wooden block.</p> <p>8 If you continue the 8 o'clock direction down, you</p> <p>9 will then come to a second rebar which is clearly</p> <p>10 underneath the wooden block.</p> <p>11 MR SHIEH: That is precisely what I suggest one can see from</p> <p>12 this photograph and which I want to suggest to this</p> <p>13 witness. Thank you very much.</p> <p>14 A. (In English) I'm sorry --</p> <p>15 Q. Perhaps you can --</p> <p>16 A. Sorry. In my experience, I'm still inclined to think</p> <p>17 that the wooden plank is actually placed here</p> <p>18 (indicating), on top of these two rebars.</p> <p>19 Q. All right, okay. So visually there seems to be</p> <p>20 a difference in observation between you and Mr Chairman</p> <p>21 or maybe myself as to the positioning of that rebar</p> <p>22 a little bit 8 o'clock to that bright spot. You say</p> <p>23 that that entire rebar is actually underneath the wooden</p> <p>24 block; is that your evidence, Mr Poon? It's</p> <p>25 underneath -- the entire rebar is underneath the wooden</p>	<p>1 a few days earlier, two staff members of Leighton, Mr So</p> <p>2 and Mr Rodgers, actually promised you that cutting of</p> <p>3 threaded ends of rebar would stop. Do you remember</p> <p>4 saying that? That is in your witness statement.</p> <p>5 I don't think we need to turn it up.</p> <p>6 Is something wrong with the headphones?</p> <p>7 A. It seems that there is a discrepancy -- I haven't heard</p> <p>8 the English version -- in Chinese version it said a few</p> <p>9 days later.</p> <p>10 Q. "(Chinese spoken)". I corrected myself. I have slips</p> <p>11 of the tongue sometimes but I admit it.</p> <p>12 A. (Chinese spoken).</p> <p>13 (In English) So do I.</p> <p>14 Q. Thank you. A few days before, you said two members of</p> <p>15 Leighton promised you that cutting of threaded ends of</p> <p>16 the rebar would stop. It's Mr So and Mr Rodgers. Do</p> <p>17 you remember saying that?</p> <p>18 A. Yes.</p> <p>19 Q. If what you say about the 22nd incident, 22 September</p> <p>20 incident of cutting, is true, it would mean that</p> <p>21 Leighton had gone back on its promise to you. Is that</p> <p>22 correct?</p> <p>23 A. The site management went against their promise, correct.</p> <p>24 Q. Now, if that were to be the case, it would be a matter</p> <p>25 of concern to you that Leighton would go back on their</p>
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<p>1 block; is that your observation, Mr Poon?</p> <p>2 A. Right.</p> <p>3 Q. I suggest to you that if we look at it, actually it</p> <p>4 shows a rebar resting, as Mr Chairman said, on the edge</p> <p>5 of or on top of that wooden block.</p> <p>6 CHAIRMAN: Actually, I'm looking at that again and I'm</p> <p>7 wondering if I may be right, because I think what</p> <p>8 perhaps causes the difficulty is there are two axehead</p> <p>9 blots of light on the piece of wood, which may give the</p> <p>10 impression that in fact it's resting, but if you look at</p> <p>11 the rebar directly below and follow that through,</p> <p>12 I think it's as likely as not that in fact the wood is</p> <p>13 sitting on the rebar.</p> <p>14 MR PENNICOTT: We think so.</p> <p>15 CHAIRMAN: So I correct myself.</p> <p>16 COMMISSIONER HANSFORD: I'm not so sure.</p> <p>17 MR SHIEH: Mr Chairman, can I just simply say my point has</p> <p>18 been made and can I move on? Can I just say my point</p> <p>19 has been adequately made by what has transpired in the</p> <p>20 past few minutes and can I move on?</p> <p>21 CHAIRMAN: Yes.</p> <p>22 MR SHIEH: Mr Poon, you said you saw threaded ends of rebar</p> <p>23 being cut on 22 September; correct?</p> <p>24 A. (In English) Yes.</p> <p>25 Q. According to you, just a few days later -- sorry, just</p>	<p>1 words so quickly; is that so?</p> <p>2 A. That's right.</p> <p>3 Q. But you did not immediately do anything in writing to</p> <p>4 raise your concern with Leighton management, did you,</p> <p>5 immediately after 22 September?</p> <p>6 A. Correct, I did not do it immediately in writing.</p> <p>7 Q. Not even orally?</p> <p>8 A. I did. I did it orally. Orally, I mean that had never</p> <p>9 stopped.</p> <p>10 Q. Orally to whom, immediately after 22 September?</p> <p>11 A. After 22 September, I think it was a few days later, not</p> <p>12 immediately, not immediately after I witnessed it, that</p> <p>13 I rang them. But it was -- I don't know how many days</p> <p>14 but it was sometime later that I told Malcolm Plummer</p> <p>15 directly.</p> <p>16 Q. You never said this in your witness statement, Mr Poon,</p> <p>17 that you orally raised it with Mr Plummer.</p> <p>18 A. I didn't mention it. In fact, if you talk about witness</p> <p>19 statements, let me say it once again. In terms of</p> <p>20 narrating the incident, basically we copied what was</p> <p>21 stated in the police statements. On the other hand, we</p> <p>22 discussed it and I feel that we need to have</p> <p>23 corroborated evidence put in the witness statements.</p> <p>24 Otherwise, there would be too many gaps in the witness</p> <p>25 statements, and during cross-examination counsel like</p>

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<p>1 Mr Paul Shieh would mince words and we would not want to 2 put in too much time other than on the subject matter. 3 The subject matter is whether rebars were being cut, 4 and in this photo we see very clearly that rebars were 5 cut. So, as far as I am concerned, I think this should 6 suffice. 7 MR JAT: There may be a translation issue at draft 8 transcript 16:12, I think the witness started off saying 9 he accepts he did not mention it in the witness 10 statement, and then he went on to explain. 11 MR SHIEH: I suggest to you that you just made up that oral 12 complaint or conversation with Mr Plummer which you have 13 never mentioned before. You can either agree or, as 14 I would expect, you can disagree. My suggestion to you 15 is you have just made up that conversation with 16 Mr Plummer. You can either agree with me or disagree 17 with me. 18 A. I disagree. 19 Q. Mr Poon, I don't know whether your lawyer has explained 20 to you, but in a setting like this, very often lawyers 21 have a responsibility, when they want to suggest 22 something to a witness which is contrary to what the 23 witness says, we are under a duty to put or suggest that 24 to you, so you have a chance to agree or disagree. So 25 that is what I am trying to do now. Do you understand?</p>	<p>1 Q. You did not raise it with the government? 2 A. Agree. Agree. 3 Q. Can I then move on quickly, the last incident of rebar 4 thread cutting that you personally witnessed was in 5 September 2015; correct? 6 A. Correct. 7 Q. Concrete was poured or completed pouring sometime in 8 2016 for EWL slab, areas A, B and C; correct? I'm 9 talking about EWL slab, areas A, B and C. 10 A. The track slab, correct. 11 Q. Anyway, in the areas which you say threaded ends of 12 rebar cutting took place, China Technology proceeded to 13 pour concrete; correct? 14 A. Correct. 15 Q. Your evidence in your witness statement is that 16 China Tech actually had little choice but to pour 17 concrete because after hold point inspections, as 18 a matter of procedure, China Tech had to pour concrete; 19 is that your evidence? 20 A. Correct. 21 Q. So, at the time of hold point inspection, you did not 22 actually say or alert people to the fact that, "Hang on 23 a second, I saw some threaded ends of rebar being cut; 24 can you check the connections to see whether there are 25 any problems?" You did not do that or say that during</p>
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<p>1 A. (In English) Understand. 2 Q. So when I say "I put it to you" or "I suggest to you", 3 I'm inviting you to either say "yes" or "no" or "yes, 4 but" or "no but". It's not a matter of whether I am 5 lying or not. I'm just doing my duty to test your 6 evidence. Do you understand? 7 A. Yes, I understand. Is it that just now you weren't 8 happy about my saying that the subject matter was 9 cutting rebars? 10 Q. No. 11 A. (Chinese spoken). 12 Q. You can. You can. 13 A. Then let me put it this way. Apart from answering "yes" 14 or "no", I think I can answer that the subject matter is 15 about cutting rebars; we should focus on it. 16 Q. The subject matter is whether there is any planned, 17 systematic cutting, Mr Poon; correct? 18 A. (In English) Of Leighton? 19 Q. Whether there is any planned or systematic cutting of 20 rebars. 21 A. (In English) Okay. 22 Q. Thank you. Can I then move on? You did not raise any 23 complaint in writing upon seeing the incidents of the 24 22nd with the MTR; correct? 25 A. Correct. Agree.</p>	<p>1 relevant hold point inspections; correct? 2 A. I personally would not take part in the hold point 3 inspections. I did not personally take part in them. 4 So, objectively speaking, I think you can refer to the 5 MTRC report, D5 and D6, those pages. During 6 investigation, according to the MTRC report, the 7 inspectorate staff also explained that somebody had told 8 them about the cutting of rebars. 9 Q. At the time that you poured concrete, you had no reason 10 to believe that whatever cutting of the threaded ends of 11 the rebar that might have taken place, they had not been 12 spotted and remedied at the hold point inspection; is 13 that right? 14 A. It was possible that it happened. 15 Q. Sorry, what is possible? 16 A. (Chinese spoken). 17 Q. At the time you poured concrete after the hold point 18 inspections, you had no reason to believe that any 19 defects in the connection had not already been spotted 20 and remedied as part of the hold point process? 21 A. In fact, it was in the end of September, we started 22 work, and it was about two months since we started work. 23 Well, in fact, we started working on a large scale in 24 the end of July, and my understanding is that ever since 25 we knew about it, we did ask the frontline staff to</p>

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1 secretly tell the MTRC. And --

2 CHAIRMAN: I think that's a different answer, with respect.

3 I think what you're being asked is that after the hold

4 point inspections had been conducted, whether you were

5 there or not, you began your pouring exercise because

6 you would have been satisfied, in your own mind, at that

7 time, that any rebar cutting issues had been remedied,

8 that is dealt with.

9 A. Yes, that's the mindset in September.

10 MR SHIEH: September of what? 2015?

11 A. September 2015.

12 Q. No, I'm asking at the time you poured concrete, whatever

13 time it was that you poured concrete. Whatever time it

14 was that you poured concrete, you had no reason to

15 believe that there's still anything wrong with the

16 connections?

17 A. At that time, I believed the MTRC would have spotted the

18 problems and would have found remedies to the problems.

19 Q. And there's nothing subsequently that somehow alerted

20 you to the fact that things might have slipped through

21 the hold point connections?

22 I'm suggesting to you that there was nothing

23 subsequent to the pouring that alerting you that things

24 might have slipped through, defects might have escaped

25 the hold point inspection; is that right?

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1 A. Right, there were things that troubled me, first because

2 I was still hearing about the cutting of rebars. The

3 second point is that there was a serious seepage of

4 water at the site.

5 Q. Stop there, Mr Poon. If concrete had already been

6 poured, then you could not have heard concrete --

7 threaded ends of rebar cutting in respect of the rebars

8 that had already been covered by concrete.

9 A. First of all, I heard that there were still people

10 cutting rebars because I received reports from my

11 workers that there were cutting of rebars, so that had

12 never stopped. That's the first point.

13 To my understanding, what I heard was in June 2016.

14 The last time I saw it was in September 2015. Of course

15 the way they cut it had somehow become different. In

16 June 2016, I still heard rebars being cutting. After

17 that, I haven't heard anything like that.

18 Q. So you were still hearing about rebar cutting incidents

19 in June 2016; that's what you say, yes?

20 A. Yes, yes. The last time it happened was June 2016.

21 Q. There was no immediate complaint made by you in June

22 2016, either in writing or orally, to anyone in

23 Leighton?

24 A. Yes, orally but not in writing.

25 Q. I don't see anything in your evidence about oral

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1 complaints, Mr Poon, in your witness statement or in

2 your interviews.

3 A. Well, yesterday, when I gave evidence, I said I went to

4 Malcolm Plummer and at that time Malcolm Plummer was

5 soon to leave.

6 Q. Can I ask you to then look at what you said yesterday

7 about Mr Plummer. First of all paragraph 45 of your

8 witness statement at D23.

9 CHAIRMAN: Mr Shieh, just one small thing. Because you have

10 a palpable advantage over me of being bilingual and I'm

11 not, much to my shame, the fact remains that what you're

12 tending to do very slightly is, because you've heard the

13 answer in Cantonese --

14 MR SHIEH: Sorry, I should wait. I'm sorry.

15 CHAIRMAN: Yes, so I'm losing the last couple of --

16 MR SHIEH: I'm terribly sorry, I should wait.

17 COMMISSIONER HANSFORD: It would be helpful.

18 CHAIRMAN: Thank you.

19 MR SHIEH: At paragraph 45 of your witness statement, you

20 said:

21 "Between September 2016 to January 2017, I had

22 a discussion with Mr Anthony Zervaas of Leighton about

23 the possibility of drilling ...", et cetera. "I urged

24 him to find a solution to rectify the defective steel

25 works."

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1 Do you see that?

2 A. Yes.

3 Q. Paragraph 46:

4 "Until in or about late November 2016, Mr Zervaas

5 orally admitted to me that there were practices of

6 cutting ... Mr Zervaas also, on behalf of Leighton,

7 agreed to find a solution ..."

8 Do you see that?

9 A. Yes.

10 Q. You were then asked, yesterday -- sorry, the day before

11 yesterday -- why you had waited until September to speak

12 to Mr Zervaas, and you gave an answer which we can find

13 in the transcript of Tuesday, Day 7, page 138, line 13:

14 "There's an overlap? All right. We'll see what

15 they say about that. But let's assume it's

16 September/October through until January."

17 That is your discussion with Zervaas.

18 "You had a discussion with Mr Zervaas of Leighton

19 about the possibility of drilling ...

20 As I understand it, Mr Poon, you say that because,

21 to your understanding, that would be some sort of

22 remedial measure to put right, as you saw it, something

23 that had been done incorrectly; is that right?

24 Answer: Yes.

25 Question: Now, you don't tell us this, Mr Poon, but

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<p>1 I'm going to ask you anyway: did you have any similar 2 discussions with Mr Plummer?" 3 Your answer was "No", Mr Poon; you saw that? 4 A. What I meant was in my conversation with Mr Plummer, we 5 didn't discuss any solution. The conversation was 6 different. I explained it. Mr Plummer usually didn't 7 respond after what I told him, and Mr Zervaas was more 8 positive, in a way. Well, Mr Plummer and Mr Zervaas had 9 different characters. I thought I said that -- 10 Q. You went on to say in the transcript -- Mr Pennicott 11 asked you: 12 "I find that slightly curious, Mr Poon, because 13 Mr Zervaas is new on the scene, new to the project ... 14 Mr Plummer has been the project director in place 15 throughout the relevant period, so far as I can work 16 out, yet you don't have any discussions with him about 17 it. Can you explain why that is, or why that was? 18 Answer: They are very different. Malcolm is more 19 senior in age. He's someone approaching a stage of 20 retirement. When I told him anything about the site, he 21 wouldn't descend to the level of doing something about 22 it. Anthony gave me the feeling that he would try to 23 resolve the problems. Very different." 24 So you were not saying that you tried to talk to 25 Mr Plummer but he brushed you away. You were saying</p>	<p>1 page 140, line 15 -- Mr Pennicott asked you: 2 "I'm just trying to again understand what's going 3 through your mind, Mr Poon. Between September 2016, 4 So/Rodgers discussion, September/October, a year passes 5 until you raise the point with Mr Zervaas; it just seems 6 almost incredible -- if this is so important, so 7 critical, such a big public safety matter -- that 8 there's this year's gap where you do absolutely nothing. 9 Answer: For the period you refer to, September 10 2016" -- and that, you accept, should be a mistaken 11 reference to 2015 -- "until October 2016 ... When I 12 first knew about it, my estimate was always that it's 13 just a few per cent. So is it really a major public ... 14 issue? No. In the interim, I came to learn more. I 15 never told the press or anyone about it, and that caused 16 me more concern that there might be a problem. There 17 were Leighton staff who told me, that is after we 18 started work, RDO and BD were hammering Leighton because 19 they did not follow the plans ... I kept seeing that 20 there were changes ... It's just that at the time I 21 misunderstood it to be remedial measures for changing 22 those plans. That's what I thought all along, until -- 23 until someone told me that's not the case ... There were 24 two middle to senior management, actually senior 25 management staff of Leighton, that were chased away in a</p>
<p>Page 26</p> <p>1 that because Malcolm doesn't want to know anything 2 anyway, "he wouldn't descend to the level of doing 3 something about it", you actually chose to speak to 4 Anthony Zervaas. Was that what you meant to say? 5 A. Well, maybe I had a slip of the tongue in Cantonese. 6 What I meant was I did talk to Malcolm Plummer and this 7 was the first time that I mentioned the name Mr Malcolm 8 Plummer and I agreed that Mr Malcolm Plummer is more 9 senior in age and normally didn't respond that well. 10 Well, that's -- for everything I told him, he responded 11 like that. And he understood what I said and he would 12 try to use his own ways to resolve things internally. 13 I remember that Malcolm Plummer and Mr Zervaas had 14 an overlapping period, but actually what is the 15 overlapping period I don't recall. 16 Mr Zervaas -- well, until the day when he actually 17 sat in that office did I start talking to him, and 18 actually Leighton didn't issue official -- officially 19 tell us that there was this novation of the post, but 20 when I talked to Mr Zervaas, his response was rather 21 positive, so I talked more to Mr Zervaas as a result. 22 So that's very natural. 23 Q. Mr Poon, in your evidence on Tuesday, when you were 24 asked why you had waited until 6 January to raise your 25 concern in writing with Mr Zervaas -- this is at</p>	<p>Page 28</p> <p>1 row, and then I realised it was something major." 2 Do you see that, Mr Poon? Do you see that? That's 3 the transcript; do you see that? 4 A. (In English) See that. 5 Q. Do you remember giving evidence along those lines, that 6 you thought initially that there were going to be some 7 remedial works to be done, and it's only after a while 8 that you realised that in fact no remedial works were 9 done, and that's why you raised the matter with 10 Mr Zervaas; that was the effect of your evidence, 11 correct? 12 A. Maybe you have misunderstood me. Let me explain again. 13 What is the screen page now? It's 141, and line 12. 14 Q. Yes. 15 A. The "remedial measures" here referred not to remedial 16 measures for rebar cutting. These are the remedial 17 measures in relation to the hammering of BD by Leighton 18 for not following the plans, and they are changing the 19 plans all the time. The D-wall capping zone, the plans 20 related, and the construction method related to D-wall 21 capping zone, the remedial measures refer to those 22 works. 23 Q. Cut a long story short, in your witness statements 24 prepared for the purpose of this Inquiry, which you have 25 been ordered by the Commission to provide, you did not</p>

Page 29	1 provide or offer any explanation as to why it was that 2 you waited until October 2016 to raise it or to raise 3 the question of remedial measures with Mr Zervaas; that 4 is correct, yes? 5 A. Can you repeat your question? I'd rather listen to your 6 question in English. 7 Q. In your witness statements prepared for this Commission, 8 you have not provided any explanation as to why you have 9 not complained to Leighton in writing until January 2017 10 or orally until October 2016. You did not provide any 11 context or reason for people to understand why that time 12 gap; correct? 13 A. The Commission's requirements were listed in the 14 eight-pager of Lo & Lo. I recalled that when I drew my 15 witness statements, there were 102 paragraphs in 16 30 pages and we did follow the instructions. I couldn't 17 recall that there was no question asking me to explain 18 why I just raised a concern with Mr Zervaas in October. 19 Q. As a matter of common sense and credibility, and giving 20 context to a witness statement, I suggest to you that it 21 is quite obvious that you need to tell the story in 22 accordance with the sequence, Mr Poon. 23 A. If you look carefully at the witness statement, it is 24 divided into periods. I mean, let's take a look. It's 25 very simple. C3 section from paragraph 45, and then	Page 31	1 subjects which is of concern to me and I must remember 2 it. 3 Q. You asked your foremen to take pictures if they were to 4 see threaded ends being cut; correct? 5 A. Yes. 6 Q. And we do not see any photograph taken by foremen being 7 adduced as evidence for China Tech; correct? 8 A. The reason is simple, because we have already locked the 9 Dropbox. For the Dropbox 1112, that was confined in the 10 head office at my desk and other people do not have 11 access. Since Apple Daily sent us an email, we were 12 also concerned there was leakage of information, so we 13 asked everybody to leave and log out of the Dropbox and 14 Dropbox 1112 was locked. As of now -- 15 CHAIRMAN: Sorry, I have a little difficulty there. Would 16 it be correct to say that there was a time when you 17 alerted your senior staff to the fact that there was 18 rebar cutting, and you asked them to keep an eye out for 19 it themselves, and you asked them, if possible, to take 20 photographs? 21 A. Correct. 22 CHAIRMAN: Is it also correct to say that nobody gave you 23 any photographs, that is none of your subordinates came 24 back and said, "Here are some photographs to confirm 25 your suspicions"?
Page 30	1 let's -- we go to "late 2016 to early 2017", and I tried 2 to explain -- sorry, I got it wrong. A slip of the 3 tongue again. 4 From "late 2016 to early 2017", I tried to explain 5 why I issued the email only in early 2017. And prior to 6 that, I actually personally witnessed rebar cutting. 7 Well, myself, I read the eight-pager of Lo & Lo and 8 the relevant requirements set out, and also the terms of 9 reference of this COI. I believed I did not have to be 10 very lengthy in my submission. I did not have to cover 11 what happened at the start of the works up to now. What 12 I needed to do, I thought, was what I witnessed, the 13 rebar cutting that I witnessed myself -- 14 Q. Mr Poon, I suggest to you that you did not see any 15 cutting of the threaded ends of rebars. Do you agree or 16 not agree? 17 A. I disagree. 18 Q. You did not discuss the issue of cutting of threaded 19 rebars with your own staff; do you agree or not agree? 20 A. I disagree. 21 Q. Even if you did discuss with your own staff, it was just 22 casual chit-chat during the course of lunch and it was 23 nothing significant; do you agree or not agree? 24 A. Well, let me put it this way. There are so many 25 subjects discussed at the lunchtime, it was one of the	Page 32	1 A. Well, there must be some misunderstanding here. After 2 they took the photos, they would upload them onto the 3 Dropbox. They would not print hard copies of the photos 4 and hand them over to me or email the photos to me. 5 That's not the way it worked. 6 CHAIRMAN: All right. I appreciate that. But would it be 7 correct to say that nobody told you, "I have 8 photographed what has concerned you and it's now in the 9 Dropbox, under [a particular reference]"? 10 A. Well, somebody told me that they had photos of piles of 11 cut threads, and there was this discussion about old 12 couplers being screwed out, and heaps of them were held 13 on the construction site, and they took photos. 14 CHAIRMAN: All right. Did you recover those photographs and 15 keep them in some USB -- keep them in some electronic 16 form? 17 A. No, I didn't -- we retrieved the photos. Well, we 18 recovered a large amount of photos and we couldn't look 19 in each and every one of the photos, and they were put 20 back in the recovered directory. Maybe I am too 21 cumbersome in my expression. In the police's USB, it 22 was strange. In the "05. Photos", there was some 23 sub-folders categorised by month and those were 24 retrieved. 25 CHAIRMAN: All right. Putting it simply, my memory -- and

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<p>1 I'm open to correction here because there's been a lot 2 of evidence that's come in -- is that none of the 3 persons employed by you in senior capacities, or any 4 capacity, gave evidence to saying that they took 5 photographs and brought the photographs back to you, by 6 which I don't mean handing over photographs, I mean 7 reported to you that they had taken photographs. 8 MR SHIEH: That is correct. That is the effect of the 9 evidence, Mr Chairman. 10 CHAIRMAN: So none of them said that. Now, they had certain 11 reasons why. They said they didn't want confrontations 12 and the like. 13 MR SHIEH: Or none of their business or whatever. 14 CHAIRMAN: Yes, none of their business. 15 Would you agree that none of those seven persons 16 actually came back to you and said -- or none of those 17 persons who have given evidence came back and said, 18 "We've taken photographs and this is what they showed", 19 and indeed nobody working for you over that period of 20 time came back and said, "I've taken photographs and 21 this is what they show"? 22 A. Now, at the time, the staff were supervisory in nature, 23 engineering or managerial staff, supervisory staff, 24 altogether about 20-odd of them, they could take photos 25 and put them in the Dropbox. Somebody told me that, but</p>	<p>1 photographs, why is it that you didn't take immediate 2 steps to find out what the person had seen and to 3 recover those photographs? 4 A. I did take steps. I remember, in late July/early August 5 I heard about it, but already in September I told them. 6 I saw that myself too, and I already approached the top 7 person on site. I meant Khyle Rodgers and Gabriel So. 8 CHAIRMAN: No, that's not my question. My understanding, as 9 limited as it is at this moment in time, is that the 10 science of engineering requires careful, thorough 11 oversight. Would you agree? That seems to be one of 12 the hallmarks of good engineering, knowing what you are 13 doing step by step. 14 A. Agreed. 15 CHAIRMAN: Now, you have shown a concern that people may be 16 cutting rebars or in some other way not doing that 17 particular form of steel reinforcing correctly, and you 18 put your own people on alert in that regard. 19 Now, why was it that once you heard, "Yes, I've got 20 photographs, here's evidence from me of what has 21 happened", that you didn't say, "Good. Have you put it 22 into the Dropbox? Yes. Where is it? What's the 23 reference number?", and then collect it and maybe put it 24 into your own file so you could confront somebody with 25 it at the appropriate time.</p>
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<p>1 I couldn't recall who, honestly. Now, when we look at 2 the photos again, we could see that the photos were 3 taken by many different models of mobile phones. 4 For those who came to give evidence, I heard them 5 say that they dare not take photos because they were 6 afraid of confrontation. That's their evidence. 7 I don't want to comment on their evidence, I don't want 8 to put my interpretation on that. But in the Dropbox 9 database of ours, we could see many people took photos 10 and put them there and they were all relevant or 11 related. 12 CHAIRMAN: All right. Can I put this to you: would it be 13 fair to say that you were concerned, when it first came 14 to your notice that rebars were being cut or not being 15 properly inserted into couplers; "yes" or "no"? 16 A. (In English) Yes. 17 CHAIRMAN: And you asked those who were working for you, or 18 the senior persons who were working for you, to look out 19 for this form of negligent or illicit workmanship and to 20 report back to you? 21 A. Yes, but not just limited to senior. All those who 22 heard me, they would have to do it. 23 CHAIRMAN: All right. That makes it even more clear that 24 you were concerned. 25 Now, if you say you heard that some people had taken</p>	<p>1 It seems to me that your training is to deal in 2 things like that in a clear and thorough way, but you 3 don't seem to have done that in respect of evidence 4 which has resulted in this Commission of Inquiry. 5 A. Let me explain again. Mr Chairman, let me explain again 6 in detail. It's the same as what I said before, 7 actually. At the start of the works -- now, this is not 8 our first MTRCL project. Our company is involved in 9 many MTRCL projects. The MTRCL is among one of the 10 strictest management teams in Hong Kong. So my 11 impression is, personally, I give the management team of 12 MTRCL a high score. 13 Now, at the end of July or early August when I first 14 heard about it, why did I ask my staff to take photos? 15 To be honest, because I was afraid that they might have 16 seen it wrong, I was afraid they might have misled me. 17 I don't have all the time to go on site and stay there 18 to catch people. So, initially, I asked my staff to 19 take photos when they see it again, because I want to 20 see whether they actually saw it or there was 21 a misunderstanding. 22 CHAIRMAN: All right. My question is a very simple one. 23 You had said you heard reports, but you can't remember 24 now the context of them, that your staff members had 25 seen things, and had photographed them. My question is</p>

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<p>1 simple enough and relates to the photographs. Why did 2 you not do anything to retrieve those electronic records 3 at the time and ensure that they were safely kept so 4 that they could be used at a later stage? 5 A. I did keep them properly. We keep them in the Dropbox. 6 We did that. For all the photos, the drawings, the 7 documents, they were all kept in the Dropbox -- 8 CHAIRMAN: But you didn't -- what you're saying is you threw 9 them all in with everything else? 10 A. Yes, that's a fact. That's a fact. 11 CHAIRMAN: And now you've got difficulty finding half of 12 this stuff, yes? 13 A. Yes, that's a fact. 14 CHAIRMAN: Whereas if you had said, "Thank you very much, 15 here's a photograph of somebody actually cutting 16 a rebar, right by a series of couplers in a diaphragm 17 wall, I'm going to now identify these photographs and 18 keep the record safely so I can use it", then we 19 wouldn't have the current situation, would you agree, 20 where half the stuff's got lost? 21 A. Mr Chairman, for our company, it's not as big as you 22 might imagine. We only have about \$300 million worth of 23 business. Of course for a contractor, it's big, but 24 it's not what you imagine, that we are a super-large 25 organisation. We honestly do not have the resources.</p>	<p>1 early stage, when you asked your people to take 2 photographs, even though you heard there had been some 3 photographs taken, you didn't take steps to put them to 4 one side and to ensure their safety, because at that 5 stage it really wasn't that serious? You had seen some 6 isolated incidents, but nothing that was going to be 7 profound in the sense that it was systematic; would that 8 be right? "Yes" or "no"? 9 A. (Chinese spoken). 10 CHAIRMAN: "Yes" or "no"? It's easy. 11 A. Up to September, yes. 12 MR SHIEH: Can I move on, Mr Chairman, to the other 13 photographs that this witness said he had taken in 14 mid-September. 15 Mr Poon, you remember in your evidence you had said 16 that prior to the 22 September incident or photo-taking 17 exercise, earlier than that date, also in September, you 18 used your office Huawei phone to take two photographs of 19 rebar cutting and one video. Do you remember that? 20 A. I did not mention it was office. I think it was my 21 Huawei phone. 22 Q. You used a Huawei phone to take two photographs and one 23 video in mid-September 2015; correct? 24 A. Yes, yes, because that was my Huawei phone. I did not 25 mention the office.</p>
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<p>1 CHAIRMAN: No. Sorry. Bear with me. I appreciate that. 2 The point of my question -- and let me put it to you 3 now; it's a question, it's not a statement of 4 conclusion -- it may be said that if you did not take 5 steps to actually safeguard the electronic records that 6 you say you received, that is an indication that you 7 weren't actually taking this that seriously at that 8 time. 9 A. Now, yesterday I explained that. In my evidence I said 10 this repeatedly, I thought there was about 5 per cent of 11 the bars cut, that was my estimate. That's always been 12 the estimate. I also believe that if we're just talking 13 about cutting threads then it's within the safety 14 margin. I answered that yesterday. Before you asked me 15 this, I talked about it before. 16 CHAIRMAN: I appreciate that. So it would be correct to 17 say -- 18 A. So, so -- now, you said -- you asked if I thought it was 19 at a point that things were going to collapse, I must 20 stop it now, I must come forward on whether to pour 21 concrete -- no, I don't think we have reached that 22 critical stage yet. But if there were other issues that 23 reached that critical stage, I would have stopped, for 24 example about pouring concrete. 25 CHAIRMAN: All right. So you are saying then, that at that</p>	<p>1 Q. Yesterday, you told us that Mr Gary Speed asked you, on 2 18 September -- Karl Speed, sorry, Mr Karl Speed asked 3 you, on 18 September 2017, in the office of Leighton, to 4 delete those two photographs and that one video which 5 you had shown him. Do you remember that? 6 A. Yes. 7 Q. You then spent, on the transcript, a couple of pages 8 talking about a man called Manning and then Tony Zervaas 9 came and then a Chinese man from Leighton came, 10 et cetera, which we don't need to call up on the 11 transcript. 12 Then you said Zervaas asked you to destroy photos or 13 records of rebar cutting in your company or office 14 computer, pursuant to the confidentiality agreement. Do 15 you remember saying that? 16 A. Yes, I remember that. 17 Q. So there were two requests, one was from Karl Speed, for 18 you to delete from your phone on the spot two pictures 19 and one video. Subsequent, on the same day, Zervaas 20 asked you to go back to your office and delete or 21 destroy photos or records of rebar cutting. Have I got 22 it right? 23 A. Yes, right. 24 Q. Can you look at D1, page 765.3. The Chinese version is 25 page 761 and the paragraph number that I want is</p>

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1 paragraph 9. You can choose to look at the Chinese or
2 the English. The English:
3 "On a certain day between 15 September ... and
4 22 September ... (exact date could not be provided),
5 under the guise of inspection of safety facilities ...
6 I asked Mr So and Mr Rodgers to conduct site
7 inspection ... with me together. Since incidents of
8 Leighton staff cutting short threaded heads of rebars
9 continued to happened, and I knew that the construction
10 process of screwing the rebars ... was being carried out
11 at bay 'C1-4' ... I believed that there would be
12 Leighton staff cutting threaded heads of rebars at the
13 said location (on that day). The three of us met at
14 around 5 pm ... and we walked towards bay 'C1-4'", et
15 cetera.
16 Can I move over the page at 765.4:
17 "I used the Huawei mobile phone of my company" --
18 which you define as "Phone 1" -- "to take 2 photos and
19 to record a video clip of about 10 odd seconds of this
20 incident."
21 That is what you said to the police; do you see
22 that?
23 A. Yes.
24 Q. So, according to what you said to the police, the Huawei
25 phone which was used to take photograph on that occasion

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1 was a company phone. That was what you said?
2 A. Sorry, I've got it mixed up, because I remember this
3 Huawei phone very well. I use it to do drone videos.
4 Q. So was that Huawei phone a company phone or your
5 personal phone?
6 A. This is my personal phone, but in fact the company
7 belongs to me.
8 Q. Anyway, can I ask you then to look at 765.6, that's the
9 English -- the Chinese is 764 -- and I want
10 paragraph 16:
11 "On 18 September ... I went to the office of
12 Leighton to discuss about the 'rebar cutting' incident
13 with Mr Zervaas and Mr Karl Speed. At the end, Leighton
14 requested that both parties sign a confidentiality
15 agreement, contents of which include Leighton's oral
16 admission of the occurrence of incident of 'rebar
17 cutting', remedial measures to be carried out by
18 Leighton and MTRC in respect of such incident, I had to
19 delete the video clip of about 10 odd seconds and
20 2 photos taken at bay 'C1-4' of Hung Hom ... using my
21 Phone 1 (as Phone 1 went wrong subsequently, I sold
22 Phone 1 later), I had to send email to the Transport and
23 Housing Bureau ... as well as matter concerning the
24 settlement of final payment of related construction
25 works."

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1 And the Chinese version is:
2 "(Chinese spoken)", and then a number of points, so
3 it seemed to match the English version.
4 Do you see that, Mr Poon? No question yet. I'm
5 asking you whether you have seen what you said in the
6 police statement. My questions will come.
7 A. Yes, yes.
8 Q. Here, you only mentioned being required to delete two
9 photos and one video; correct?
10 A. Correct.
11 Q. You did not mention anything about being requested by
12 anyone from Leighton to delete stuff in your office
13 computer; that is correct, right? You did not mention
14 that in your police interview; correct?
15 A. For 18 September, I think it was rather general and the
16 confidentiality agreement did not mention the oral
17 undertaking or the remedial solution. So maybe
18 everything was all mixed up.
19 Q. In your -- I'm sorry.
20 A. Because from the text, it seems to suggest that the
21 confidentiality agreement includes the admission orally
22 that there were cutting of rebars, the remedial
23 measures, all these have been included in the
24 confidentiality agreement, but it was quite general,
25 without details. Just very general.

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1 Q. I will come to that in due course, the confidentiality
2 agreement.
3 I will suggest one more time: this business about
4 being asked to go back to your office to delete stuff or
5 data in your office computer was not mentioned in your
6 police interview or your witness statements prepared for
7 this Commission of Inquiry. Do you accept that, as
8 a matter of fact?
9 A. Did not mention? Well, this paragraph only briefly
10 mentioned that meeting. If you just read from the text,
11 perhaps that's true, what you say is true. There was no
12 mentioning in detail. But in fact the meeting -- well,
13 I don't want to argue anymore. That's right, it isn't
14 mentioned here.
15 Q. I suggest to you that you just made that up when you
16 were in the witness box, this business about being asked
17 to go back and delete data in your office computer.
18 A. Not true. Not correct.
19 Q. And conveniently you said your "phone 1" has been sold,
20 so no exercise of reconstruction can now be done; do you
21 accept that?
22 A. Conveniently? Of course I disagree. I believe everyone
23 here would not have a phone that they purchased three
24 years ago in their pocket.
25 Q. The deletion only took place --

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<p>1 CHAIRMAN: I do. There seem to be a lot of hands going up. 2 A. Well, just for myself, I change my phone every year. 3 I do follow the latest models. 4 MR SHIEH: Anyway, I will move on. 5 You uploaded the photographs and the video that you 6 took in September onto the Dropbox or the system in your 7 office; correct? 8 A. Correct. 9 Q. Thank you. I suggest to you that as part of your 10 story-making, you realised that it is not enough for you 11 to simply say in your evidence that you were asked to 12 delete photos and video on your phone, because you knew 13 people would ask you, "How about the system in the 14 office?", and therefore you had to make something up on 15 the spot to say, "I have been asked to go back to my 16 office to delete data as well." Do you accept that? 17 A. Disagree. 18 Q. Turn to bundle C12, page 7995. That is a final account 19 statement recording a final settlement between 20 China Tech and Leighton in respect of contract 1112. Do 21 you see that, Mr Poon? 22 A. Yes, I see that. 23 Q. And also C12/8000, there is the confidentiality 24 agreement; do you see that, Mr Poon? 25 A. Yes.</p>	<p>1 A. How can I answer on behalf of Leighton? 2 Q. Now, you said -- yesterday, we looked at clause 3.5, 3 which Mr Pennicott took you to. That's 4 confidentiality -- 3.5, yes, and Mr Pennicott drew your 5 attention to the first few words: 6 "At any time upon demand by Leighton ...", 7 et cetera. 8 And the destruction or deletion was to take place 9 only upon demand by Leighton. Do you remember 10 Mr Pennicott asking you that? 11 A. Yes, I remember. 12 Q. And you said the request came from Speed and Zervaas; 13 yes? 14 A. Yes, I remember. 15 Q. I now come back to what you said earlier in your police 16 statement. In your police statement, 765.6, English, 17 764, Chinese, paragraph 16 -- 18 A. I see that. 19 Q. -- it talked about the content of the confidentiality 20 agreement; do you see that? 21 A. Yes. 22 Q. So if you read either the English or the Chinese, it 23 suggests that the confidentiality agreement, the content 24 of the agreement required Leighton to make admission, 25 required you to delete, required Leighton to rectify,</p>
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<p>1 Q. You say in your professional career you have entered 2 into confidential agreements twice; do you remember? 3 A. Right. 4 Q. Although you also said yesterday that sometimes 5 confidentiality provisions are contained in the main 6 building contract anyway; do you remember that? 7 A. Yes. 8 Q. Do you accept that it is commercially commonplace -- it 9 is a commercial commonplace practice, when people settle 10 their differences and disputes, they would sign 11 a confidentiality agreement to preserve confidential 12 information? 13 A. Disagree. 14 Q. You don't agree? 15 A. Disagree. 16 Q. Can you look at C12/8000, the bottom right-hand corner. 17 A. Yes, I see that. 18 Q. You see the date of 16 January 2015 and then there are 19 some code-like references on the left? 20 A. Yes, I see that. 21 Q. So you may or may not agree but I suggest to you that 22 this is kind of standard-form template of Leighton, it's 23 a commonplace document kept in Leighton's system, which 24 was taken out for use on this particular purpose. You 25 can either agree or you can say "I don't know".</p>	<p>1 and required you to send email and also sort out the 2 engineering sum; do you see that? 3 A. Well, you said Leighton required us to delete? It seems 4 like there is -- 5 Q. You were required to. 6 A. (In English) I am required to. Okay. 7 (Via interpreter) Right, right. 8 Q. But in fact nowhere in the confidentiality agreement at 9 page 8000 required admission, deletion, rectification 10 and sending of email; do you accept that? 11 A. I agree with most of that, but I do not agree with the 12 "delete" part because 3.5 states very clearly that we 13 need to destroy the information -- 14 Q. Upon request, and I will argue whether there was a 15 request, but certainly nothing about admission, nothing 16 about rectification and nothing about having to send any 17 email to withdraw the earlier email; correct? 18 A. In fact, I told the police about July -- let me check 19 the date, sorry. Yes, 10 July. It was 10 July. At the 20 very beginning, of course when I first spoke to the 21 police, I maintained the same version as I am 22 maintaining now. At first, there was a struggle. 23 I insisted that it should include Leighton's admission 24 of this incident and our company should be indemnified. 25 Then this young person took this document to us, and</p>

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<p>1 then I heard Anthony's explanation before I signed it. 2 However, I admit, now reading back this police 3 statement, that the paragraph is too general, such that 4 a lot of details have been left out. I ask for 5 understanding because I spent the whole day giving the 6 statement. 7 MR SHIEH: Mr Chairman, I am halfway through this topic. 8 I have a few more questions to put on this topic before 9 moving on to the next one, and this seems to be 10 an appropriate time to take the mid-morning break. 11 CHAIRMAN: If that's how you feel, then it's your 12 cross-examination. We'll have the mid-morning 13 adjournment. 15 minutes. Thank you. 14 (11.30 am) 15 (A short adjournment) 16 (11.51 am) 17 MR SHIEH: Good morning, Mr Poon. It's still the morning. 18 A. (Chinese spoken). 19 Q. Can I come back and ask you some questions about 20 Mr Zervaas's request for you to go back to the office to 21 delete files; all right? 22 A. Yes, please. 23 Q. Did Mr Zervaas ask for or suggest any way for him to 24 verify whether you had indeed gone back to your office 25 and deleted the photographs or data which he wanted you</p>	<p>1 strange. I won't comment on that. 2 Q. It just did not happen, Mr Poon. This request for you 3 to go back to delete the files simply did not happen. 4 A. No, it did happen. It did happen. 5 Q. All right. Now, you remember in January 2017 you sent 6 two photographs to Leighton as part of the complaint 7 that you made; do you remember? C12/7931 -- 8 A. Yes, in the email. 9 Q. -- C12/7932. Maybe we can call that up. C12/7931. 10 A. (In English) Okay. 11 Q. 7931, 7932. If you move to 7930, and 7928 maybe, the 12 previous page, this is the email, 6 January. 13 Paragraph 3, after that, you say: 14 "We attach herewith two of the found photos taken 15 at 18:18 to 18:19 ..." 16 Do you see that? 17 A. Yes, I see. 18 Q. So you sent these photos to Leighton in January 2017 as 19 part of what you regard to be relevant evidence of 20 wrongdoing; correct? 21 A. Yes. 22 Q. But Leighton did not ask you to delete these two 23 photographs, did they? Because you were able to produce 24 these photographs now to this Commission as part of your 25 exhibits.</p>
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<p>1 to delete and have not kept a spare copy in the USB? 2 A. He didn't mention USB. 3 Q. Has he asked for or suggested any way that could verify 4 or show to him that you had indeed kept your promise and 5 gone back to the office and deleted the required data? 6 A. Yes. This is how he said it. Leighton knew that my 7 wife and I owned a property, and if the data were 8 leaked, say, to outside parties, say the media, then, in 9 accordance with the confidentiality agreement, they 10 would take us to court. But then I said that this is 11 a company agreement, and he has successfully persuaded 12 my wife to go over and sign the agreement, but my wife 13 didn't go immediately. 14 Q. I ask you for the third time: did Mr Zervaas ask you or 15 suggest that you should provide any proof or 16 verification that you had in fact gone back and deleted 17 the required files? 18 A. No, no. 19 Q. I suggest to you that it is just incredible and indeed 20 moronic for Mr Zervaas to simply ask you to go back to 21 delete stuff and, "I'll just leave it to you to do it." 22 Do you accept that? It's silly, incredible that he 23 should just ask you to go back and delete the data and 24 just leave it at that; do you agree? 25 A. So you were criticising Mr Zervaas as silly and very</p>	<p>1 A. I've explained before. 2 Q. Are you talking about the subsequent restoration or 3 recovery of photographs; is that right? 4 A. Correct. 5 Q. Thank you. I will come on to that. So these two 6 photographs, indeed the seven photographs which you now 7 exhibit to your witness statement and say were taken on 8 the 22nd were part of the photographs that were 9 recovered; correct? 10 A. Yes, it's part, or maybe I have missed deleting these 11 photos in the first place. 12 Q. I will come to that. 13 In January 2017, when you picked and chose 14 photographs to send to Leighton as part of your evidence 15 of Leighton's wrongdoing, did it occur to you to send 16 the two photos and one video that you took on the 17 earlier occasion? 18 A. You are talking about the email on 6 January 2017, at 19 that particular juncture? 20 Q. Yes. 21 A. I have only to find two pieces of corroborative 22 evidence, because at that time, starting December, 23 Mr Zervaas denied this happening. 24 Q. Mr Poon, videos inherently should be better than static 25 photos in terms of evidence of people doing certain</p>

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<p>1 things; do you accept that?</p> <p>2 A. It's hard to say. I think photos should be enough, and</p> <p>3 I didn't send all; I just need to pick two randomly and</p> <p>4 that would be enough to convince Anthony that it did</p> <p>5 happen.</p> <p>6 Q. Mr Poon, what you are now trying to create is</p> <p>7 an impression that "there is something pretty damaging</p> <p>8 and relevant dangling somewhere but it's just that</p> <p>9 I can't produce them". Is that what you are trying to</p> <p>10 do?</p> <p>11 A. No. Now, if on 6 January 2017 I would have foreseen</p> <p>12 I would be doing this, of course it would be different.</p> <p>13 Now, this email was sent on 6 January 2017, Mr Shieh.</p> <p>14 So what I want to express is this. Anthony said there</p> <p>15 was no cutting of threaded rebars. Even though, or even</p> <p>16 if they were cut, they were not screwed in. That's why</p> <p>17 it's enough for me to just show him two photos.</p> <p>18 I explained that in my evidence or statement. He</p> <p>19 admitted initially but suddenly he denied it.</p> <p>20 Q. Actually -- and it's a small point -- in your witness</p> <p>21 statement prepared for this Commission, you have not</p> <p>22 mentioned any deletion at all -- I'm talking about your</p> <p>23 first witness statement. In your first witness</p> <p>24 statement prepared for this Commission, you have not</p> <p>25 mentioned any deletion at all; do you accept that?</p>	<p>1 A. Yes.</p> <p>2 Q. Paragraph 5:</p> <p>3 "Describe and explain in detail and in chronology</p> <p>4 the events and occasions when your company witnessed any</p> <p>5 shortening, cutting, or defective connection of the</p> <p>6 steel bars in the diaphragm walls and platform slabs, in</p> <p>7 particular ..."</p> <p>8 Then I wish you to go to the next page, page 5, (d):</p> <p>9 "Notes and written records kept on such events and</p> <p>10 occasions, photographs taken and video or audio</p> <p>11 recordings made should be exhibited. All internal</p> <p>12 records, reports, meeting notes and minutes, summaries</p> <p>13 and documents pertaining to any internal investigations</p> <p>14 undertaken by your company should be provided as well.</p> <p>15 Notwithstanding the existence ... please explain why</p> <p>16 your company proceeded to pour concrete at the diaphragm</p> <p>17 walls and platform slabs and completed your company's</p> <p>18 works under the relevant contract(s).</p> <p>19 Explain with reference to the terms of</p> <p>20 contract 1112 ... how the steel bars should be</p> <p>21 connected ...</p> <p>22 Given your company's knowledge ... provide</p> <p>23 an analysis ... of the extent ..."</p> <p>24 Then at 6:</p> <p>25 "Given your answers to the matters in paragraph 5,</p>
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<p>1 A. I think I should have copied the police statement there.</p> <p>2 Q. I'm not going to argue with you. We can all read for</p> <p>3 ourselves.</p> <p>4 A. Obviously part of our statement is from the police</p> <p>5 statement.</p> <p>6 Q. You did not, in your first witness statement, adopt or</p> <p>7 confirm the contents of your police interview, Mr Poon;</p> <p>8 do you accept that?</p> <p>9 A. Let me explain again. For the police statement, the</p> <p>10 contents therein, they were copied to the witness</p> <p>11 statement.</p> <p>12 Q. Anyway, Mr Poon, before the mid-morning break, when you</p> <p>13 were questioned about why you have not mentioned certain</p> <p>14 complaints and conversations in your witness statements,</p> <p>15 you said you were just trying to reply to Lo & Lo's</p> <p>16 letter to your company or to your solicitors; do you</p> <p>17 remember that?</p> <p>18 A. Yes.</p> <p>19 Q. Can you then turn to bundle D, page 1. This is</p> <p>20 Lo & Lo's letter of 20 July 2018.</p> <p>21 A. Yes.</p> <p>22 Q. Some ten days after the setting up of the Commission of</p> <p>23 Inquiry.</p> <p>24 A. Yes.</p> <p>25 Q. Turn to page 5 -- well, actually, page 4.</p>	<p>1 explain to the best of your company's knowledge how the</p> <p>2 defective steel works came about and the reasons for the</p> <p>3 shortening ... and also why the defective steel works</p> <p>4 had been allowed and overlooked."</p> <p>5 Do you see that?</p> <p>6 A. (In English) Yes.</p> <p>7 Q. At D6, top of the page:</p> <p>8 "Please describe, explain and confirm whether, and</p> <p>9 if so, what steps were taken by your company to alert or</p> <p>10 inform the main parties or any of them of the existence</p> <p>11 of the defective steel works.</p> <p>12 Identify the persons in your company who notified</p> <p>13 and reported the matter ...</p> <p>14 Describe the responses, reactions and steps</p> <p>15 taken ...</p> <p>16 Whether or not it was as a result of your company's</p> <p>17 notifications and reports, please confirm and</p> <p>18 identify ...", et cetera.</p> <p>19 Point 8:</p> <p>20 "Following the notifications and reports described</p> <p>21 in paragraph 7, please describe and explain what steps</p> <p>22 and measures were taken by your company and/or the</p> <p>23 recipients of such notifications and reports to rectify</p> <p>24 the defective steel works. Please provide all relevant</p> <p>25 correspondence, emails, telephone records, text</p>

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<p>1 messages, written notes ...", et cetera. 2 Do you see that? 3 A. Yes, I see that. 4 Q. Mr Poon, it is -- and I'm not going to go through the 5 wording; we can all read it -- a very comprehensive set 6 of questions, asking for a wide range of matters; do you 7 agree? 8 A. Yes, it's wide range, it's very wide range. 9 Q. Whether complaints were made, for example? Whether 10 complaints were made, for example? 11 A. Yes. 12 Q. Whether remedial steps were taken as a result; agree? 13 A. Yes. 14 Q. And why the alleged acts of cutting should take place at 15 all and why they were not spotted; it was requested, the 16 information, yes? 17 A. Yes. 18 Q. Why concrete was poured nonetheless; yes? 19 A. Yes. 20 Q. Thank you. And despite that, you have not mentioned, 21 for example, your complaint to Mr Plummer, for example, 22 before you raised it with Mr Zervaas? 23 A. No, that was not written down. 24 Q. Mr Poon, I come back to your photos taken in 25 mid-September. You used the Huawei phone to take those</p>	<p>1 Q. Oh, Mavic, that's the style, that's the particular model 2 of the drone, the DJI drone? 3 A. (In English) Yes, A new model. 4 Q. Not Phantom. 5 A. (Chinese spoken). 6 Q. Okay. 7 Now, can I ask you to look at a news report, 8 bundle C32. 9 A. Yes. 10 Q. 24260. 11 A. Yes. 12 Q. Now, we do not yet have time to translate this, but we 13 can rely on the simultaneous interpreter to translate 14 the relevant parts. 15 A. Mmm. 16 Q. This is an article in an online media called HKC News. 17 A. Yes. 18 Q. It is written by a reporter; I won't name her. In 19 fairness, it does not seek to report an interview with 20 you by HKC News. If you read the second line, it says: 21 "(Via interpreter) The managing director of China 22 Technology, Jason Poon." 23 The date of this article is 28 June 2018. The 24 second line of the article says: 25 "(Via interpreter) Managing director of China</p>
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<p>1 two photographs and one video; correct? 2 A. Yes. 3 Q. When did you sell that phone? 4 A. When I sold the DJI Phantom 2, I sold the phone at the 5 same time. 6 Q. Yes, we don't know when you bought that drone, DJI 7 drone. DJI is the brand for drones; yes? 8 A. Let me explain. I love doing drone videos. In my car, 9 there's always a drone. In every drone, I equip it with 10 a phone, because I need to use a phone to use the drone. 11 I won't use my own phone because if my phone rings then 12 the drone would fly away. So I would use a phone 13 without signals for controlling the drone. 14 Q. When was that, Mr Poon? 15 A. When did I buy the drone, you mean? 16 Q. Yes, and -- well, when did you sell -- I don't care how 17 you work it out in your own mind. I want to know when 18 you sold that Huawei phone. 19 A. You mean sold it? Sold it, right? 20 Q. Yes, sold it. 21 A. Around end of 2017. 22 Q. Right. 23 A. Because at that time I bought Mavic Pro. 24 Q. Okay. 25 A. M-A-R-V-I-C.</p>	<p>1 Technology, Mr Jason Poon, following what he said for 2 the first time on the 27th at D100 at the 'Left Right' 3 programme, he said this morning again he received 4 interviews from 'On a Clear Day' by Commercial Radio and 5 also the RTHK programme. He gave further details of the 6 bar cutting incident." 7 Do you see that? 8 A. (In English) Yes. 9 Q. (Via interpreter) Left Right [Tipping Point] at D100. 10 A. Mmm. 11 Q. D100 is an online radio programme; correct? 12 A. (In English) Yes. 13 Q. The host is Li Wei Ling. Is it Li Wei Ling? 14 A. Yes, I think so. 15 Q. The next day, the 28th, you accepted an invitation to 16 speak on Commercial Radio; correct? 17 A. Yes. 18 Q. Stephen Chan, (Chinese spoken)? 19 A. Yes. Three of them. 20 Q. Chan Chung, Poon Siu To? (Chinese spoken)? 21 A. Yes. 22 Q. Right. I hope they are here. 23 Then you attended three interviews within two days, 24 correct, according to this article? 25 A. No, more than that.</p>

<p>Page 61</p> <p>1 Q. Many more? 2 A. Five. 3 Q. So you were darling of the media at the time; do you 4 accept that? 5 A. Because the MTRCL published that report or 6 advertisement. 7 Q. "Idol of the underdog"; correct? 8 A. Let me say this again, because the MTRCL published 9 an advertisement and that led to this case. 10 CHAIRMAN: Sorry, what was the advertisement? 11 MR PENNICOTT: It may be a press release; I'm not sure. 12 A. At the time, the MTRCL, I think there were -- on 13 26 newspapers, English and Chinese newspapers, they put 14 in a half-page or whole-page advertisement to condemn 15 people, including myself, in other words people who 16 describe this case, and at the time MTRCL was telling 17 lies repeatedly. 18 CHAIRMAN: So it was some form of press announcement? 19 MR SHIEH: Yes, a press announcement, as opposed to 20 an advertisement in the commercial sense. 21 COMMISSIONER HANSFORD: Just a small point -- 22 A. It's a commercial advertisement. 23 (In English) Commercial advertisement being placed 24 by MTR on 26 numbers of local newspapers and media, 25 purely commercial, and MTRC is paying the advertisement</p>	<p>Page 63</p> <p>1 Technology, Jason Poon, responded to many key questions 2 in relation to the cutting of bars at Hung Hom Station. 3 The CitizenNews summarises his reply as follows." 4 A. What are you trying to say? 5 Q. Do you see that sentence? 6 A. (In English) Yes. 7 Q. I'm just telling you that this article is not 8 an interview by HKC News with you. It is an attempt by 9 the reporter to summarise the content of your interview 10 at the three radio programmes. I'm just letting you 11 know this is what this article was trying to do; right? 12 A. Yes, I agree. 13 Q. Can I then ask you to turn to 24262. At the bottom, 14 there is a line in bold: 15 "(Via interpreter) When did the MTR know about it? 16 What did it do to respond? Was it the case that the 17 senior management knew nothing about it? Who should be 18 held responsible?" 19 Above that, there is a paragraph -- the second line 20 on that paragraph, there is a sentence which starts: 21 "(Via interpreter) By 18 September, Leighton staff 22 improved their attitude, the two parties reached 23 an agreement, Chinat was satisfied with the remedial 24 solution of Leighton and Chinat agreed to sign 25 confidentiality agreement. In response to Leighton's</p>
<p>Page 62</p> <p>1 fee. 2 COMMISSIONER HANSFORD: My point, Mr Shieh -- once again 3 I think we are going a bit fast for the interpretation, 4 so I'm not collecting it all on the screen. 5 MR SHIEH: I'm sorry. 6 COMMISSIONER HANSFORD: Thank you. 7 MR SHIEH: Mr Poon, page 2460, the second paragraph, it 8 says: 9 "(Via interpreter) Jason Poon said that the 10 initially pointing out of the problem by Chinat, it was 11 to protect the company, because they could see 12 an organisation systematically cutting threaded rebars." 13 So your concern and your observation was one of 14 systematic cutting; correct? 15 A. Yes, correct. 16 Q. Turn to 24261. That's a nice picture of you; do you 17 agree? 18 A. (In English) Not that good. 19 Q. Media tend to choose nice pictures of people who they 20 want to praise as heroes. 21 A. (In English) I don't know. I'm not media. 22 Q. Yes. 23 Now, immediately below that photograph, there is 24 this sentence: 25 "(Via interpreter) Managing director of China</p>	<p>Page 64</p> <p>1 request, Jason Poon deleted photos in his phone that 2 were taken in September 2015. Chinat emailed to the THB 3 to say that the suspected incidents had been clarified. 4 Jason Poon added that there were other photos taken in 5 September 2015 kept in the company's computer and they 6 were not deleted." 7 Now, that is what the reporter summarised to be the 8 effect of the interviews; do you see that, Mr Poon? 9 A. Yes, I see it. 10 Q. A few things to point out to you. In this summary, it 11 is said that you said you deleted the video in your 12 mobile phone. Did you say that in any of the 13 interviews, that you deleted the video in your mobile 14 phone? 15 A. I think it's not just a video. I couldn't recall 16 exactly what I said. 17 Q. Certainly here it did not record you as saying you 18 deleted photos and video? There's no reference to you 19 saying you have deleted photos? 20 A. Not reported in this article but it doesn't mean 21 I didn't say it. 22 Q. So you say you might have said it? 23 A. (In English) I may have said it, yes. 24 Q. But somehow the reporter simply picked out the bit about 25 video?</p>

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<p>1 A. Right.</p> <p>2 Q. Well, you may not be able to comment.</p> <p>3 A. Well, I didn't write this.</p> <p>4 Q. You then said:</p> <p>5 "(Via interpreter) Then there were photos taken in</p> <p>6 September 2015 stored in the office computer not yet</p> <p>7 deleted."</p> <p>8 A. Right.</p> <p>9 Q. So you are saying there are photographs taken in</p> <p>10 September which you have not deleted; do you see that?</p> <p>11 A. In fact what I meant at the time was that I was able to</p> <p>12 identify photos, a quantity of photos, in September</p> <p>13 2015.</p> <p>14 Q. Mr Poon, if you are in whistleblowing mood and trying to</p> <p>15 expose the brutal behaviour of Leighton in asking for</p> <p>16 deletion, you would actually spill the beans completely,</p> <p>17 wouldn't you, and say Leighton asked you to delete two</p> <p>18 photos and one video and to delete stuff in your office</p> <p>19 computer as well; do you accept that? But you didn't</p> <p>20 say that in the radio programme.</p> <p>21 A. First of all, this is a very wrong assumption that</p> <p>22 you've kept making. You call me the whistleblower.</p> <p>23 I don't mind that you call me a whistleblower. In the</p> <p>24 beginning I already told the media numerous times that</p> <p>25 I am not that whistleblower. At first I kept silent,</p>	<p>1 On this point, let me just continue. In fact, it's</p> <p>2 already in my phone records. I deliberately called my</p> <p>3 phone record. On 4 June, I called Dr Philco Wong.</p> <p>4 There were four or five phone calls between the two of</p> <p>5 us, back and forth. At the time, I appealed to him that</p> <p>6 as far as this matter was concerned, it was best to just</p> <p>7 tell the truth, or else I would imagine that there would</p> <p>8 be a very horrible consequence. Dr Philco Wong back</p> <p>9 then asked me to contact somebody named Wong in</p> <p>10 Leighton, and I already said it once that there was</p> <p>11 nothing else to talk about.</p> <p>12 Then he gave me the wrong number of a salesman of</p> <p>13 Mercedes-Benz, alleging that that was the person. Then</p> <p>14 what happened, as I saw, was that several personnel from</p> <p>15 MTRC came out to tell stories, totally inconsistent with</p> <p>16 the truth.</p> <p>17 Up to the point when the interview took place, the</p> <p>18 MTRC insisted there were less than 20 and in fact just</p> <p>19 17 threads being cut. I disagreed. Then MTRC, being</p> <p>20 a major corporation, tried to bully an ordinary citizen</p> <p>21 in Hong Kong and then they placed order for</p> <p>22 an advertisement, half-page advertisement, in 26</p> <p>23 newspapers, making allegations against someone, which is</p> <p>24 either me or Mr Michael Tien, and that is why I also</p> <p>25 noticed Mr Michael Tien coming out to clarify, and that</p>
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<p>1 Chinat kept silent. In the beginning, Chinat kept</p> <p>2 silent.</p> <p>3 What I meant was if the matter was made public, such</p> <p>4 that in May 2018, when Apple Daily reported the matter,</p> <p>5 it was considered to be whistleblowing, and first of all</p> <p>6 let me reiterate that it wasn't me. In fact,</p> <p>7 I deliberately made such emails public to show that</p> <p>8 I also received the emails. I was questioned by</p> <p>9 Apple Daily and they even attended my office, and not</p> <p>10 until then did I know that they knew. And after that</p> <p>11 our company had all along kept silent, all the way until</p> <p>12 MTRC sent a wrong message to Mr Michael Tien, the</p> <p>13 honourable member, alleging that my company was</p> <p>14 responsible for bar fixing and screwing bars into</p> <p>15 couplers. We were accused of being difficult, and the</p> <p>16 MTRC had asked us to do rectification, which we refused.</p> <p>17 It was only until they categorically talked about</p> <p>18 Chinat that Chinat took the initiative to contact the</p> <p>19 honourable Mr Michael Tien for clarification. That was</p> <p>20 the first time when Chinat, relatively speaking, gave me</p> <p>21 the exposure for the first time.</p> <p>22 Then, subsequently, there were numerous</p> <p>23 clarifications that it was a wrong source of information</p> <p>24 coming from MTRC to Mr Michael Tien, it was not Chinat</p> <p>25 but somebody else, and after that I kept silent again.</p>	<p>1 is also the reason why I came out to clarify. That's</p> <p>2 the context of how these two interviews took place.</p> <p>3 CHAIRMAN: All right.</p> <p>4 WITNESS: (In English) I am finished.</p> <p>5 MR SHIEH: You did not, in these interviews, talk about</p> <p>6 Leighton's request for you to delete data in your office</p> <p>7 computer; is that correct?</p> <p>8 A. In the beginning, when I was interviewed, I told</p> <p>9 everyone who interviewed me very clearly, categorically,</p> <p>10 that I was bound by the confidentiality agreement;</p> <p>11 I could only talk about what was already leaked into the</p> <p>12 public domain.</p> <p>13 As for all other matters, they were not</p> <p>14 comprehensive. And, at that time, I even knew about the</p> <p>15 indiscriminate amendments of drawings by Leighton --</p> <p>16 without approval, without remedial proposals -- I even</p> <p>17 knew that things were yet to be fixed, but I didn't say</p> <p>18 anything of that sort to the media.</p> <p>19 Q. Sorry, have you finished?</p> <p>20 A. (In English) Finished.</p> <p>21 Q. Let's move on, because we need to move on in life and in</p> <p>22 questions. Can I talk about the recovery of your</p> <p>23 photos. Mr Poon, you talked about the recovery of your</p> <p>24 photographs yesterday.</p> <p>25 A. Yes.</p>

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<p>1 Q. I'm not going to go through the detailed extent of your 2 evidence, because it actually spanned quite a number of 3 pages. I don't use MacBook. I'm old school, I use PC, 4 so I don't pretend to understand the clicking -- 5 A. (In English) Little bit. 6 Q. -- of the Apple mouse. Yes. The gist of what 7 I understand you to be saying is that you first of all 8 formatted your office computer? 9 A. Not my office computer, the site computer. 10 Q. You formatted the computer in the -- site office 11 computer? 12 A. Yes, yes. 13 Q. Am I correct -- 14 A. That's part of the deletion procedure, not the retrieval 15 procedure. 16 Q. Hang on a second. My simplistic mind tells me that if 17 you format a computer or a drive, you basically 18 eliminate data in it; correct? 19 A. Correct. 20 Q. So, after formatting your site office computer, the data 21 should all have been gone; correct? 22 A. As far as that computer is concerned, correct. 23 COMMISSIONER HANSFORD: Unless there's data in the cloud, 24 the Dropbox. 25 MR SHIEH: Yes.</p>	<p>1 Q. So, when you tried to delete, somehow, accidentally or 2 because of the way of clicking, you did not delete 3 everything, to start with; correct? 4 A. Correct. 5 Q. On top of that, by some process, you actually managed to 6 recover some of the stuff that you actually managed to 7 delete? 8 A. (In English) Yes. 9 Q. That was the effect of your evidence yesterday? 10 A. Mmm. 11 Q. Am I being fair to what you said yesterday? 12 A. (In English) Fair. 13 Q. Can I ask you to look at yesterday's transcript, 14 page 91. 15 A. Yes. 16 Q. Let me see, it might be my mistake; I'm terribly sorry. 17 Just give me one second. 18 A. (In English) 89? Paragraph, sentence 5? 19 Q. No, no, no. I might have made a mistake. Can I just 20 have one moment? Ah, yes, page 88, line 8. 21 This is I think Mr Pennicott asking you: 22 "Let's try to put it around the other way. Do you 23 know whether any photographs that you had taken were 24 missing, ie had been destroyed forever? 25 Answer: I didn't know at the time. Not at the</p>
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<p>1 A. Do I need to explain again? 2 Q. No, I know your explanation. Don't repeat a few pages, 3 please. 4 I know what you have said in those few pages and 5 I am trying my very best to summarise, to the simplest 6 extent possible, my understanding. 30-odd years ago, 7 I almost became an engineer; what might have been. 8 A. (In English) You might have sat here. 9 Q. Separate from the deleting, you said you then proceeded 10 to try to delete photos from the Dropbox; correct? 11 A. (In English) Yes. 12 Q. That's the effect of what you said? 13 A. (In English) Yes. 14 Q. You talked about the effect of clicking using the Apple 15 mouse, something about horizontal and vertical, 16 yesterday, and effectively what you are trying to say, 17 on a high level of generality, is that you thought you 18 might have deleted all but somehow, because of the way 19 of clicking, you had actually not deleted all? 20 A. (In English) Yes. 21 Q. Is that what you're trying to say? 22 A. (In English) Yes. 23 Q. Was there a separate act of recovering some of the 24 deleted data? 25 A. (In English) Yes.</p>	<p>1 time. 2 Question: What about now; do you know? 3 Answer: I'm aware now that at least regarding 4 area A, there was a lot of rubbish and those photographs 5 are not recoverable. Because I wanted to give a 6 statement of that but I couldn't find the photographs 7 and we could not -- I had seen many pictures where there 8 were a lot of cut threaded bars and I have seen a lot of 9 those before. Then we also had a lot of couplers that 10 were removed and I couldn't find those pictures either. 11 Question: Okay? 12 Answer: I have a clear recollection of seeing 13 those, but I cannot recover them. 14 Question: Okay. So your evidence, in summary, 15 therefore, is that, yes, you did destroy photographs; 16 you recall that some of those photographs showed 17 incidents of cutting, and also couplers, you recollect 18 those photographs, and they are no longer available ... 19 because of the destruction ... They have not been 20 recovered? 21 Answer: Correct." 22 That's what you said, Mr Poon. 23 But the photographs that you say are no longer 24 available included the threaded ends that had been cut 25 and also damaged couplers; that's your evidence?</p>

<p style="text-align: right;">Page 73</p> <p>1 A. Mmm.</p> <p>2 Q. That's right, yes?</p> <p>3 A. (In English) Yes.</p> <p>4 Q. None of this business about en masse or massive deletion</p> <p>5 of data on your site office computer, from your Dropbox,</p> <p>6 and the recovery or retention of some of them, had ever</p> <p>7 been mentioned in any of your witness statement or</p> <p>8 police statement. Do you accept that as a matter of</p> <p>9 fact?</p> <p>10 A. Okay. As I explained about the written statement,</p> <p>11 I don't want to repeat. The police just gave a general</p> <p>12 description in the paragraph, whereas for other witness</p> <p>13 statements, I didn't put them in because the statement</p> <p>14 was written by the police and the COI never asked about</p> <p>15 it. I did not consider it the subject matter.</p> <p>16 Q. You were asked about whether you have any photographic</p> <p>17 evidence by Lo & Lo; do you remember that?</p> <p>18 A. Yes. That is why -- let me put it this way. At the end</p> <p>19 of June, when the police approached me, I already said</p> <p>20 to the police -- I mean, when I was approached by the</p> <p>21 police at the end of June, it was the Highways</p> <p>22 Department which called the police, somewhere between</p> <p>23 20 and 30 June. I mean it was somewhere after 20 June</p> <p>24 2018, the police approached my office, inviting us to</p> <p>25 give a statement. At that time, I explained to the</p>	<p style="text-align: right;">Page 75</p> <p>1 suggestion that you had been asked to remove data in</p> <p>2 your office computer recently. Do you accept that?</p> <p>3 A. No, I didn't make it up. As a reasonable man, ordinary</p> <p>4 man, I would not take my own time to remove data.</p> <p>5 Q. Well, Mr Poon, can I suggest why you had to make that</p> <p>6 deletion and recovery up: you had said you deleted --</p> <p>7 well, we don't accept you deleted two photos on the</p> <p>8 phone and one video on the phone anyway, but you had</p> <p>9 said to the police that you deleted two photos and one</p> <p>10 video; correct? Correct?</p> <p>11 A. When I told the police, there were more than that.</p> <p>12 There were more than that. That was how it was written.</p> <p>13 Q. So you said something to the police but, when it got</p> <p>14 reduced in writing, it became you deleted two photos and</p> <p>15 one video?</p> <p>16 A. Right.</p> <p>17 Q. So the police interview record did not accurately record</p> <p>18 what you have said to the police?</p> <p>19 A. That's right, because of the length of time; we spent</p> <p>20 the whole day.</p> <p>21 Q. Anyway, I suggest to you that you then realised that</p> <p>22 people would raise questions: "How about your Dropbox,</p> <p>23 how about your office computer? You must have synced</p> <p>24 them." You then had to make up a separate deletion</p> <p>25 exercise of Dropbox and your office computer; do you</p>
<p style="text-align: right;">Page 74</p> <p>1 police, "Before I give corroborative evidence, I need to</p> <p>2 study the matter. If you ask me to shoot from the hip,</p> <p>3 it will just be a mess." I was asked by the police what</p> <p>4 supplementary information I could provide and by that</p> <p>5 time the COI had yet to write to me, and after that we</p> <p>6 tried every means to try to retrieve the photos. We</p> <p>7 tried different ways.</p> <p>8 One of the most successful ways is to rely on the</p> <p>9 Dropbox system because apart from the cloud server on</p> <p>10 Dropbox the data on Dropbox would also be synchronised</p> <p>11 with the hard disk so that they would be in a mix in</p> <p>12 your hard drive, and at that time we identified two</p> <p>13 computers. We thought these two computers were no</p> <p>14 longer in use. They were placed in the office. And</p> <p>15 when we switched on the computers then automatically the</p> <p>16 data in the computer were uploaded in Dropbox.</p> <p>17 And in fact, in early July, we worked it out with</p> <p>18 the police, but the folder -- I mean, there were a lot</p> <p>19 of duplicated folders at different locations regarding</p> <p>20 the same date. That is the reason why.</p> <p>21 Q. Have you finished?</p> <p>22 A. (In English) Yes.</p> <p>23 Q. You have finished?</p> <p>24 A. (In English) Yes.</p> <p>25 Q. I have to suggest to you that you made up this</p>	<p style="text-align: right;">Page 76</p> <p>1 accept that?</p> <p>2 A. I don't accept that. I have never expected Mr Shieh</p> <p>3 using so much time to discuss deletion of files, and so</p> <p>4 on, and not focusing on cutting of rebars. I find it</p> <p>5 very strange. I expected that when I was invited to the</p> <p>6 COI, I was supposed to give concrete evidence on rebar</p> <p>7 cutting and, once that evidence was obtained, then that</p> <p>8 could help the COI to make decisions, to write their</p> <p>9 report, based on their terms of reference. The terms of</p> <p>10 reference don't include the question of how complicated</p> <p>11 Chinat's computer system is.</p> <p>12 I am very disappointed. This is the ninth day of</p> <p>13 the hearing already and, for the past nine days, apart</p> <p>14 from the time when we cross-examined Intrafor,</p> <p>15 ascertaining that the MTRCL system was very useless, we</p> <p>16 haven't arrived at any other particular finding, and we</p> <p>17 spent so much time discussing one-sided information</p> <p>18 presented by Leighton.</p> <p>19 CHAIRMAN: I'm sorry --</p> <p>20 A. And we tried to identify inconsistencies in witness</p> <p>21 statements which are very lengthy. So does it mean that</p> <p>22 we should focus our energy on inconsistencies in witness</p> <p>23 statements among the different witnesses? Now, these</p> <p>24 inconsistencies, how important are these to the terms of</p> <p>25 reference of the COI?</p>

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<p>1 CHAIRMAN: All right. Mr Poon, thank you very much. I've 2 given you an opportunity to say your piece. As the 3 Chairman of this Commission, it's for me to decide what 4 matters are relevant. I think you're well aware of the 5 fact that Leighton, perhaps among others, are strongly 6 of the view that a lot of your evidence as to central 7 issues -- such as rebar cutting, couplers being damaged 8 and the like -- is simply not true; that even if there 9 are random indications of this happening, you have 10 greatly exaggerated your evidence. 11 Now, there are ways in which that can be proved, and 12 one way is by testing your evidence as to its accuracy 13 and as to its inherent truthfulness. That is the 14 exercise that has been embarked upon. It is not 15 an irrelevant exercise, and it is of course for myself 16 and Prof Hansford to look at your evidence in the light 17 of the manner in which it has been tested. 18 This is the way traditionally, in our system, the 19 integrity of evidence can be tested. That's all that's 20 happening. It's being tested. And if I felt that what 21 was being tested was irrelevant, or if I felt that the 22 questions were not pertinent, I can assure you, as 23 I said to counsel the other day, I would stop it. 24 All right? 25 MR SHIEH: Mr Poon, can I --</p>	<p>1 WITNESS: If, judge, you said I'm not assisting the COI, 2 then you can ask me to leave immediately. 3 I am worried. I fully respect the Chairman's 4 remarks. I respect those. I'm just worried that 5 Leighton has another plan, and that is that they don't 6 want to give sufficient time for the COI to investigate 7 the matter. 8 On the point of the North Approach Tunnel, I don't 9 agree that the COI is not covering the North Approach 10 Tunnel. 11 CHAIRMAN: All right. That's another matter entirely. You 12 are here as a witness. I don't intend to continue the 13 matter. But you were making a speech, I suggest, aimed 14 at further than the walls of this hearing room, and 15 I just wanted to make it quite clear to you that if 16 I felt that you were in any way being led down 17 irrelevant pathways, or being mistreated or prejudiced 18 in your ability to tell the truth, then I would 19 interrupt; all right? 20 You must accept from me that I know what's relevant 21 and I know what's not relevant; all right? And that 22 I think ends the matter. 23 Yes? 24 MR SHIEH: Mr Poon, can I continue to suggest things to you 25 and you can agree or disagree, and we can actually get</p>
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<p>1 WITNESS: Can I respond? I will just say the last word. 2 I will not comment any further on. 3 CHAIRMAN: Well, you always want to say the last word, 4 Mr Poon, and the problem is I'm in control of this 5 Commission, rightly or wrongly. 6 WITNESS: All you need to do is to open up. All the photos 7 are here. Just open up the concrete to ascertain 8 whether the couplers have been fully screwed, I mean the 9 rebars have been fully screwed. We don't have much 10 time. 11 CHAIRMAN: I appreciate that, Mr Poon. I appreciate that. 12 Thank you very much indeed. Those matters are being 13 considered by other authorities, and we will discover 14 shortly, no doubt, what the decision of those other 15 authorities is. We have to proceed with the Inquiry 16 according to our terms of reference, and that's what we 17 will do. 18 So the very best way you can assist the Inquiry is 19 not to assume that we're in some sort of gladiatorial 20 combat, where you have to defend every single thing, no 21 matter what. 22 The purpose of this Inquiry is to get to the truth, 23 that's all, and if you can assist us in that regard, 24 then that will be a great service to this Commission and 25 to the community --</p>	<p>1 to other topics if you could make shorter media 2 speeches, Mr Poon. 3 My suggestion to you is this. You then thought that 4 you had to make up a story about deletions in the office 5 and in the Dropbox, but you then realised you need to 6 make up a further story as to how come you were able to 7 bandy around photographs to the police and also the 8 figure of 20,000-odd photos to this Commission, so you 9 had to miraculously delete and recover some. 10 Do you accept that this was what happened in your 11 mind? 12 A. I have disagreed many times. On 10 July, there were 13 some 40,000 photos in the USB, because the recovery 14 exercise had just finished and there was a lot of 15 overlapping. 16 I've talked about the timing. I've said that what 17 I said was the truth. In early July, there were some 18 40,000 photos in the USB for the police, and there was 19 so much overlapping. 20 Q. Have you finished, Mr Poon? 21 A. Yes. 22 Q. I will move on to the timing at which you raised the 23 allegations of rebar cutting by email. That brings us 24 to late 2016/early 2017; all right? 25 I haven't asked you a question yet. I'm just</p>

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<p>1 putting you in the time frame; understand? 2 Just a small point. No need to turn up the evidence 3 but I'm just telling you that yesterday you said that in 4 December 2016, Leighton asked you to approach Philco 5 Wong of MTRC to follow up on issues of non-payment by 6 MTRC to Leighton. Do you remember saying that 7 yesterday? 8 A. Let me give you the details. 9 Q. Mr Poon, what was my question? 10 A. If you just ask me to say "yes" or "no", I will leave 11 immediately. 12 Q. It is not for me to say whether you can do so, but my 13 question was: do you remember having said that 14 yesterday? 15 MR TO: Maybe it would be appropriate for him to have 16 a break, because I think he's under a lot of stress. 17 Maybe we can have an earlier lunch and come back 18 earlier, if that's okay, Mr Shieh. 19 MR SHIEH: I'm not in control here. 20 WITNESS: I am not under a lot of pressure. I think it's 21 Mr Shieh who is wasting taxpayers' money here. 22 CHAIRMAN: All right. I'm not going to go through what 23 I have said already and repeat myself. Please accept 24 from me, Mr Poon, that I am satisfied that the questions 25 being asked are proper. You may disagree. In this</p>	<p>1 question, and what you are now behaving is like a kid 2 throwing a tantrum -- 3 A. (In English) Is it relevant to the terms of reference? 4 Is your question relevant? 5 Q. It goes to your credibility, Mr Poon. You can disagree. 6 A. (In English) I am saying that please go to the 7 transcript. 8 Q. Very well. It is page 23 yesterday, line 8. 9 A. (In English) Yes. 10 Q. "In early December 2016 ... it was Leighton which asked 11 me to approach Philco Wong and ask whether MTRC had 12 discontinued making payment to Leighton so Leighton 13 couldn't pay me. It was in early December ..." 14 You said that, Mr Poon, did you? 15 A. (In English) That is exactly what I said. 16 Q. Right. 17 A. Which is different from what you put to me. 18 Q. Right. Okay. So, in December 2016, Leighton asked you 19 to approach Philco Wong and asked whether MTRC had 20 discontinued making payment so Leighton couldn't pay 21 you; that was what you said yesterday, correct? 22 A. (Nodded head). 23 Q. You are looking at the transcript now, Mr Poon? 24 A. (Via interpreter) Yes. 25 Q. This has never been mentioned to[sic] you in any of your</p>
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<p>1 instance, however, the final decision rests with me. 2 Your function is to listen to the questions, so that you 3 understand them, and that they are questions, and then 4 to answer them to the best of your ability; all right? 5 WITNESS: Mmm. 6 CHAIRMAN: If I came to your concrete-pouring factory on 7 a business and said to you, "I don't think you are 8 pouring the concrete the right way", you may listen to 9 me out of politeness, and if I was showing my ignorance 10 then you would ignore what I said. Do you understand 11 me? You are in control in that sphere of 12 professionalism. I am in control of this sphere. Okay? 13 So you listen to the questions, listen to them 14 calmly, and answer calmly, and then we will proceed with 15 the relevant business of this Inquiry. 16 Thank you. 17 MR SHIEH: Mr Poon, my question was: do you remember that 18 was your evidence yesterday, that in December you asked 19 Leighton to follow up with Philco Wong of MTRC -- 20 A. (In English) Show me the transcript, please. 21 Q. All right, okay, if you don't want to do it that way -- 22 Mr Poon, can I suggest to you -- you may disagree -- 23 that you have been spoiled by the Hong Kong media and 24 politicians and KOLs who have all along been swallowing 25 what you had said and lapping it all up, without</p>	<p>1 witness statements. 2 A. (In English) Okay. I find it out . 3 Q. By you, sorry, never mentioned by you. 4 At page 23 of D, paragraph 48 of your witness 5 statement -- 6 A. (In English) Yes, exactly, I did. 7 Q. No, Mr Poon. Your evidence in the transcript was that 8 Leighton asked you to speak to Philco. In this 9 paragraph, paragraph 48, you only said you reported to 10 Philco Wong. You did not say that it was Leighton who 11 asked you to do so. 12 A. I explained before, I didn't put things relating to 13 commercial matters in the witness statement. If I were 14 to do that, then 1,000 pages would not suffice. 15 Q. Mr Poon, I know there had been quite a number of email 16 and commercial correspondence between the parties in 17 late December and early January on the commercial side 18 of things, concerning the construction contract, 19 especially payment. Do you understand that? 20 A. (In English) And actual records, et cetera, many. 21 Q. Right. Anyway, as I said during my opening, this is not 22 the place to conduct a trial of who is right and who is 23 wrong. No doubt you say you are right and Leighton is 24 being the bad guy; Leighton would say it is justified in 25 doing what they did. But accept that there is a dispute</p>

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<p>1 between the parties. 2 A. (In English) I am using "dispute" also. There is 3 a commercial dispute also. 4 Q. Yes, there was a dispute between the parties in 5 December; correct? 6 A. Yes. 7 Q. And that resulted in what is called a milestone 8 agreement in December, 12 December; correct? 9 A. Yes. We signed that on 10 December and then the 10 formality took place on the 12th. 11 Q. Anyway, the date doesn't matter. There's a milestone 12 agreement governing the stages and the schedule by 13 reference to which payments should be made; correct? 14 A. Correct. 15 Q. But, subsequent to that, disputes continued between 16 Leighton and China Technology? 17 A. Because they didn't pay according to the agreement. 18 Q. That is what you say, but I would simply say dispute 19 continued between the parties; correct? 20 A. (In English) Okay. 21 Q. Now, there was a meeting on 5 January 2017 between you 22 and Leighton, when the parties discussed payment of 23 money and the date when money should be paid; correct? 24 A. Well, we did that all the way from October to early 25 January.</p>	<p>1 A. (In English) Yes. 2 MR PENNICOTT: That's all I want to ask you, Mr Poon. 3 Nothing else. That's the one. Thank you very much. 4 Sir, we'll make sure that's paginated and given 5 a reference. 6 CHAIRMAN: All right. Yes. I've seen that before. Thank 7 you. Dated 27 June 2018. 8 MR PENNICOTT: Yes, the day before. 9 CHAIRMAN: Thank you very much. An hour and 15 minutes. 10 MR PENNICOTT: Thank you. 11 (1.01 pm) 12 (The luncheon adjournment) 13 (2.18 pm) 14 MR SHIEH: Good afternoon, Mr Poon. May I ask you to look 15 at some letters in January, first of all C12/7863, at 16 the bottom. 17 A. Yes. 18 Q. 5 January, Anthony Zervaas to you. 19 Mr Poon, just to tell you what I'm getting; it may 20 actually speed things up. As I keep emphasising, we are 21 not here to sort out who is right and who is wrong in 22 a commercial dispute; understand? 23 A. (In English) Yes. 24 Q. All I want to show is the brief point that there is 25 a dispute and I want to know what the dispute is about.</p>
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<p>1 Q. Right. But there was a meeting on 5 January in 2 Leighton's office, when you and Leighton discussed 3 schedule of payment. Do you have any recollection of 4 that? 5 Anyway, maybe I can show you the letter after the 6 lunch break. 7 Mr Chairman, perhaps this would be an appropriate 8 moment? 9 CHAIRMAN: Yes, certainly. 10 MR PENNICOTT: Sir, before we rise for lunch, can I just 11 raise one matter? When Mr Shieh took Mr Poon to the 12 Chinese report of the radio interview, Mr Poon I think 13 indicated in his answers -- and we saw the date of that 14 was 28 June, the report. 15 CHAIRMAN: Yes. 16 MR PENNICOTT: I think Mr Poon indicated that was 17 precipitated by an advertisement by the MTRC shortly 18 before that report. 19 Sir, I just wonder whether it would be appropriate 20 to ask Mr Poon if he could identify the advertisement, 21 just in case MTRC want to take this matter up with him. 22 I understand we've got it on the screen now. I'm 23 holding a hard copy. And perhaps just to ask Mr Poon 24 the question: is this the announcement or the 25 advertisement that he's referring to?</p>	<p>1 A. Okay. 2 Q. At the bottom of 7863, you can see Zervaas to you: 3 "Jason, 4 Please be advised we would never proceed with the 5 loading of formwork without following our TWC process." 6 Then moving to the last paragraph: 7 "Notwithstanding this, during our joint status 8 meeting held at 11 am ... a 'without prejudice' offer 9 was made to you in that we are prepared to immediately 10 release HK\$3 million for achievement of circa 11 50 per cent of the milestone(s) and the remaining 12 HK\$3 million would be released on achievement of the 13 remaining end December 2016 milestone(s); which is 14 forecast for completion at the end of next week. We 15 record that you declined this offer." 16 Then, at the top of this page you replied, basically 17 setting out your stance: 18 "Anthony, 19 We further record", et cetera. 20 And then point 3: 21 "We do not accept the arrangement of partial payment 22 while it is not the content of our agreement." 23 So there was an offer which you rejected and you put 24 forward your position that you disagree that what they 25 are doing is the right thing to do.</p>

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<p>1 A. Mmm.</p> <p>2 Q. A fair way of describing the state of affairs between</p> <p>3 you and Leighton at the time?</p> <p>4 A. (In English) Yes.</p> <p>5 Q. Thank you. Then there's a letter which came also on the</p> <p>6 same day, 7859, 5 January to you, and this letter sets</p> <p>7 out progress of sub-contract, et cetera.</p> <p>8 Over the page, there's an offer. It says:</p> <p>9 "In spirit of our common target on the successful</p> <p>10 completion of this project and accordance with the</p> <p>11 milestone and final account payment schedule, we have</p> <p>12 prepared a cheque of HK\$6 million which can be readily</p> <p>13 released following your completion of the milestone</p> <p>14 scheduled for end of December 2016."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You gave some evidence about this offer. Can you</p> <p>18 look at your 4th witness statement, in bundle D2/1059.</p> <p>19 A. Yes.</p> <p>20 Q. This is a table compiled in your witness statement,</p> <p>21 where you set out some relevant events, together with</p> <p>22 some page references, in case documents are available;</p> <p>23 yes?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Turn to 1060. You say "Leighton sent Poon</p>	<p>1 Leighton actually paid me \$6 million.</p> <p>2 Now, 786, there's a letter, there's a cheque of</p> <p>3 \$6 million. Mr Shieh, perhaps that's why you relate</p> <p>4 that to this case. The fact is the cheque did exist.</p> <p>5 Now, for the milestone payment, that cheque should</p> <p>6 have been given to us in December. Then Leighton</p> <p>7 dragged it out until January. At the time, Anthony</p> <p>8 waved the cheque, and then when I received the cheque he</p> <p>9 asked me to make those two promises but I wouldn't and</p> <p>10 that's why I didn't take the cheque and he didn't give</p> <p>11 it to me either.</p> <p>12 Q. So the -- I'm sorry, I should hit myself for forgetting</p> <p>13 the requirement to wait until the transcript has come</p> <p>14 up.</p> <p>15 So the condition precedent was oral, imposed by Tony</p> <p>16 Zervaas. What I suggest to you is, first, you have</p> <p>17 never mentioned this in your witness statement --</p> <p>18 A. Yes.</p> <p>19 Q. -- or recorded in any document; correct?</p> <p>20 A. Document record, no.</p> <p>21 Q. You just made that up, Mr Poon?</p> <p>22 A. No. Think about it. You are trying to create the image</p> <p>23 of a very greedy businessman and he wanted to use this</p> <p>24 incident to take Leighton pay him, or you were specific</p> <p>25 to mention the \$6 million figure. In fact, the</p>
<p>Page 90</p> <p>1 a complaint letter", et cetera, and then:</p> <p>2 "It was put on written record that Leighton would</p> <p>3 release a \$6 million cheque, with a condition precedent</p> <p>4 that Chinat must complete its works pursuant to the</p> <p>5 December milestone schedule."</p> <p>6 Do you see that? That's the letter we have just</p> <p>7 seen; correct?</p> <p>8 A. (In English) yes.</p> <p>9 Q. The next box, you say:</p> <p>10 "In fact, Leighton had imposed 2 conditions</p> <p>11 precedent -- first, Poon must stay silent on the</p> <p>12 defective steel works; and second, Poon must cooperate</p> <p>13 with Leighton concerning the Liantang fatal accident."</p> <p>14 What I suggest to you is there was no such</p> <p>15 additional conditions precedent accompanying the offer</p> <p>16 of 6 million. Do you accept that?</p> <p>17 A. I don't agree.</p> <p>18 Q. The so-called two additional conditions precedent was --</p> <p>19 you can see on the right-hand box, there was no</p> <p>20 document, and not mentioned before in any previous</p> <p>21 witness statements.</p> <p>22 A. Here it stated clearly, actually. I remember at the</p> <p>23 opening of Mr Shieh, there's reference to the</p> <p>24 \$6 million. And at the time people were led to think</p> <p>25 that I tried to extort 6 million from Leighton, or</p>	<p>Page 92</p> <p>1 \$6 million cheque did exist on 5 January, so it's true.</p> <p>2 But this greedy businessman did not take it. Do you not</p> <p>3 think it's strange? Do you not think that it's not</p> <p>4 logical?</p> <p>5 Now, Leighton's letter made it clear. The</p> <p>6 \$6 million cheque, although there was a delay but still</p> <p>7 Leighton issued the cheque. Leighton issued the cheque</p> <p>8 because on 4 January our company stopped work; we</p> <p>9 wouldn't do the work. But when they gave the cheque,</p> <p>10 they imposed two more conditions; that's why I didn't</p> <p>11 accept it.</p> <p>12 Q. Thank you, Mr Poon. Your email, on 6 January, can we</p> <p>13 look at that. C12/7923.</p> <p>14 A. Yes.</p> <p>15 Q. That is the email that we had seen many times when you</p> <p>16 first raised the matter with Leighton in writing;</p> <p>17 correct?</p> <p>18 A. (In English) Correct.</p> <p>19 Q. I suggest to you that this was really prompted by the</p> <p>20 letter from Leighton to China Tech offering the</p> <p>21 \$6 million cheque. You wanted more and you wanted to</p> <p>22 get a better deal, and so you sent this email. Do you</p> <p>23 accept that or not accept that?</p> <p>24 A. No, I don't agree. What is the basis of you saying so?</p> <p>25 Q. I will move on. You were hoping to place Leighton under</p>

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<p>1 the threat over its head of some unwanted nuisance 2 publicity, so that it would give you a better offer. Do 3 you accept that? 4 A. I totally do not accept it. At the time, the public 5 knew nothing about this, you know, that is what happened 6 on site. Or this email, the public knew nothing about 7 that. 8 Q. Yes. 9 A. No knowledge at all by the public. 10 Q. Let's look at 7926. This was an email about 11 "Arrangement on reporter visit"; yes? 12 A. Yes, I was asked this before. 13 Q. Yes, and your answer was it was because reporters had to 14 come to your office and they may not have a pass to the 15 site; is that your evidence? 16 A. Yes, yes. 17 Q. There was no reason for reporters to come to the site to 18 find you, Mr Poon, is there? 19 A. Yes, there's a reason, because I was on site. 20 Q. I know. 21 A. I was at the site office. 22 Q. But there was no particular topic or reason why 23 reporters would want to interview you or see you about? 24 A. I can't recall the topic. I think it was about opening 25 up public space.</p>	<p>1 A. Yes. Yes. 2 Q. Do you remember which media? 3 A. I can't recall that. 4 Q. Thank you. 5 A. And it's a coincidence, on the 11th, I would be 6 interviewed on the same topic. 7 Q. I suggest to you that it is actually a veiled -- 8 V-E-I-L-E-D -- threat by you to Zervaas that if you do 9 not receive a better deal or hear back from him, you 10 would make unfounded allegations to the media, you lined 11 up the media, basically. Do you accept that? 12 A. No, I don't accept it. 13 Q. You don't accept what I say, Mr Poon? 14 A. (In English) Don't accept. 15 Q. Thank you. 16 In your witness statement, D1, page 23, you said 17 that you had -- it's paragraph 46 -- you said you had 18 already raised the issue of rebar cutting with 19 Mr Zervaas, and in November he actually orally admitted 20 to you that there were practices of cutting threads on 21 rebar. You said that; correct? 22 A. Yes. 23 (In English) Yes. 24 Q. In your email itself to Mr Zervaas -- we can look back 25 at that email: C12/7923 -- you did not refer to</p>
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<p>1 CHAIRMAN: Sorry, Mr Poon, I think the suggestion is being 2 made to you that when you look at all the circumstances, 3 is it not the case that you invited the press to your 4 offices, on site, in order to speak to them about the 5 issues that were troubling you? 6 A. I didn't invite them. I didn't invite them. The 7 reporters would approach me all the time. I'm a member 8 of one of the political parties in Hong Kong. 9 CHAIRMAN: So you're saying that you had said nothing to the 10 press prior to your email of 1.18 pm on 6 January 2017, 11 that is you had said nothing to the press about the 12 matters that concerned you in respect of the contract 13 which is the subject of this Commission? 14 A. No, I didn't say anything, because if I had, there would 15 have been reports. If I had said something, it 16 definitely would have been reported. 17 CHAIRMAN: All right. 18 MR SHIEH: So, Mr Poon, you were saying that the reason why 19 some reporters wanted to come to speak to you is to talk 20 about a topic on the opening of public space, and it is 21 purely a matter of coincidence that you sent your email 22 to Tony Zervaas about arranging them to come in on 23 6 January at 1.18 pm, after you had sent your previous 24 email. That is your evidence; right? Purely a matter 25 of coincidence?</p>	<p>1 Mr Zervaas's earlier conversation or confession with 2 you; correct? 3 A. Well, in writing email, I often say "further to" 4 something. Actually, the email, at the end of November, 5 I remember Zervaas admitted to it and we even discussed 6 options, but then, all of a sudden in December he 7 wouldn't admit it; he said he would not admit it. 8 So, in writing the email, the atmosphere was that 9 Zervaas did not admit to it, and so I deliberately 10 showed photos to prove it's true. 11 Q. Well, in fact, in your email, you made it sound as 12 though the whole thing only came up during your review 13 on progress photos and videos. It looks as though you 14 were raising something new for the first time. Do you 15 accept that? 16 A. No, not the first time. When I was looking through the 17 photos -- well, because the background was that 18 Mr Zervaas sent a letter, some other letters, stating 19 that for A, B, C, D, E, works had yet to be completed, 20 the partial payment therefore could not be made out, and 21 we therefore needed to identify photos as proof, as to 22 what we did on a certain date and the status and such 23 an exercise of looking at photos was for this purpose. 24 If you could go through the emails, you could see 25 there were outstanding works. For example the major</p>

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<p>1 structure had been built and then the photos were taken 2 on a particular spot and we were looking through the 3 photos, during this exercise, to explain why. And that 4 is, regarding two photographs among the seven 5 photographs attached to prove that Mr Zervaas originally 6 had admitted and later refused to admit that there were 7 cutting of rebars or the screwing of bars into couplers, 8 and that's why they were attached. I was trying to 9 rebut his argument by showing proof that indeed it 10 happened, and it's not something new that I identified. 11 That's not how I put it in words; I never said that. 12 Q. Look at 7937. 13 Zervaas said: 14 "Jason, 15 We are in receipt of your email. 16 It is quite alarming that you have not brought this 17 issue to our attention earlier particularly as the 18 alleged malpractice occurred in September ... 19 Please be advised that an investigation has 20 commenced to review the allegation(s) made in your 21 email." 22 You have been taken to this email reply by 23 Mr Pennicott when he questioned you; do you remember? 24 A. Yes, I remember. In fact Anthony also said it. In 25 fact, he was contradicting himself. In the second</p>	<p>1 MR SHIEH: Mr Chairman, I'm not going to engage in 2 an argument, because there are documents showing how the 3 investigation came about, and, that really is a matter 4 of submission. 5 CHAIRMAN: No, all I'm saying is you can ask as many 6 questions but I didn't want a question going to how you 7 interpret -- 8 MR SHIEH: No, I'm not going to go to that, because if he 9 wants to argue, he'll argue, but I will move on. I have 10 put the point and I will move on. 11 CHAIRMAN: Thank you. 12 MR SHIEH: Mr Poon, the response was it is alarming that you 13 only brought this to the attention -- and I think 14 Mr Pennicott had actually asked you why you had not 15 written back and said, "Hang on, stop being silly, you 16 confessed to me"; do you remember questions along these 17 lines have been put to you? 18 A. Yes, I remember. 19 Q. In fact, you responded at C12/7940. You said: 20 "Dear Anthony, 21 We had investigated internally and it is quite clear 22 that your site in-charge Khyle Roger[sic] was well aware 23 and directing these activities." 24 Do you see that? 25 A. Yes.</p>
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<p>1 paragraph, he mentioned that it was the first time 2 I brought it up, and then he went on to say that 3 investigation has commenced. So don't you think that 4 regarding the second and third paragraphs, he was 5 contradicting himself totally? In the second paragraph, 6 he mentioned that we have not brought this issue to 7 their attention earlier and it was the first time we 8 mentioned it, and then in the third paragraph he said 9 an investigation had commenced to review the 10 allegations. That is to say, when he wrote this email, 11 he already made an order for his colleagues to 12 investigate into the allegations I made. In the third 13 paragraph, it is clear that he knew and that 14 investigation was going on. 15 CHAIRMAN: All right. My reading of it -- which I think, 16 Mr Poon, is an everyday, common-sense reading of this -- 17 is that whatever the background to this matter, on 18 an ordinary reading, Mr Zervaas is saying, "You have 19 brought to my attention alarming news of structural 20 safety issues and an investigation has commenced; in 21 other words, we are not going to delay on this matter." 22 So I don't read that as being contradictory. I've 23 interjected there because it's an ordinary reading of 24 a letter, rather than having ten minutes of examination 25 on this issue.</p>	<p>1 Q. First of all, it is not as if you didn't go back to him, 2 you did go back to him, but when you went back to him, 3 you didn't say, "Stop, stop messing around, it was you 4 who confessed to me"; you didn't say that, did you? 5 A. I said the other day that for the email, it's one of our 6 methods of communication. Starting from the 4th, even 7 in the end of December, up to 6/7/8 January, every day 8 I'd been at the site office of Leighton. That is apart 9 from emails. We still had other forms of communication. 10 And that email was made out the following morning. 11 Q. All right. Mr Poon, you said in answer to 12 Mr Pennicott's question that, "Look, you see, 13 I mentioned Khyle Roger, I mentioned Khyle Roger, see", 14 you pointed out the name in your email and you said, 15 "Look, I mentioned his name." Do you remember that, 16 when you answered Mr Pennicott's question? 17 A. Yes. 18 Q. You said: 19 "We had investigated internally and it is quite 20 clear that your site in-charge ... was well aware and 21 directing these activities." 22 But according to your evidence, in your witness 23 statement, it was you who was with Rodgers and So at the 24 site, when you saw the occurrences. So why you say you 25 have investigated internally? You saw that happening.</p>

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<p>1 So I'm just wondering why you say you had investigated 2 internally.</p> <p>3 A. Let me say it again. I do not remember the evening of 4 6 January, when we had a discussion with Anthony and 5 Joe Tam and myself, not just Anthony but Joe Tam was 6 included as well; I do not recall the details. Anthony 7 basically at the time said in fact I needed to change 8 the version because after investigation it was found 9 that there was no such thing, according to them, and 10 I insisted there was. Anthony then said that he didn't 11 witness it, and then I referred to Khyle Rodgers, and 12 here I mention Khyle Rodgers as I thought he should be 13 responsible for the incident, because I thought he 14 directed these activities.</p> <p>15 Before that, when I first mentioned the name Khyle 16 Rodgers, it was two years before this email in September 17 2015. It was the first time when I, together with him 18 and Gabriel So, who had a meal at the food forum above 19 the station, when we first mentioned about this incident 20 and when I was told about cutting of rebars, I took them 21 for a site inspection and we witnessed them together. 22 Khyle Rodgers at that time did not say anything.</p> <p>23 So these two things happened at two different times, 24 September 2015 and January 2017.</p> <p>25 Q. Yes. Can I ask you to look at your witness statement,</p>	<p>1 in secret, stealthily, not in such an open manner. And 2 I think it is planned exactly because of this.</p> <p>3 Q. Mr Poon, I see nowhere in your witness statement where 4 you mention Mr Rodgers's involvement in threaded rebar 5 cutting after September 2015.</p> <p>6 A. Because Mr Rodgers was the site in-charge, not the 7 engineering in charge but the site in-charge. For site 8 operations, all operations regarding the site, 9 especially those employees directly hired by Leighton or 10 equipment directly procured by Leighton, must have gone 11 through Rodgers, who would sign on the documents.</p> <p>12 Q. Right, Mr Poon. To cut a long story short, you arrived 13 at a form of revised milestone payment schedule, what's 14 called schedule number 2, with Leighton, dated 15 23 January 2017; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. I can show you that very briefly at C7944.</p> <p>18 A. Yes.</p> <p>19 Q. I don't want to get bogged down in the numbers, just to 20 the best of your recollection. Under the original 21 milestone payment schedule which was made in December, 22 the total amount to be paid was 28 million, roughly; do 23 you remember? And under this milestone payment, it's 24 33; yes?</p> <p>25 A. Well, perhaps --</p>
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<p>1 bundle D, page 20.</p> <p>2 A. (In English) Yes.</p> <p>3 Q. Paragraph 36:</p> <p>4 "In September 2015, I reported the incidents in 5 August 2015 to Mr So ... and ... Mr Rodgers ... 6 I indicated to Mr So and Mr Rodgers that staff members 7 ... were cutting the threaded rebars.</p> <p>8 Both Mr So and Mr Rodgers told me that they had no 9 knowledge ... They also reassured me that they would 10 inform their staff members not do such acts again and 11 reassured me that no similar incidents would occur again 12 in the future."</p> <p>13 A. Right.</p> <p>14 Q. Pausing here, you are not saying in these two paragraphs 15 that Rodgers directed any cutting activities, are you? 16 These two paragraphs didn't say Rodgers directed any 17 activities; do you agree?</p> <p>18 A. I agree that in September I did not use the word 19 "directed", but after September, when they purchased new 20 cutting machine, when they cut the bars secretly, I then 21 began to think it was planned and directed.</p> <p>22 Previously, the cutting was done in a very open 23 manner, very blatantly. After that, it was different. 24 After that, they changed their practice to night-time 25 when the cutting would take place and they would do it</p>	<p>1 Q. Let me just take you to the actual one, to spare the 2 hassle. 7841. You can see this is the December 3 milestone schedule; yes?</p> <p>4 A. (In English) Yes.</p> <p>5 Q. So the total amount, including retention release, was 6 \$28 million; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Then, under the revised milestone payment number 2, that 9 is 7945, end of March, 33 million?</p> <p>10 A. Mmm.</p> <p>11 Q. Do you accept that?</p> <p>12 A. Yes.</p> <p>13 Q. So after -- or in fact in January, after you sent the 14 emails that we have seen to Leighton, you did not 15 actually take the matter any further or raise any 16 further complaints; do you agree?</p> <p>17 A. Disagree. I remember at the time even Raymond from MTRC 18 also participated. That's MTRC's Raymond.</p> <p>19 Q. Let me show you Raymond. Your witness statement, D1, 20 page 25.</p> <p>21 A. Yes.</p> <p>22 Q. This is your witness statement.</p> <p>23 A. Okay.</p> <p>24 Q. It starts at D24. D24 was your --</p> <p>25 A. (In English) Email.</p>

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<p>1 Q. -- first email to Leighton. 2 A. (In English) Yes. 3 Q. Over the page at D25, then, without referring to 4 Leighton's reply and without referring to your reply to 5 Leighton, you jump to paragraph 50: 6 "Following the 6 January 2017 email, Raymond" -- 7 this is Raymond of MTR -- "contacted me by telephone ... 8 asked you to 'stop pushing Leighton'. " 9 Yes? 10 A. Right. Right. 11 Q. Why would -- now, first of all, it comes completely 12 disjuncted, Mr Poon, in the sense that there is no 13 explanation as to why Raymond would call you, and two, 14 what you did or did not do after Raymond had called you. 15 It's just a bland statement: Raymond contacted you and 16 asked you to stop pushing, full stop; correct? 17 A. Disagree. If you read paragraph 48 of my witness 18 statement on page D23. 19 Q. Yes. 20 A. In fact, this has been said many times. We've looked at 21 it as well. On the 9th, I, in person, called Philco 22 Wong on a number of subjects, one on unresolved cutting 23 of rebars, and of course Philco would not talk to me on 24 the phone all the time. He directed somebody called 25 Raymond -- and I still don't remember the surname of</p>	<p>1 Q. I suggest to you that you didn't raise your head or 2 pursue the matter any further after January, because you 3 got a commercial settlement out of Leighton. 4 A. No, no. On the commercial side -- well, let me spend 5 some time to talk about this. I hope that you can be 6 clearer about the picture. 7 Let's take a look at D1030. D1030, the green part 8 is our company's estimate. There are different versions 9 of this table. There was the first version in October 10 2016. We had commercial dispute with Leighton, whether 11 it's to dispute the re-measurement or final account 12 measurement, what are the wordings to be used, 13 et cetera -- well, we started all these in October 2016. 14 Back then, say, we have -- 15 CHAIRMAN: Mr Poon, I'm not stopping you at all, I'm happy 16 for you, but is it possible for you to do it in 17 a slightly more abbreviated form? 18 A. (In English) Okay, okay. 19 (Via interpreter) The red part shows progress -- the 20 beige colour, rather, shows the progress. The green 21 part is our estimates, and the red part -- you see that 22 there is re-measuring in progress, or even in dispute. 23 Our quantity surveyor, if they agree with the QS of 24 Leighton, say if it's agreed sum of \$129 million, and if 25 it is an ongoing process in measurement, then we would</p>
<p>Page 106</p> <p>1 Raymond -- to follow up the matter, and that is why 2 I maintained some communication with Raymond thereafter. 3 Q. Have you finished? 4 A. Yes, finished. 5 Q. But you did not say, in this paragraph, paragraph 50, 6 what happened after Raymond contacted you; all right? 7 It's left hanging there. 8 A. Raymond said in fact Leighton was also investigating 9 into the matter, coming up with a remedial proposal, and 10 asked me not to get involved any further, and because of 11 that, after January 2017, I waited for eight months 12 before I further pursued the matter. 13 Q. Well, obviously we are not in a position to tell whether 14 Raymond did or did not call you, but I suggest that if 15 you had any genuine concern, you would not have just 16 taken Raymond's word for it. 17 A. Maybe you do not know about this. Philco Wong has 18 a very high status in the construction sector. And 19 every year he controls a very large turnover, volume 20 much higher than any government department. We are 21 a sub-contractor. Everyone is fearful of him, I mean 22 everyone is -- fearsome. I dared to call Philco Wong 23 and he said something to me, there's no reason why 24 I shouldn't believe him. At least I should give him 25 some time to resolve the matter.</p>	<p>Page 108</p> <p>1 say re-measuring in progress, but if Leighton doesn't 2 agree and they say they are not going to pay on this 3 item, then that would be indicated as in dispute in this 4 table. 5 If we have to re-measure items in 100 or 6 \$200 million then the -- some of the items, Leighton 7 hasn't even started looking at them. For this table, 8 Leighton -- 9 CHAIRMAN: So what are you actually saying? 10 A. (In English) The commercial discussion, et cetera, is 11 always an ongoing process. 12 CHAIRMAN: All right, yes. 13 A. (In English) I think until March or April. And Leighton 14 refused to make further discussion, then we stop. 15 CHAIRMAN: All right. Thank you. 16 A. (In English) Therefore, if you pick up some of the 17 exchange in terms of tabulation or in terms of emails, 18 you will see that particular status. 19 CHAIRMAN: I appreciate that. A photograph is a moment in 20 the history of a series of events, and so if you pick up 21 a particular email it might only be a moment in 22 a history of a series of ongoing disputes. 23 A. (In English) Yes, exactly. 24 CHAIRMAN: All right. 25 MR PENNICOTT: Sir, I apologise for interrupting Mr Shieh,</p>

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<p>1 but he said a moment ago, and I'm just trying to play 2 catch-up, "Well, obviously we are not in a position to 3 tell whether Raymond did or did not call you." Those 4 were Mr Shieh's words. 5 We do have a witness statement from Raymond, 6 Raymond Au -- 7 MR SHIEH: B16/13674. 8 MR PENNICOTT: Sorry, I just want to make sure you haven't 9 missed something. 10 MR SHIEH: Because he's not our witness and therefore we 11 can't -- 12 MR PENNICOTT: I don't think there is any dispute, if you 13 look at his witness statement, that he made the call. 14 There's big dispute about what was said. 15 MR SHIEH: Yes. 16 Mr Poon, fast-forward to September. 17 D1/237. In the middle of the page is your email of 18 15 September: 19 "Dear Anthony, 20 It's already 8 months after our report ... 21 We [are] still unable to obtain your feedback and we 22 observe that there is no remedial works being committed 23 on site in these 8 months time. 24 Concerning the public safety and durability ... 25 which accommodate ..."</p>	<p>1 that? 2 A. Yes. 3 Q. And yesterday -- can I ask you to look at yesterday's 4 transcript, page 25. 5 A. Yes. 6 Q. Line 14. You said: 7 "After the email on 6 January -- well, Anthony ... 8 at the time he told me that Leighton and MTRC at the 9 time were studying the concerns ... including the 10 remedial works, and Anthony at the time said that 11 Leighton already had an independent technical team to 12 study the matter together with MTRC. Raymond also told 13 me that. Raymond did tell me that there was something 14 like that. So I waited for a few months. It wasn't 15 a surprise. We waited for Leighton and MTRC to come up 16 with a solution, and I remember even Raymond told me 17 that the option I raised was possible." 18 Then further down, the chairman asked you: 19 "Did you ever see a team like this in operation?" 20 Answer: No ... there were many engineers", 21 et cetera. 22 Do you see that? 23 A. Yes. 24 Q. Now, what I am suggesting to you is that this letter, 25 this email, that you sent, occurred in the midst of</p>
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<p>1 This is the famous "30,000 pieces" email, Mr Poon. 2 A. Mmm. 3 Q. In your latest witness statement, you gave some reason 4 for why you brought this matter up in December. 5 A. Mmm. 6 Q. Can you look at D2/1063. 7 MR BOULDING: Sir, just while my learned friend is asking 8 that question, I just want to make it clear, in the 9 light of Mr Pennicott's statement, that it is disputed 10 that he made the call in January. If you look at the 11 witness statement, he accepts that he had a call with 12 this witness but it was in December. I want to make 13 that clear. 14 MR PENNICOTT: Sorry, there was a call, yes. Mr Boulding is 15 quite right. 16 MR SHIEH: Mr Poon, D1063. You said, in paragraph 11: 17 "The reason to send another email in September ... 18 to ... Zervaas to follow up on the matter were, first, 19 Leighton failed to provide a satisfactory answer; and 20 second, China Tech, at that time, was about to complete 21 all its works in the Hung Hom Station site, and 22 therefore felt the need to settle all outstanding 23 matters, including the defective steel works and 24 payments." 25 Do you see that? That was what you said; do you see</p>	<p>1 another commercial dispute with Leighton. Do you accept 2 that? 3 A. If you refer it as commercial dispute -- once again, 4 I said that commercial disputes have been ongoing. They 5 have never stopped. Any sub-contractor is engaged in 6 some sort of commercial dispute with Leighton; it has 7 never stopped. 8 Q. Look at C12/7979. 9 A. Yes. 10 Q. This is a letter from Leighton to you of 11 September; 11 yes? 12 A. Yes. 13 Q. Making some complaints; yes? 14 A. Yes. 15 Q. Which you disagree with; correct? 16 A. Well, they have given me this letter. 17 Q. I know, but you disagree with what this letter says? 18 A. Yes. 19 Q. Turn to 7982. This is a letter of 13 September, another 20 letter of complaint from Leighton; yes? 21 A. Yes. Leighton to me. 22 Q. Leighton to you? 23 A. Leighton to me, correct. 24 Q. Then look at 7984. 25 A. Yes.</p>

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<p>1 Q. Mr Pennicott showed this to you in his questioning of 2 you; remember? 3 A. Yes. 4 Q. In the first part of this letter, you refuted or you 5 tried to rebut the complaints by Leighton made against 6 you; yes? 7 A. Yes. 8 Q. It only means that there is a dispute between you; yes? 9 There's a dispute between you? 10 A. Yes. 11 Q. Then paragraph 7: 12 "We reiterate herewith we had already reported the 13 matter of cheating coupler and threading since this 14 January, and there is no action on Leighton to remedy 15 the problem. We do not want our company or our labour 16 being forced to involve on covering up this illegal 17 fault." 18 Now, Mr Poon, Mr Pennicott had asked you something 19 like this before but I'm going to ask you again: what is 20 the purpose in bringing in this question about coupler 21 and threading, into this letter, which really is to 22 rebut allegations made in the commercial dispute between 23 you and Leighton? 24 A. The reason being -- well, the Chinese translation is 25 a bit slow because you talk very quickly; they have</p>	<p>1 room for Philco Wong and Raymond to resolve the matter. 2 That's so natural. 3 Then we were not that idle. We were not just 4 looking at one site only. No. And Liantang BCP, Hong 5 Kong-Zhuhai-Macau Bridge, Sheung Shui waterworks plant, 6 we are working on several sites at the same time. I was 7 fully engaged in all these sites. 8 So it's not the case that I would be pursuing the 9 matter every minute all the time, and in September, when 10 I knew that the team on site could be withdrawn, then 11 I thought I should spend some time to resolve all 12 outstanding matters. 13 So that's it. 14 Q. To the extent of emailing the Secretary for Transport 15 and Housing, Mr Frank Chan; yes? 16 A. Yes. 17 Q. C12/7991. 18 A. Yes. 19 Q. Mr Poon, if what you were trying to do was to sort 20 things out and wrap things up -- 21 A. (Chinese spoken). 22 Q. -- with Leighton, what's the point of involving the 23 Secretary? 24 A. For this project, it involved not only Leighton and 25 MTRC. I understood very well. The SCL was the project</p>
<p>Page 114</p> <p>1 a hard time. 2 Like what I've been doing all the time, if you read 3 through all my letters, you would know that I would 4 separate technical and commercial matters usually. But 5 then, in September 2017, our company worked overnight at 6 the Hong Kong-Zhuhai-Macau Bridge and I was under 7 pressure to re-deploy the resources at Hung Hom to other 8 sites, including the Hong Kong-Zhuhai-Macau Bridge. 9 Well, including myself. So I was eager to resolve all 10 the outstanding issues. 11 So you can see that afterwards we have not pursued 12 the matter with Leighton any further. We haven't even 13 chased them up on the payment. 14 Q. Well, in terms of payment, you reached a final account, 15 you settled your disputes by the agreement of 16 18 September; correct? 17 A. No, no, no. No, no, no. At the meeting on 18 18 September, that was discussed. 19 Q. The complaint was made in January by you to Zervaas; 20 correct? 21 A. Yes, January 2017, in writing. 22 Q. There was no reason why you would want a reply 23 coincidentally in September, instead of, say, June or 24 August or July? 25 A. Why I remained quiet after January: I had to allow some</p>	<p>Page 116</p> <p>1 entrusted by the government to the MTRC. And as far as 2 management was concerned, I saw that -- in January 2017, 3 I raised the issue with Leighton and also MTRC and they 4 promised that they would resolve the matter. But eight 5 months have passed and we were about to withdraw, the 6 matter was still untackled. I also invited MTRC for 7 discussion, not just Leighton, and it's not just a 8 complaint. I hope that with the intervention of the 9 government, the MTRC, Leighton and myself could actually 10 sit down and resolve the matter. That was very clear. 11 Q. I suggest to you that you sent an email to the 12 Secretary, copying Zervaas in, again as a veiled threat 13 to Mr Zervaas that if no progress is made to resolve 14 your commercial dispute, you would create unwanted 15 trouble for Leighton; yes? Agree or not? 16 A. Not agree. 17 Q. Very well. I'm not going to go through the details of 18 your witness statement but I'm just going to refer you 19 to the substance of what you've said. 20 You said in your witness statement that on 21 15 September you had an appointment with Mr Zervaas for 22 a site inspection; do you remember? 23 A. 15 September? 24 Q. Yes. 25 A. I asked Mr Zervaas to have a meeting on 15 September.</p>

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<p>1 Q. A meeting or an inspection? 2 A. (In English) Meeting. 3 (Via interpreter) Inspection happened on 4 16 September. 5 Q. Mr Zervaas disagrees that he had an appointment to meet 6 you on the 15th -- 7 MR WILKEN: The 16th. 8 MR SHIEH: Mr Zervaas does not accept that he had a 9 pre-arranged appointment to see you on the 15th at site. 10 I gather you would disagree with him? 11 A. Yes, I disagree. 12 Q. There was a meeting that day, on the 15th, between you 13 and Mr Zervaas and Mr Speed, but it was not 14 an unpleasant meeting; do you accept that? 15 A. Yes. 16 Q. Not unpleasant? 17 A. (In English) Not unpleasant? No. Very unpleasant. 18 CHAIRMAN: It was very unpleasant? 19 A. (In English) Yes. 20 MR SHIEH: I think the lines are clear. We say it's not 21 unpleasant. He says it's very unpleasant. 22 Mr Zervaas and Mr Speed said that they didn't make 23 any threats against you, and Mr Speed reassured you that 24 you had not been blacklisted; do you accept that? 25 A. Zervaas? Opposite. I don't disagree with it.</p>	<p>1 A. Yes, I see it. 2 Q. Do you accept -- 3 A. Yes, I accept. 4 Q. -- that you did not call back? 5 A. Yes. No, I did call him back. But at around 5 pm, it's 6 true I did not take his three calls, because at the 7 time, I was already at Leighton's headquarters in 8 Wan Chai. At the time there was a heated argument with 9 Karl Speed. 10 Q. So you did not receive the calls on that day. You got 11 this email; correct? 12 A. This is an email, so I didn't read it at the meeting. 13 Q. You have no reason to dispute that calls have been made 14 in an attempt to reach you? 15 A. I don't dispute that. I didn't dispute that. 16 Q. Thank you. Then 2046. 17 Actually, yes, 2044 -- 18 A. Mm-hmm. 19 Q. -- you actually replied: 20 "Sorry that I was engaged in a meeting that time. 21 Will phone you back tomorrow 9 am." 22 That was from you to Chu? 23 A. Yes. 24 Q. Then 2046. 25 A. Yes.</p>
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<p>1 Q. Let's look at some emails. G3/2042. 2 A. I see it. 3 Q. This is an email on 15 September by Leung Sai Ho from 4 the Transport Bureau to you; do you see that? 5 A. Yes. 6 Q. "Thank you for your email this morning and our telephone 7 conversation this afternoon. According to your 8 information provided over the phone, your concerns would 9 be technical in nature about the site works of ... 1112 10 and you agreed to have a discussion with professional 11 staff ... which is the technical department closely 12 monitor being the MTRCL and the works of Shatin to 13 Central Link. 14 By copy of this email, my colleague, Vincent Chu, 15 who is a senior engineer ... will approach you shortly." 16 Do you see that? 17 A. Yes, I see it. 18 Q. Vincent Chu actually tried to call you but could not 19 reach you; remember? Look at 2043. 20 A. Yes. 21 Q. Vincent Chu sent an email to you: 22 "Please note that I tried to call you three times at 23 around 5 pm today but you were not available. Please 24 give me a call ... to discuss your concerns." 25 Do you see that?</p>	<p>1 Q. Christie Wong -- 2 A. Yes. 3 Q. -- on a Saturday morning sent an email to you and 4 referred to the telephone conversation, and you 5 expressed a preference to discuss with Vincent Chu on 6 Monday; do you see that? 7 A. Yes. Yes. 8 Q. And you did not call him on Monday, or you did not speak 9 to Chu on Monday; correct? 10 A. No, I did not. As to whether I spoke with him, 11 I couldn't recall exactly, honestly. It was Mr Chu 12 or -- I couldn't remember it was Christie, it's a lady, 13 she's an engineer of course. I had some conversations 14 with them, but I couldn't recall exactly the content of 15 the telephone conversation. 16 Q. What you say, Mr Poon, is that on the Saturday, the 17 16th, you had a site inspection with Mr Zervaas? 18 A. Yes. 19 Q. And there was an agreement by you not to say anything or 20 disclose anything to the government until Monday; that's 21 what you say? 22 A. Yes, indeed. Can I say a bit more so that we can speed 23 things up here? 24 Q. No. You have said what you wanted to say in your 25 statement. I'm just reminding you that that was the</p>

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1 gist of what you had said. Members of the Commission
2 and Mr Chairman can read your statement to see what you
3 wanted to say in writing, so there's no need to repeat
4 it for the benefit of those who do not have the document
5 in front of them.
6 A. (In English) Okay.
7 Q. But what I suggest to you, what I put to you, is that
8 Mr Zervaas did not have the site inspection with you on
9 Saturday. Do you accept that?
10 A. He was not on time but he did arrive eventually.
11 Q. Can you look at C8/6172. This is in/out record for
12 Hung Hom site.
13 A. Yes.
14 Q. In fact, there's no record at all of you signing in for
15 September 2017.
16 A. I won't repeat that point. If I could say it again, for
17 the check-in and out records of Leighton, especially
18 regarding me, it's not right. So you're saying that my
19 name's not even on the document; right?
20 Q. Yes. And Mr Zervaas said he was not on site that day.
21 A. No, he was there. Actually, I called him up to chase
22 after him. Now, what location did we look at primarily?
23 It's about how we could use the cheapest -- use a cheap
24 way and feasible way to screw in the dowels. That's
25 all, nothing special.

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1 Q. Anyway, fast-forward. It is not in dispute that the
2 final account and the confidentiality agreement were all
3 signed and concluded on 18 September, yes, the final
4 account and the confidentiality agreement, 18 September;
5 remember that?
6 A. Yes, I agree. Let me add that there are a lot more on
7 that day. This is just part of that.
8 Q. I was just asking you whether you agree that these two
9 documents were concluded that day. I'm sure many other
10 things happened, including anniversary of the tragic
11 events of 9/18 in China, many, many years ago, but let's
12 not get bogged down in that, Mr Poon. I've got my
13 answer.
14 We can see that as soon as the documents were
15 signed, you withdrew the allegations that had been made
16 to Mr Frank Chan by your email at C12/8006.
17 A. Yes, I see it.
18 Q. We don't need to dwell on the wording of this email, but
19 can I ask you to look at your 4th witness statement, at
20 D2/1062?
21 A. Yes.
22 Q. You said there that this email was reviewed and amended
23 by Leighton before being sent out?
24 A. Yes.
25 Q. Now, Mr Poon -- and also, I think in your testimony

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1 yesterday, you said that it was actually sent on your
2 mobile phone; correct?
3 A. Yes.
4 Q. And with Leighton people basically talking to you about
5 the wording, while you maybe typed out the language on
6 your mobile phone; yes?
7 A. Yes.
8 Q. Now, Mr Poon, do you agree that this idea that the email
9 was composed with the assistance and help or even
10 editing of people from Leighton has never been mentioned
11 before in your witness statements until your 4th witness
12 statement? Do you accept that?
13 A. Now, from what I remember of this, I couldn't remember
14 the content. I remember on 13 June I told MTRCL this in
15 their investigation. It eventually was Leighton's
16 Wallace who stopped it because he said it's commercial.
17 Q. Mr Poon, I suggest to you that you had to resort to this
18 notion that it was sent on your mobile phone, with
19 Leighton people next to you, helping you with the
20 wording, because otherwise you cannot show any draft
21 toing and froing between you and Leighton, so you had to
22 drag Leighton in, and you have to say that somehow they
23 stood next to you and helped you with the wording.
24 A. Now, it's like this. It's not that he held my hand to
25 write it, but Anthony made any write this so the file

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1 could be closed. I had only one sentence there, that is
2 further to the agreement between me and Leighton,
3 Leighton would undertake to remedy the technical issues.
4 So that's why we could close the file. But Anthony did
5 not agree that I should write it like that.
6 Actually, at the time, on 18 September, the ambience
7 was good and we had a good discussion, apart from
8 commercial agreement and confidentiality agreement there
9 is also Liantang and also how we're going to verify the
10 accounts, how the payments would be made, and so on.
11 Also, I asked Leighton to write a security to my
12 company, that is our company raised it before and
13 Leighton and MTRCL agreed to resolve it on their own, so
14 if in future if there should be any problems it would
15 have nothing to do with our company, so it was to
16 indemnify our company. At the time, in the email, that
17 was a concept I had, that's why I wrote that Leighton
18 promised to resolve it on their own.
19 Q. The security or the indemnity wasn't signed; correct?
20 A. No. It was first meant to be included in the
21 confidentiality agreement, but it wasn't, and then
22 Anthony said that he would reply to me in an email and
23 give us the indemnity, in that manner.
24 Q. I simply put it to you, Mr Poon, that the email of
25 18 September sent to Mr Frank Chan by you has not been

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<p>1 reviewed or amended by Leighton. Do you accept that?</p> <p>2 A. No, I do not accept that. No, I do not accept that.</p> <p>3 Now, if -- the email system of my company is through</p> <p>4 gmail and our company is not in Wan Chai, our company is</p> <p>5 in Tsim Sha Tsui. At that time, on the HK island side,</p> <p>6 I didn't have any site. I remember definitely it was</p> <p>7 sent out in Leighton's office, in their conference room,</p> <p>8 it was sent out from the Sun Hung Kai Centre. If you</p> <p>9 could check it, it would be best if you could locate it.</p> <p>10 That is, if it could be traced, the location of where</p> <p>11 the email was sent out, it would be best.</p> <p>12 Q. Now, we just move on, Mr Poon. In April 2018, you were</p> <p>13 in dispute with Leighton because of the termination of</p> <p>14 the Liantang construction contract; correct?</p> <p>15 A. Yes, correct. That's towards the end of the dispute.</p> <p>16 The dispute started in February/March.</p> <p>17 Q. Look at C12/8077.</p> <p>18 A. Yes.</p> <p>19 Q. In fact 8075.1 is the English version. 8077 I think is</p> <p>20 the Chinese. So it depends on which one you want to</p> <p>21 see.</p> <p>22 A. The English version.</p> <p>23 Q. The email is English but the Chinese attachment is on</p> <p>24 the next page. But let's look at the English version --</p> <p>25 let's look at the email:</p>	<p>1 A. Yes.</p> <p>2 Q. "To whom it may concern", and then over the page -- and</p> <p>3 then you have the whole page of reply; yes?</p> <p>4 A. Yes.</p> <p>5 Q. Let's look at the request from Apple Daily, the enquiry</p> <p>6 from Apple Daily. The English translation is 8075.1; do</p> <p>7 you see that?</p> <p>8 A. Yes, I see that.</p> <p>9 Q. The Chinese, if you want the Chinese, it's 8078.</p> <p>10 A. Yes.</p> <p>11 Q. But for the benefit of the Commission, let's look at the</p> <p>12 English version:</p> <p>13 "According to information received by us</p> <p>14 [Apple Daily], your company was engaged by Leighton</p> <p>15 Contractors in mid-2015 in respect of the Hung Hom</p> <p>16 Station ... We are informed that your company sent</p> <p>17 emails to Mr Zervaas ... on the respective dates of [6,</p> <p>18 7 and 15] ... In the said emails, your company referred</p> <p>19 to the discovery of problems with a number of couplers</p> <p>20 in the 2 underground diaphragm walls inside the station</p> <p>21 ... these couplers had been dislocated ... The said</p> <p>22 emails also mentioned that, after investigation by your</p> <p>23 company, your company was informed that Mr Khyle</p> <p>24 Roger[sic] ... knew about the improper act, or even</p> <p>25 partook in guiding the improper act. Email was copied</p>
<p>Page 126</p> <p>1 "Dear Mr Anthony Zervaas,</p> <p>2 Without prejudice, a sudden email we received at</p> <p>3 3.45 pm as follows from a local news agency and an</p> <p>4 agreement of confidentiality we made at our final</p> <p>5 account stage in project SCL 1112 are both referred.</p> <p>6 Pursuant to the agreement, we report hereby our</p> <p>7 company, our staff and our agent did not release any of</p> <p>8 our documents and information to any 3rd party, however</p> <p>9 certain information seem being obtained by the news</p> <p>10 agency and therefore asking us to make response.</p> <p>11 We do not accept any damage on our goodwill due to</p> <p>12 any possible public news, especially it is Leighton's</p> <p>13 negligence on the relevant malpractice and</p> <p>14 mismanagement. We shall therefore feedback the news</p> <p>15 agency at 10 am tomorrow. We have drafted hereby our</p> <p>16 reply as follow while we had not disclosed any</p> <p>17 confidential information according to the agreement. If</p> <p>18 we do not receive any adverse comment from you by 10 am</p> <p>19 29 May 2018 we will send it out as our formal response."</p> <p>20 Do you see that?</p> <p>21 A. Yes. Please read more slowly because it's really tough</p> <p>22 for the interpreter.</p> <p>23 Q. It's okay because you wrote it, so maybe you skip over</p> <p>24 my reading and you can just look over the text of the</p> <p>25 email, and you look at your draft reply.</p>	<p>Page 128</p> <p>1 to the senior staff ... including Jon Kitching ...</p> <p>2 attaching photos ... We would like to enquire about the</p> <p>3 following:</p> <p>4 Whether your company had sent emails to Leighton ...</p> <p>5 When did your company discover the dislocation ...</p> <p>6 When did your company discover that Leighton workers</p> <p>7 had cut short rebars ...</p> <p>8 In the emails, your company alleged that Mr Khyle</p> <p>9 Roger[sic], the superintendent ... knew about the</p> <p>10 improper act ... Do you have any evidence ...</p> <p>11 Did Leighton send reply to your company reporting to</p> <p>12 you about the investigation ...</p> <p>13 ... please send us reply before tomorrow ... Please</p> <p>14 call me if you have any queries."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Let's call a spade a spade, Mr Poon: you caused the</p> <p>18 emails to be leaked to Apple, didn't you?</p> <p>19 A. Disagree. If I were the one who did it, Apple Daily</p> <p>20 would not email me; they would not have gone to my</p> <p>21 office.</p> <p>22 Q. Mr Poon, you can use a dummy email account, you can buy</p> <p>23 a phone with a disposable SIM card. There are all kinds</p> <p>24 of ways to do it, Mr Poon.</p> <p>25 A. Perhaps you just don't know me as a person. I'm a very</p>

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<p>1 frank and candid person. I do not need to do what you 2 are suggesting, using a dummy account, to resort to this 3 and that, because I am open and frank. I'm not doing 4 anything evil. Why would you come up with these 5 methods? 6 Q. I'm not here to answer questions, Mr Poon. 7 So what you are suggesting is that from some unknown 8 source, Apple Daily laid their hands on the emails that 9 you had sent to Leighton, and were asking you for 10 comments. That is what you would have this Commission 11 believe; correct? 12 A. I believe it could be MTRC -- I mean, I suspect it was 13 MTRC because before this email, in March 2018, Oriental 14 Daily also exposed another incident relating to Hung Hom 15 Station. That is the NAT tunnel. And I think that MTRC 16 was trying to so-called burn the firecrackers so the 17 media would lose interest over the matter very soon. 18 MR SHIEH: Chairman, I can see the time. Perhaps it is 19 an appropriate moment to take a break. 20 CHAIRMAN: Yes, certainly. Ten minutes. Thank you. 21 (3.39 pm) 22 (A short adjournment) 23 (3.55 pm) 24 MR SHIEH: Mr Poon, I now want to move on to the topic of 25 this idea or suggestion that you had been selling to the</p>	<p>1 2015, that was only an isolated incident, and after 2 I learned about it, in August 2015, I have reflected 3 this to two superintendents of Leighton, asking them to 4 stop the activity. According to our observation, there 5 has been some improvement, and afterwards we found the 6 same thing happening and things were going beyond the 7 control of our company so we have reported the matter to 8 the senior management of Leighton and asked for 9 improvement. In January 2017 we wrote in to lodge 10 a complaint with the senior management of Leighton and 11 asked for remedial works to be undertaken." 12 A. (Chinese spoken). 13 Q. See that? 14 A. (Chinese spoken). 15 Q. Then at point number 3 -- 16 COMMISSIONER HANSFORD: Sorry, can we just -- 17 MR SHIEH: Slow down, yes. 18 COMMISSIONER HANSFORD: Okay. 19 MR SHIEH: Then move to point number 3: 20 "(Via interpreter) Our company has been warned. In 21 relation to the SCL 1112 extension project, SCL, we have 22 signed a confidentiality agreement with Leighton, so we 23 could not disclose information considered as 24 confidential by Leighton. In fact, on 29 May 2018, we 25 were asked by the reporter on this thing and because of</p>
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<p>1 media and the politicians that you are somehow gagged -- 2 G-A-G-G-E-D -- or prohibited by Leighton from freely 3 speaking out about the subject matter of threaded end 4 cutting. I'm on that subject of so-called gag. 5 A. No problem. 6 Q. When you started giving evidence, you said you only 7 spoke to the media about what was already known to the 8 public or by way of reply to what the MTR had said. 9 That was your evidence; correct? 10 A. Correct. 11 Q. Now let's look at what you have been saying to the 12 media. Look at C32/24117. This was a press release 13 from your company, dated 1 June; right? 14 A. (In English) Okay. 15 (Via interpreter) Yes. 16 Q. 1 June. 17 A. Yes. 18 Q. It's in Chinese but I will read out the first paragraph: 19 "(Via interpreter) Our company's frontline staff" -- 20 I'll start from the beginning: 21 "(Via interpreter) In relation to the SCL 1112 22 extension works at SCL of MTRC, somebody was suspected 23 of fraudulent works in relation to coupling works so our 24 company states the following. 25 Our company staff have exposed the incident in July</p>	<p>1 the requirement in the agreement, we had to report to 2 Leighton." 3 A. (Chinese spoken). 4 Q. Right, that's what you said? 5 Mr Poon, this was before the so-called misleading 6 advertisement by MTR -- 7 A. (Chinese spoken). 8 Q. -- later in June; correct? 9 A. Correct. 10 Q. And in this news release, you were revealing the fact 11 that, according to you -- we are not accepting it as 12 fact, obviously -- but you are telling the media that 13 first of all your company's staff already discovered 14 alleged cutting in July 2015. That is what is said in 15 the first paragraph; correct? 16 A. Yes. 17 Q. You also said that you made complaints in August to two 18 superintendents; correct? Correct? 19 A. Correct. 20 Q. You then said later on it looked like it was improved 21 but later it went out of control; correct? 22 A. Correct. 23 Q. That's not something already known to the public, 24 Mr Poon. 25 A. Well, the public knew about the cutting of the rebars.</p>

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<p>1 Q. Mr Poon, whatever the public may know, you were feeling</p> <p>2 uninhibited in telling the public about what you say to</p> <p>3 be your company's knowledge about time and internal</p> <p>4 dealings about who had spoken to who; yes, in</p> <p>5 paragraph 1?</p> <p>6 A. It's my turn to answer question, right?</p> <p>7 Q. Yes.</p> <p>8 A. This Chinese paragraph -- well, the English translation</p> <p>9 is also very clear. Second, for this press release, the</p> <p>10 focus should be on in paragraph 2. And thirdly, before</p> <p>11 the release of this press release, MTRC said three to</p> <p>12 four times, gave us three to four times misleading</p> <p>13 information, and it has to do with saying that we had</p> <p>14 commercial dispute. And then Mr Michael Tien, that</p> <p>15 China Tech was making things difficult, and he was</p> <p>16 saying that China Tech was responsible for screwing on</p> <p>17 the couplers like that.</p> <p>18 So paragraph 2 should be the focus of the press</p> <p>19 release, as I said. So why don't you read out</p> <p>20 paragraph 2 as well, for completeness purpose?</p> <p>21 Q. If your counsel wants to read anything out, he can do</p> <p>22 so, but I am asking you about paragraph 1.</p> <p>23 In paragraph 1, you attempted to talk about</p> <p>24 so-called discovery of your company's staff; correct?</p> <p>25 A. Correct. It was Jason Wong from MTRC, the general</p>	<p>1 With respect to your email ... Leighton are not</p> <p>2 aware of any malpractice ..."</p> <p>3 Do you see that?</p> <p>4 A. (In English) Yes.</p> <p>5 Q. In this email, Zervaas actually did not say, one way or</p> <p>6 another, whether you are allowed or not allowed to say</p> <p>7 anything; correct?</p> <p>8 A. (In English) I did acknowledge him, on C12/8080.</p> <p>9 Q. I know.</p> <p>10 At the top of that page, you then interpreted that</p> <p>11 as meaning that you will feed back freely; correct?</p> <p>12 A. (In English) I would rather say I acknowledge him.</p> <p>13 Q. So, Mr Poon, you interpreted this email as meaning that</p> <p>14 Leighton did not object to your responding or feeding</p> <p>15 back to the media on the subject matter; correct?</p> <p>16 A. (In English) Yes.</p> <p>17 Q. You did not feel that you had been gagged by the</p> <p>18 confidentiality agreement, upon receiving Zervaas's</p> <p>19 email; correct?</p> <p>20 A. (In English) on this particular subject matter.</p> <p>21 Q. The subject matter being the allegations of threaded</p> <p>22 rebar cutting forming the subject matter of the</p> <p>23 complaint in the emails which Apple Daily approached you</p> <p>24 about --</p> <p>25 A. (In English) Yes.</p>
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<p>1 manager, around 31 May or 30 May said something. And in</p> <p>2 the news video footage I saw his response. The</p> <p>3 background to it was that MTRC and reporters were at the</p> <p>4 EWL track slab on the site and he denied categorically</p> <p>5 that there was cutting of the rebars back then.</p> <p>6 Q. Mr Poon, you then thought that this justified you in</p> <p>7 exposing the fact that there is cutting of threaded end</p> <p>8 of rebars; correct?</p> <p>9 A. On this threaded rebar incident, our company was abiding</p> <p>10 by the confidentiality agreement, and we issued an email</p> <p>11 to Anthony Zervaas, and Anthony Zervaas responded to</p> <p>12 that email, and as a result we believed that we could</p> <p>13 talk about it. That's all I want to say.</p> <p>14 Q. So you were not gagged? You were not prohibited from</p> <p>15 speaking?</p> <p>16 A. (In English) I am prohibited or gagged to announce or</p> <p>17 discuss in public the subjects that Leighton thinks</p> <p>18 confidential. On this particular subject, on thread</p> <p>19 cutting, I myself have sent an email to Anthony Zervaas,</p> <p>20 and he made a reply clearly.</p> <p>21 Q. Mr Poon, I suspect you are talking about C8080.</p> <p>22 MR PENNICOTT: C12.</p> <p>23 A. (In English) Yes.</p> <p>24 MR SHIEH: So Anthony Zervaas replied, 29 May 2018:</p> <p>25 "Jason,</p>	<p>1 Q. -- correct?</p> <p>2 A. (In English) Yes.</p> <p>3 Q. And if you were to look at Apple Daily, C32/24182.</p> <p>4 A. (In English) Yes.</p> <p>5 Q. This is Apple Daily.</p> <p>6 A. (In English) Yes.</p> <p>7 Q. 28 June.</p> <p>8 A. (In English) Yes.</p> <p>9 Q. Over the page --</p> <p>10 A. (In English) Yes.</p> <p>11 Q. -- in the middle of the page it said:</p> <p>12 "(Via interpreter) Jason Poon said the first time</p> <p>13 that they knew about rebar cutting was July 2015, and</p> <p>14 then afterwards he went on site to make an inspection</p> <p>15 and he witnessed it for himself that there was this</p> <p>16 cutting. He said that this was a systematic cutting and</p> <p>17 it would have nothing to do with the workmanship of the</p> <p>18 workers. And then they tried to hide the whole thing</p> <p>19 and they switched to some other equipment to cut the</p> <p>20 rebars and the quantity being cut has also increased and</p> <p>21 he estimated that the being cut was in the thousands as</p> <p>22 far as the number is concerned."</p> <p>23 A. (Chinese spoken).</p> <p>24 Q. You see that?</p> <p>25 A. (In English) Yes.</p>

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1 CHAIRMAN: Just a little slower, if you would. Thank you.
2 MR SHIEH: You did not feel in any way gagged or prohibited
3 in talking about how the cutting took place and the
4 manner of cutting, and also your own estimate as to the
5 number of threaded rebars that had been cut; correct?
6 A. Yes. On the subject of cutting of steel bars, yes.
7 Q. Move on to Hong Kong 01, C32/24219.
8 A. (In English) Okay.
9 Q. This is Hong Kong 01.
10 A. (In English) Yes.
11 Q. "(Via interpreter) ... there have been developments and
12 Jason Poon was interviewed at a radio programme this
13 morning. And he witnessed for himself the rebars being
14 cut short, and he also said that the main contractor,
15 Leighton, thought that the cutting of the rebars was too
16 slow, so they have purchased new super hydraulic cutter
17 to speed up the cutting, and they even tried to do it in
18 some secretive place."
19 So again, here, you do not regard yourself as
20 prohibited or gagged in talking about your personal
21 observation of cutting and the tool used for cutting;
22 correct?
23 A. Well, this was not first-hand. This paper was quoting
24 from the radio interview done in the morning with the
25 radio station. I didn't give an interview to this

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1 paper.
2 Q. Yes. It was quoting what you said in a radio interview;
3 correct? Correct?
4 A. Correct. I didn't use the word "super" in my radio
5 interview.
6 CHAIRMAN: Sorry, can I just -- but in your radio interview
7 did you say words to the effect that because the cutting
8 of the rebars was considered to be too slow, a new
9 hydraulic cutter had been obtained to speed up the
10 process?
11 A. (In English) Yes.
12 CHAIRMAN: Okay.
13 A. (In English) But the Chinese wording is "super".
14 CHAIRMAN: Did you know that? I may have missed that. I'm
15 aware of a green cutter, I'm aware of a red cutter, I'm
16 aware of cutters that throw off sparks and cutters that
17 don't.
18 A. Mmm.
19 CHAIRMAN: I'm not aware, however, of any evidence that
20 Leighton or any of their sub-contractors had actually
21 purchased a new hydraulic cutter to speed up cutting.
22 A. Well, they told me that the new hydraulic cutter was
23 purchased by Leighton.
24 CHAIRMAN: Who told you?
25 A. One of the foremen of Leighton.

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1 CHAIRMAN: And when, roughly, were you told this?
2 A. When I asked them -- I can't remember exactly. Around
3 October or November 2015, towards the end of that year.
4 Let me clarify. I thought it was one. I thought it
5 was just one cutter.
6 CHAIRMAN: Please forgive me, but to me that's quite
7 important. I mean, because what we've got is, on your
8 evidence -- I appreciate it's hearsay, but we won't go
9 into the technicalities of that at the moment. What
10 you're saying there, as I understand it, is that
11 sometime towards the end of 2015, you were in
12 conversation with one of the foremen of Leighton, who
13 confided in you that in order to speed up the illicit
14 work of cutting these rebars, that is cutting the
15 threads, I take it, as opposed to legitimate cutting,
16 they had actually got themselves another machine.
17 A. At the time the conversation was more or less if they
18 continue to use that hand-held grinder, then after they
19 cut it, the edge was not smooth, and then they would
20 have to smooth the edge, and then there would be sparks
21 and everybody could see it, and then the Chinat people
22 would especially make noise about it. That's why
23 Leighton bought a hydraulic cutter. There's no need to
24 smooth the edge with a hydraulic cutter.
25 CHAIRMAN: You today have complained, and I've allowed you

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1 to complain, in very, very explicit terms, about how
2 disappointed you are in this Commission of Inquiry of
3 being asked all sorts of questions which are irrelevant.
4 Okay? I appreciate -- that's not a criticism, I'm just
5 recording the fact. But, you see, this is an important
6 piece of evidence as far as I'm concerned. It's down to
7 earth, it's a conversation with a man from Leightons, it
8 shows illicit activity, and the first time I'm getting
9 it, by word of mouth directly in this Commission room,
10 is now.
11 MR WILKEN: May I assist you briefly -- I'm sure
12 Mr Pennicott will be able to help with the references,
13 but this allegation of a large hydraulic cutter was out
14 there and formed part of the requests made by Lo & Lo of
15 the various involved parties.
16 CHAIRMAN: Yes.
17 MR WILKEN: You will hear from Fang Sheung at some point and
18 they will say, "No, there wasn't such a machine", in
19 response to the precise question that was asked by
20 Lo & Lo. So this allegation was out there, the parties
21 were asked, and everyone said "no".
22 CHAIRMAN: Yes. I have, now that you bring it up -- thank
23 you so much, because I did have a blank there but
24 I remember it now.
25 Can you see -- I don't wish to give you a lecture,

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1 although I am doing exactly that, but I think it is
2 important for the public at large to appreciate these
3 things -- for me, I'm now going to question, I'm not
4 saying I will reject it, but I'm going to question just
5 how much reliance I can place on this piece of evidence
6 you have now given me, because it hasn't appeared in any
7 statements in a concise form, that I know of, it hasn't
8 been spoken to in this hearing, and now at the very
9 it comes up.
10 I'm not saying I'm going to reject it, but what it
11 does do, I would like you to recognise, is it indicates
12 the way in which the veracity and reliability of
13 evidence can be tested in our system. Do you see the
14 point I'm making?
15 A. (Nodded head).
16 CHAIRMAN: So when counsel for the various parties have
17 asked you questions earlier today, it hasn't just been
18 a rambling attempt at trying to upset you. It's been to
19 test the credibility of your evidence in exactly the
20 same way as I have now asked you questions about this
21 important piece of evidence which, up until now, I have
22 not read in a statement in any detail or heard evidence
23 of.
24 Do you understand the point I make?
25 A. (Nodded head).

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1 CHAIRMAN: Okay. I have your evidence now and I will weigh
2 it. As I say, forgive me for the lecture but this is
3 a Commission of Inquiry, it's for the public good, and
4 I don't want the public to be under any misunderstanding
5 that this Commission is allowing rambling, vindictive
6 questioning. It has been satisfied all along that the
7 questions are of real, central relevance to the
8 important issue, Mr Poon, of determining your
9 credibility, because you have been the fountainhead of
10 so much of this. Well, you are the sole fountainhead.
11 You are the wellspring. That's not a criticism, and we
12 may back you up entirely and support you, but your
13 evidence has to be tested.
14 Do you understand the point I make?
15 A. Yes, I understand that, but in Lo & Lo's letter, from
16 the beginning, they said they have read all the news
17 reports.
18 CHAIRMAN: All right. Thank you. I understand that.
19 MR PENNICOTT: Sir, I wonder if I could intervene at this
20 stage, because perhaps to some extent I can take some
21 responsibility. But, sir, to be fair to Mr Poon, in
22 certain paragraphs of his witness statement he does
23 refer to a hydraulic disc cutter.
24 CHAIRMAN: Yes.
25 MR PENNICOTT: I accept entirely there's nothing in the

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1 statement about Leighton conversations and the like that
2 we've heard. That is obviously brand new and you are
3 absolutely right about that.
4 Sir, what I think we've overlooked, if I may say so,
5 and I'm as guilty as anybody, is what Mr Poon does say
6 in paragraph 41 of his witness statement:
7 "On 22 September 2015, I, again, saw staff of
8 Leighton cutting the threaded bars with a hydraulic disc
9 cutter."
10 I suppose what we should have done, and I've
11 overlooked it, is to ask Mr Poon to look at one or more
12 of the photographs and say, "Is that the hydraulic disc
13 cutter or is that some other disc cutter?", because it
14 may be that there is some confusion here. He does refer
15 to a hydraulic disc cutter in I think at least four
16 paragraphs of his statement.
17 CHAIRMAN: I'm aware of that. In fact I think when I set
18 out my understanding I spoke about a disc cutter that
19 cut and made a whining noise, which I always understood
20 to be a hydraulic disc cutter, it was always described
21 as such, and a grinder which throws off sparks.
22 MR PENNICOTT: Yes.
23 CHAIRMAN: But I wasn't aware of a conversation about
24 this --
25 MR PENNICOTT: No, absolutely not, sir.

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1 CHAIRMAN: -- where a foreman turns around and says,
2 effectively -- if you will excuse a bit of play acting
3 for a moment -- "Look, do you know what's gone on here,
4 mate? What's going on here, mate, is we've actually
5 just got in a bit more machinery so we can speed up
6 cutting corners."
7 MR PENNICOTT: Yes.
8 CHAIRMAN: That's what that says in good old-fashioned
9 English.
10 MR PENNICOTT: Yes, sir. That's entirely right on that
11 front. I just thought I had better point out that we
12 haven't overlooked the references to the hydraulic disc
13 cutter in his statement. If somebody wanted to pursue
14 that further, they could.
15 CHAIRMAN: No.
16 Again, Mr Poon, don't get me wrong, I'm not
17 rejecting your evidence, but I'm saying when it suddenly
18 appears late in the day, it naturally raises questions.
19 All right? Thank you. And those are the sorts of
20 questions counsel have been asking you.
21 MR SHIEH: Mr Poon, can I then ask you to look at C32/24179.
22 A. (In English) yes.
23 Q. Blow it up, please. This is the web page of an online
24 radio station called D100.
25 A. Mm-hmm.

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<p>1 Q. And it actually says: 2 "(Via interpreter) MTRC and the government take 3 something." 4 I don't know what the "(Chinese spoken)" which they 5 are supposed to "(Chinese spoken)" means. I presume 6 some nasty things. 7 A. Mm-hmm. 8 Q. "(Via interpreter) The whistleblower appeared at the 9 first time at an interview to detail all the ins and 10 outs of the fraudulent practices of the MTRC works. He 11 believed the biggest culprit was ..." 12 Further down, and there is somebody blowing 13 a whistle. Obviously you are not responsible for that 14 visual image. I'm not blaming you for that. 15 A. (In English) (Unclear) It sold you on the title. 16 MR SHIEH: It's a programme hosted by Li Wei Ling; correct? 17 A. (In English) Yes, I think so. 18 Q. Mr Jat told me he actually listened to it, and together 19 appearing was Audrey Eu SC; right? 20 A. (In English) Yes. 21 Q. Right. So you were blowing the whistle, exposing matter 22 not previously known to the public in this radio 23 programme; correct? 24 A. The title, "Whistleblower appearing for the first time 25 at the interview to detail the ins and outs of the</p>	<p>1 radio hosts about this project and the incident of rebar 2 cutting. 3 A. I recall at this programme, it was the first time, 4 I mentioned the confidentiality agreement. I remember 5 Audrey Eu SC also mentioned, "Mr Poon, perhaps there 6 could be some unlawful practices, maybe the 7 confidentiality agreement does not apply", but I didn't 8 listen to her, I didn't say other things. I was still 9 talking about the rebar cutting. I didn't say anything 10 else. 11 Q. So let's get it out of the way: you felt that you were 12 not gagged in speaking freely about the threaded rebar 13 cutting incident; correct? 14 A. (In English) Yes. 15 Q. But it is true, is it not, Mr Poon, that all along you 16 had been creating this image to the media and to 17 politicians that Leighton had been trying to gag you 18 from exposing wrongdoing about threaded rebar cutting? 19 A. Malpractices of rebar cutting, I didn't say that. I've 20 been saying this all along and I knew all along that 21 there were many, many other structural problems on site, 22 such as indiscriminate amendments of the drawings, not 23 following the drawings, I knew all about it, but I never 24 mentioned it. And in my mind, all these structural 25 problems were integrated. They were not stand-alone</p>
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<p>1 fraudulent practices of the MTR practice! He believes 2 the biggest culprit was" -- I don't know what's after 3 that, and in brackets, "Tipping Point's interview of the 4 sub-contractor Chinat's Jason Poon". This is not what 5 I said. 6 Q. But, Mr Poon, obviously if it's worth appearing in 7 a programme, you've got to be talking about things which 8 were not already known, because otherwise why ask you to 9 go up? You've got to be adding to or responding to 10 things already known; correct? 11 A. Perhaps you don't know this. Why don't you ask why 12 I was on that programme? I didn't arrange to be 13 interviewed beforehand. I received a phone call, and 14 the phone call was actually from this programme, and 15 then they said, "Wait a moment, we have some questions 16 for you", and then they started asking the questions. 17 Q. Right. 18 A. There's nothing new in it, actually. 19 Q. From what -- 20 A. I did not go to the radio station. 21 Q. Mr Poon, you know very well the issue is not whether you 22 took the trip to the radio station. You may have 23 received a phone call and you may have spoken to the 24 host on the telephone; right? 25 But my point is you had been freely speaking to</p>	<p>1 problems. We cannot look at them separately. But still 2 I was still just talking about rebar cutting. 3 If you think that even so I was not gagged, I was 4 not able to speak on other things and when I'm so 5 outspoken, then I should have mentioned the other 6 subjects as well. 7 Q. Mr Poon, can I ask you to look at C32. 8 A. (In English) Yes. 9 Q. Page 24262. 10 A. (In English) Yes. 11 Q. This is the HKC News article or report that we have seen 12 previously. Do you see that, HKC News? Sorry, 24260. 13 A. (In English) Okay. 14 Q. HKC News; yes? 15 A. (In English) Yes. 16 Q. Turn to 24262. 17 A. Yes. 18 Q. And this is Apple. If you look at the top: 19 "(Via interpreter) Jason Poon witnessed and 20 videotaped the process of rebar cutting. At the time, 21 who did he see cutting the rebar? Jason Poon said he 22 has signed a confidentiality agreement with Leighton so 23 he couldn't answer." 24 A. It's about which party cutting the rebar. If 25 I mentioned Leighton, I would have been sued at once,</p>

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<p>1 I know Leighton well. But now of course I can speak 2 freely. At the time, Leighton was resorting to all 3 means to try to sue me. 4 Q. But I thought, if you look at 24220 -- 5 A. (In English) Yes. 6 Q. -- there, you are reported to have said: 7 "(Via interpreter) He mentioned that Leighton 8 frontline people were cutting the rebars on site." 9 Do you see that, Mr Poon? 10 A. Where? 24220, right? 11 Q. 24220, the paragraph at -- yes? 12 "(Via interpreter) He said Leighton frontline cut 13 the rebars on site. At first they did so openly and 14 rather roughly." 15 Do you see that? 16 A. You should really ask the reporter. I didn't write 17 this. 18 Q. So now you -- 19 A. I think I need to explain this clearly. What it is that 20 I said or I wrote. What I wrote is all in my press 21 release. If the reporter quoted certain reports and 22 then wrote something, if you ask me, no, I won't answer 23 it. I think it's best that you ask that reporter. 24 Q. So you are now suggesting that Apple Daily misquoted 25 you; yes?</p>	<p>1 "Leighton frontline workers cutting rebars on site"; are 2 you referring to this sentence? 3 Q. No. No, Mr Poon, 24219, you named Leighton as being the 4 party who thought the old instrument was too slow and 5 who bought a new instrument; correct? 6 A. Well, too slow, getting a new cutter, I definitely said 7 it. Whether or not we referred to Leighton, I need to 8 check. 9 Q. Right, I'm sure there are many people who would want to 10 ask you questions about that. Let me just cut to the 11 heart of -- I'm sorry. 12 Let me cut to the heart of the matter, Mr Poon. 13 This constant reference to your being gagged by the 14 confidentiality agreement is just a media stunt on your 15 part to create an adverse impression that Leighton was 16 trying to stop you from talking about threaded rebar 17 cutting. Do you accept that, Mr Poon? 18 A. (In English) No. 19 Q. You know very well that sound bites such as "being 20 gagged", "confidential agreement", would appeal to the 21 media who would find these concepts easy to understand, 22 when in fact you did not feel gagged at all; do you 23 accept that? 24 A. Disagree. In fact, Mr Paul Shieh quoted a number of 25 reports stemming from one radio interview. It was just</p>
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<p>1 A. Is this Apple? 2 Q. It is. No. 01. You are saying that HK01 misquoted 3 you? 4 A. I don't want to comment. 5 Q. All right. Look at 24219. 6 A. Yes, yes, it's written down here. "This morning he was 7 interviewed by the radio." I wasn't interviewed by 8 them. 9 Q. Mr Poon, it doesn't matter whether you were interviewed 10 by 01 or by some other radio. The fact, you know very 11 well, is it is reported here that you had said in 12 a radio programme that Leighton thought that the cutting 13 of threaded rebars were too slow and they had to buy new 14 equipment. 15 A. Yes. Yes, it's too slow so they bought a new device, 16 and I used the term "systematic and planned"; I said so. 17 I would like to clarify here. I remember at the 18 opening address, Mr Shieh used the term "widespread" 19 often to describe what I said, but I never used the word 20 "widespread". I used the words "systematic" and 21 "planned". MTRC also used the term "industrial"; I did 22 not use that word. 23 Q. In that passage, it also reported that you named 24 Leighton; correct? 25 A. So you are talking about 24220, the last paragraph, the</p>	<p>1 the articles prepared by different media quoting the 2 same radio interview, and you gave the impression that 3 I was interviewed by different media and that's not the 4 case. I think, in all fairness, because you are putting 5 this to me, when you refer to each and every press 6 article, you should state very clearly the source. It 7 would be better; it would be fairer. 8 CHAIRMAN: I think in fact he did quote the source, and 9 indeed on one occasion he was corrected as to the source 10 that he had quoted. 11 MR SHIEH: And, Mr Poon, when you come to give evidence in 12 this Commission, you still say that because you are 13 constrained by confidentiality agreement, you only speak 14 out on certain matters now in the hearing room; remember 15 that? 16 A. Perhaps it's a slip of the tongue on my part. I didn't 17 mean that. I meant when I'm here I can speak now. 18 That's what I mean. 19 That's why I really had expectations on the COI. 20 Q. You meant you can speak now but not put in the form of 21 witness statements beforehand? Is that what you mean? 22 A. Let me respond once again. For the witness 23 statements -- well, let me say it once again. Let me 24 say it once again in summary. On 20 August 2018, when 25 I received a letter from Lo & Lo, an eight-page letter</p>

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1 requesting us to prepare witness statements, I roughly
2 identified some 20 items which our company was required
3 to respond to. The deadline -- I'm sorry, it should be
4 20 July when we received -- I mean, that was the date of
5 the letter, we received it a few days later, and the
6 deadline was 10 August we were supposed to make
7 submission. We failed to do that.
8 In the course, I was required to engage a solicitor
9 and counsel. I needed to look for information. It was
10 really a tight time frame for me. As a result, we could
11 only focus on answering the questions put to me.
12 That's all I wish to say.
13 Q. Mr Poon, I suggest to you that you knew from day one
14 that you had extremely flimsy evidence to support the
15 allegation of threaded rebar cutting, and that was why
16 you constantly referred to this excuse of having been
17 gagged to justify your inability to say anything more
18 than what you had already said to the media; correct?
19 A. The cutting of rebar evidence is concrete, it's not
20 flimsy. We see from photos, from the bars screwed in,
21 there is concrete evidence, solid evidence. Also, for
22 the NCR issued by MTRC to Leighton, this is solid
23 evidence.
24 CHAIRMAN: Sorry, a mental block for a moment. What's an
25 NCR again?

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1 MR SHIEH: Non-conformance report.
2 CHAIRMAN: Thank you.
3 MR SHIEH: I guess it's the ultimate test of media
4 neutrality. I suggest to you that the evidence is not
5 clear-cut and not clear at all, and at most your people
6 said there were instances of threaded rebar cutting, and
7 there is no evidence to support systematic, organised
8 rebar cutting. That is our stance. Do you accept or
9 not accept?
10 A. (In English) Not accept.
11 Q. Thank you.
12 A. (In English) Do you need me to explain?
13 Q. No. If your counsel wants you to make a speech in
14 re-examination, he can. Can I move on.
15 I now move on to that part of your evidence when you
16 mentioned what I called the C word, "corruption"; do you
17 remember the moment when you mentioned the word
18 "corruption"?
19 A. (In English) Yes.
20 Q. Now, that was at a point in time, if you remember -- and
21 I don't want to turn up the transcript because I want to
22 save time and complete the cross-examination today --
23 that was as a result of the Chairman asking you: Why
24 would anyone engage in some form of organised,
25 systematic cutting of threaded end of rebar?

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1 Then you suddenly mentioned, for the first time in
2 this Inquiry, the word "corruption"; do you remember
3 that, Mr Poon?
4 A. (In English) Yes.
5 Q. Do you accept that the word "corruption" has never
6 featured in any of your emails that we can find in the
7 bundles or in your witness statement? Do you accept
8 that?
9 A. (In English) No.
10 Q. You don't accept that? Fine. I'll leave it to your
11 counsel to sort it out.
12 Can I ask you to look at Lo & Lo's Salmon letter.
13 Bundle D1, page 1.
14 MR PENNICOTT: It's not a Salmon letter.
15 MR SHIEH: It's not a Salmon letter, but the letter calling
16 for information.
17 MR PENNICOTT: Yes.
18 MR SHIEH: Can you look at D, page 5.
19 A. Yes.
20 Q. "Given your answers to the matters in paragraph 5,
21 explain to the best of your company's knowledge how the
22 defective steel works came about and the reasons for the
23 shortening, cutting or defectively connecting the steel
24 bars and also why the defective steel works had been
25 allowed and overlooked."

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1 Do you see that?
2 A. Yes.
3 Q. So that is an express request, in the form of a letter
4 from the Commission's lawyers, so it has the force of
5 law, because the law enables the Commission to request
6 information from parties, to explain, to the best of
7 knowledge, so you don't need to have personal knowledge,
8 it's only to the best of your knowledge, how they came
9 about and the reasons for shortening and cutting; right,
10 Mr Poon? You understand this?
11 A. (In English) Yes.
12 Q. Therefore, if you believe there is any substance in any
13 allegation of corruption, you ought to have included
14 that as part of your answer to this question, Mr Poon.
15 Do you accept that?
16 A. (In English) No.
17 Q. Very well. Your witness statement did not contain any
18 allegation of corruption; is that correct?
19 A. On 13 June, at the meeting with the MTRC, I did say
20 that.
21 Q. Mr Poon, we are talking about a proper, solemn witness
22 statement signed for this Inquiry which would be backed
23 up by an oath at risk of perjury. You did not say
24 anything about corruption in your witness statement;
25 correct?

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<p>1 A. Well, what's the relevance with perjury, Mr Paul Shieh? 2 I think you are taking it too far. It's out of context. 3 I didn't mention it here, responding to this point, but 4 it doesn't mean that I wasn't going to talk about it or 5 I didn't know. 6 If you say that I should include everything in my 7 witness statements, with just 20 days' time to answer 8 these eight pages of questions, including every 9 meticulous detail, then I would be a saint, and if that 10 was the case, then I wouldn't be needed here; I could 11 just put in a written statement. 12 Q. Mr Poon -- 13 A. (In English) Yes. 14 Q. -- let me move on. In your oral answer to questions, 15 you resorted to the Prevention of Bribery Ordinance and 16 said that you are not supposed to talk about 17 investigation; do you remember that? 18 A. (In English) Details, details of investigation. 19 Q. Details of investigation, yes. 20 Can I now have shown on the screen provisions in the 21 Prevention of Bribery Ordinance. (Handed). 22 First of all, Mr Poon, are you saying that you have 23 not included allegations of corruption in your witness 24 statement because you actually thought that you were 25 prevented by this Ordinance or by law to do it in</p>	<p>1 give you a chance to accept or deny -- that you 2 basically decided on the spot to utter the C word just 3 as another media stunt, because you knew full well the 4 media would go on a frenzy upon hearing the C word, 5 Mr Poon. 6 A. Disagree. 7 Q. In fact, Mr Poon, you live in a parallel universe from 8 all of us in this courtroom. Everyone in this courtroom 9 speaks with a view to addressing Mr Chairman and the 10 Commissioner. You, however, speak with a view to 11 addressing an audience elsewhere; that is your 12 motivation, throughout your testimony. Do you accept 13 that, Mr Poon? 14 A. I do not accept. On the contrary, I think, 15 Mr Paul Shieh, you are the one doing that. In your 16 opening speech, you wronged our company by saying that 17 we extorted Leighton \$6 million, and you successfully 18 appeared in the headline news. You successfully smeared 19 my company. 20 Q. Have you finished, Mr Poon? 21 What the effect of the law is is not a matter for 22 you, Mr Poon, because that is a matter for argument, but 23 can I suggest to you that you knew very well that even 24 the law does not prohibit you from disclosing what you 25 knew or thought about acts of corruption, as long as you</p>
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<p>1 a witness statement? 2 It's a simple question, Mr Poon. 3 A. That's right. That's what I thought. 4 Q. You thought, "I was prevented by this Ordinance from 5 including it in the witness statement"? 6 A. Right. I think that's the thinking of the majority of 7 Hong Kong. 8 Q. Right. Then why did you say it in the witness box, 9 Mr Poon? 10 A. In fact when I talked about it, I did not specifically 11 talk about the details of that investigation. I did not 12 talk about the content of the investigation, the subject 13 of investigation and the details of the investigation. 14 I just broadly talked about the problems regarding 15 Leighton and also corruption, and also third-party 16 sub-contractors cutting rebars and screwing threads into 17 couplers. 18 Q. Therefore, Mr Poon, you could very well talk about what 19 you knew or thought to be the allegations of corruption, 20 without referring to any investigation in a witness 21 statement; correct, Mr Poon? Correct? 22 A. (In English) Correct. 23 Q. Yet you did not do so, Mr Poon. 24 A. (In English) So? 25 Q. So we would ask the Commission to find -- and I will</p>	<p>1 don't say anything that there is an investigation going 2 on. Do you understand that? Do you accept that? 3 A. If I knew that the investigation was going on, it would 4 be my wrong, my fault, if I talk about it. 5 Q. Mr Poon, I am not going to get bogged down with you. 6 This suggestion that somehow you thought you were 7 prevented by the Prevention of Bribery Ordinance to make 8 these allegations in the form of a witness statement is 9 the same type of excuse about the confidentiality 10 agreement. 11 A. (In English) No. 12 Q. You just rushed to this as a deceptive and misleading 13 excuse for justifying your improvisation in the witness 14 box. Mr Poon, do you accept that? 15 A. (In English) Disagree, and let me explain. 16 Q. Go ahead. 17 A. (In English) Thank you. Let me find out first. Okay. 18 Please go to my witness statement, D1/D35, paragraph 82. 19 Q. Yes. 20 A. (In English) You are saying that I did have a tactic or 21 strategy to build up an atmosphere that I am gagged by 22 the confidentiality agreement, and that is not true. 23 Please go to paragraph 82. Mr Wallace is the 24 corporate counsel of Leightons, and the foreground of 25 this paragraph 82 is that at that particular moment that</p>

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1 I participate into the investigation invited by MTRC on
2 13 June 2018. And before the investigation, MTR --
3 I can't remember the exact name of the leading person --
4 suddenly vacated the meeting room and only left me
5 myself and Leighton's two representatives. At that
6 particular moment, Leightons showed me -- Mr Wallace
7 showed me an email that's issued by his corporation,
8 limiting me on the scope of discussions in the
9 investigations.

10 I asked him, if I reject, shall I go ahead? He said
11 no. And I asked him to send this to my email.

12 Therefore, Mr P Lee, another Chinese assistant to
13 Mr Wallace, sent the email to my corporate email, and
14 the email contents have been quoted in paragraph 82.
15 Please see.

16 The three points -- there are three points --
17 emphasise it is a waiver. It is a waiver to the
18 confidentiality agreement. The first one is:
19 "The waiver is solely for matters to be discussed in
20 the MTR interviews tomorrow and Jason Poon is not to
21 discuss the subject matter of the interviews to any
22 person afterwards".

23 You see, Leighton is always enforcing the
24 confidentiality agreement on me. That is issued on
25 13 June 2018.

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1 Please go to the third point. He even further limit
2 me to discuss only the technical issues of the couplers
3 and not to any commercial discussion or settlement.

4 Q. Thank you. I've seen it. Have you completed your media
5 speech, Mr Poon?

6 CHAIRMAN: With respect, I think read by a layperson, it's
7 quite important, actually.

8 MR SHIEH: Mr Poon, did this prevent you from speaking to
9 the media in the various interviews that I had read out
10 earlier, after 13 June 2018, about Leighton cutting,
11 about machinery, about estimate of numbers, Mr Poon?
12 Mr Poon?

13 A. (In English) Be patient. I am waiting for the
14 translation; okay?

15 (Via interpreter) Let me reiterate, I received
16 Anthony's email reply, and I then sent an email
17 acknowledging his reply, and then I talked about cutting
18 of rebars and media. Has anyone heard me saying to the
19 media that Leighton has not been following the plans
20 indiscriminately? No, I have never said that.

21 Q. Mr Poon, in answer to the chairman's question, you said
22 that you have actually spoken about the corruption
23 matter with Mr Plummer; do you remember that?
24 A sit-down talk with Mr Plummer; correct?
25 A. (In English) Plummer, yes.

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1 Q. Mr Zervaas's predecessor; correct?
2 A. (In English) Yes.

3 Q. You didn't raise it to him by an email, did you? No.
4 And you didn't raise the matter with Mr Zervaas by
5 email; correct?
6 A. (Chinese spoken).
7 (In English) Yes, yes.

8 Q. If you thought there was anything in this allegation,
9 you would have raised your concern with either
10 Mr Plummer or Mr Zervaas; do you accept that?
11 A. I do have enough evidence. I went directly to the ICAC.

12 Q. You have not given evidence in these proceedings and
13 I will move on.
14 Can I now move to the final topic. You remember
15 yesterday you were examined on the "30,000 couplers"
16 email?
17 A. (In English) Yes.

18 Q. You then went on for some time to talk about a number of
19 complaints other than threaded ends being cut; remember?
20 A. Yes.

21 Q. You talked about the need for a torque meter; remember
22 that?
23 A. (In English) Yes.

24 Q. You talked about rebars not being screwed in fully;
25 remember?

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1 A. (In English) Yes.

2 Q. You engaged in a wide-ranging commentary on the BOSA
3 instructions; correct?
4 A. Yes.

5 Q. You then also talked about your concerns on some defects
6 in the holes or in the wall, apart from the torque meter
7 complaint and the "not being screwed in fully"
8 complaint?
9 A. Yes. Yes. That was about the dowel and the coupling
10 falling down, et cetera.

11 Q. Now, for these complaints other than threaded ends being
12 cut, apart from maybe the torque meter, which was in the
13 "30,000 coupler" email, these other complaints have no
14 prior complaint or discussion by email. Do you accept
15 that?
16 A. (In English) Yes.

17 Q. No prior complaint by email?
18 A. (In English) No, no.

19 Q. Thank you. So can I suggest to you, Mr Poon, that the
20 long discursion yesterday in the witness box, when you
21 engaged in this wide-ranging survey of possible
22 complaints, or complaints, other than threaded ends
23 being cut, when you were questioned by the Chairman, was
24 an exercise in diversion, to create the impression that
25 there are other matters which the Commission ought to be

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<p>1 looking into but is refusing to look into. Do you 2 accept that?</p> <p>3 A. (In English) Because the Chinese translation is using 4 the words "refused by the Commission to study those 5 particular subjects", I would rather say -- I will use 6 English -- I am reporting to the Commission my 7 understandings and my best knowledge on the scope of 8 defective connections, because, maybe due to my previous 9 interview in the media, and the perception being taken 10 by Lo & Lo or being taken by the Commission, due to the 11 interviews, misleads the Commission that the scope of 12 defective connection is only oriented on the 13 thread-cutting subjects.</p> <p>14 I'm just trying to help and assist the Commission to 15 have a full picture on the scope of defective 16 connections.</p> <p>17 MR SHIEH: Chairman, I think I only have about 15 minutes 18 left, so instead of adjourning today and then continuing 19 tomorrow, can I just have 15 minutes' indulgence to 20 complete my cross-examination?</p> <p>21 CHAIRMAN: Yes, you may.</p> <p>22 MR SHIEH: Mr Poon, can I suggest to you this way, that you 23 knew, in your heart of hearts, that your allegations on 24 organised and systematic rebar cutting is doomed to be 25 rejected, and you were finding ways to introduce</p>	<p>1 for the MTRC to disclose the content of the discussion 2 then, incessantly.</p> <p>3 The main reason being that in the 13 June evidence 4 given by China Tech, that was taken away. Then I found 5 that we resorted to all these means, including 6 approaching MTRC, and we couldn't get information in 7 relation to that particular investigation.</p> <p>8 So that's why I try my best to be as clear as 9 possible. It was very difficult to identify the persons 10 involved. It was very difficult, and I've tried my best 11 to identify them. And back then I didn't know that 12 Mr Ian Pennicott was engaged as the Commission's 13 counsel. No information in that regard was given to me. 14 And I didn't have any other purpose either.</p> <p>15 Q. Mr Poon, in that list of names -- it's a very long 16 answer to my very simple question. I might as well put 17 the suggestion to you, Mr Poon. When you have 18 difficulty giving a straight answer, you engage in 19 a long ramble of diversion, to bring in sound bites to 20 appeal to the media, to conceal your inability to give 21 a straight answer. Do you accept that?</p> <p>22 A. (In English) No.</p> <p>23 Q. Mr Poon, if he's a Caucasian gentleman whose name you do 24 not know, you could simply say he's a Caucasian 25 barrister from Des Voeux Chambers, just as you described</p>
<p>Page 166</p> <p>1 inconsequential complaints, to continue to sustain your 2 whistleblower image and to undermine this Commission in 3 case things go against you.</p> <p>4 Do you accept that?</p> <p>5 A. Disagree. Well, once you open up the concrete, you will 6 be able to see for yourself. I don't need to say so 7 much. And I think they are definitely breaking up the 8 concrete very soon. We will know who is actually lying.</p> <p>9 Q. Mr Poon, you remember the question of when you named 10 Mr Ian Pennicott in your witness statement, your first 11 witness statement, as being an attendant in the MTRC 12 investigation interview?</p> <p>13 A. Mmm.</p> <p>14 Q. And according to the letters we have seen, Mr Pennicott 15 wasn't even in Hong Kong on that day.</p> <p>16 Mr Poon, there was no reason --</p> <p>17 A. (In English) You know. I don't know. Sorry.</p> <p>18 CHAIRMAN: No, it's not important.</p> <p>19 MR SHIEH: It's not important.</p> <p>20 There was no reason why you had to name that Western 21 gentleman in that interview; correct?</p> <p>22 A. First of all, in that list of names, why did I pay 23 particular attention as to who were present, and why did 24 I say categorically what I said at the 13 June 25 investigation? And we have been pursuing incessantly</p>	<p>Page 168</p> <p>1 the other guy from Des Voeux Chambers or who you thought 2 to be from Des Voeux Chambers. Do you accept that?</p> <p>3 A. In the next ten days or so, after receiving Lo & Lo's 4 letter, I immediately reviewed the situation, I withdrew 5 that name and I made an apology, and we did a particular 6 witness statement on that issue as well.</p> <p>7 Q. Mr Poon, was it not an attempt, although a doomed 8 attempt, to undermine the credibility of the Commission 9 by suggesting that counsel for the Commission had 10 an earlier involvement in the investigation?</p> <p>11 A. No.</p> <p>12 Q. Can I just touch on a small topic. You remember last 13 Friday, when Mr Li, your staff, was being 14 cross-examined --</p> <p>15 A. (In English) Yes.</p> <p>16 Q. -- when he talked about being in area B of the EWL.</p> <p>17 A. Mmm.</p> <p>18 Q. And we had a discussion about whether he could have seen 19 any work on rebars on 12 January; remember that?</p> <p>20 A. (In English) Yes.</p> <p>21 Q. Then you remember that your counsel, or China Tech's 22 counsel, stood up and said there were photographs which 23 could show --</p> <p>24 A. (In English) Yes.</p> <p>25 Q. -- that pouring was taking place on 14 January; do you</p>

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<p>1 remember that? 2 A. (In English) Yes. 3 Q. And we had to adjourn earlier for that photographic 4 evidence to be properly put before the Commission and to 5 the lawyers; do you remember that? That was last 6 Friday. 7 A. (In English) Yes. 8 (Via interpreter) Four photos. 9 Q. And it became 11 photographs on Monday; remember that? 10 A. (In English) 11 photographs but two graphics. 11 Q. Right. Now, can I ask you to look at your 4th witness 12 statement. 13 A. (In English) 5th or 4th? 14 Q. 4th witness statement. Sorry, my mistake. It's the 15 5th. Bundle D2, page 1084. 16 A. (In English) Yes, here. 17 Q. 1086, I'm sorry. My apologies. 1086. 18 A. (In English) Yes. 19 Q. It's paragraph 21. 20 A. (In English) Yes. 21 Q. "If one refers to the EWL slab, as opposed to confining 22 it to the EWL track slab, the very last area in which 23 concrete was poured was area A2." 24 A. (In English) Yes. 25 Q. "We were still pouring it on 14 January ... I refer to</p>	<p>1 Can you look at D1102. 2 A. (In English) Yes. 3 Q. This is a schematic diagram attached to your witness 4 statement; do you see that? 5 A. (In English) Yes. 6 Q. You can talk about where Mr Li was that night. He said 7 he's in area B, Mr Li. 8 A. (In English) I'm going to point out? 9 Q. Yes. We see where B is on this diagram. We can see 10 what B is, where area B is; yes? 11 A. Mm-hmm. 12 Q. And photo 11, which was the only photograph on the 13 14th -- 14 A. (In English) Okay. 15 Q. -- is A2; correct? 16 A. Mm-hmm. 17 Q. Mr Li never said he was anywhere near area A2; do you 18 remember? If you don't remember, it doesn't matter. 19 A. I remember clearly this is not the only photo. There 20 are four photos. 21 Q. No, Mr Poon, I'm asking you about area A2. My question 22 is: Mr Li's evidence did not say he was anywhere near 23 any area A2; correct? 24 A. (Chinese spoken) -- 25 Q. Now, Mr Poon, I want you to be released today, if that's</p>
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<p>1 the eleventh photo ... ('Photo 11') ... showing Chinat's 2 workers in blue shirts ...", et cetera. 3 Do you see that? 4 A. (In English) Yes. 5 Q. Can I also ask you to look at paragraph 9. 6 A. Yes. 7 Q. You accept, in paragraph 9, that pouring in area B4&5 8 completed just before 11 pm on 12 January? 9 A. Mmm. 10 Q. Do you accept that? This is your statement; yes? 11 A. Yes. 12 Q. So, as far as B4&5 are concerned, there is no dispute 13 that pouring completed maybe late at night but 14 12 January; correct? 15 A. (In English) B4&5, yes. 16 Q. Right. We're talking about B4&5. 17 And the area to which the 14 January photo is 18 relevant is area A2; correct? 19 A. Well, it's relevant. It's not irrelevant. Do you need 20 me to explain? 21 Q. Let me take you to the letter before you explain. I'm 22 asking you that you accept that B4&5 completed on the 23 12th? 24 A. (In English) On 23 hours of the 12th. 25 Q. Yes, all right.</p>	<p>1 possible. 2 A. I think this is very important. The Commission, in 3 relation to geographical and three-dimensional vision, 4 sometimes they get it wrong. I have to clarify. First 5 is Mr Ian Pennicott and then Mr Wilken, and he continued 6 putting it to Mr Li in relation to the fact that A/B/C 7 are areas where concrete pouring has been completed, so 8 you can't be seeing some rebars out there. I've heard 9 remarks repeated like that. 10 And why did I mention A2? A2 is part of A/B/C. You 11 can ask staff of Leighton to clarify. And Mr Li goes to 12 B and C, he must pass through this area. This is 13 an area that he must pass through. 14 So he is not wrong in saying that he is seeing this 15 rebar, and he also said that he is between area B and C, 16 and one of my photos, as a corroborative evidence, 17 I deliberately showed the concreting work at B4/556, and 18 I showed also the photo showing the concrete pumping 19 truck. 20 CHAIRMAN: I think we remember that photograph. 21 A. And the mixer and the pumper are actually at C1-5, at 22 the junction of B and C, because we are concreting at 23 B4&5, and the mixer could not be placed in that area; it 24 has to be placed next to that area. And Mr Li was 25 responsible for the concreting work. And that night --</p>

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<p>1 and he was there at B4&5 and C1-5, and he was moving 2 back and forth between C1-5 and B4&5. And he was at the 3 pouring point and discharge point, and there was this 4 area between C1-5 and B4, and he saw the rebars there. 5 I must apologise. It was me who caused the delay 6 submitting the witness statement. It was because I had 7 to draw this 3D chart and I was worried that no matter 8 from which angle I took photo -- I had to be very 9 careful. 10 CHAIRMAN: That's all right; you don't need to worry about 11 that. 12 A. But I would like to say to you, what Mr Li said that day 13 was 100 per cent true -- 14 CHAIRMAN: With respect, it's for the Commission to look at 15 the evidence. We won't look at it, Mr Poon -- 16 A. (In English) Thank you. 17 CHAIRMAN: -- in an isolated fashion. Believe me, I'm well 18 aware of the responsibility to look at all the evidence 19 together, and to compare, to contrast. Okay? 20 So what you've told us now will obviously be taken 21 into account, but we won't take into account the fact 22 that you testified that his evidence is true; all right? 23 A. (In English) Thank you. 24 MR SHIEH: Mr Poon, on this topic, can I suggest to you that 25 you actually misled the Commission, and maybe your</p>	<p>1 case was. Do you accept that? 2 A. No, I do not accept that. I think it's solid. 3 Q. At first, when you raised it with the media, you did not 4 expect it to grow into a Commission of Inquiry where you 5 have to testify on oath and have your testimony tested 6 critically, Mr Poon. Did you expect that? No? 7 A. I didn't expect it, yes, right. I never thought about 8 it, right. But what followed after, that's not right, 9 because when people ask whether I agree there should be 10 an independent Commission of Inquiry, and so on. 11 Q. Now you have to face the music and be tested on your 12 evidence on cutting of threaded ends of rebars, you were 13 keen to divert and digress by reference to 14 inconsequential complaints on other matters. Do you 15 accept that? 16 A. No, I do not accept it. It's totally within the terms 17 of reference of the Commission of Inquiry. 18 Q. You had been keen to build up an image of a brave but 19 oppressed whistleblower for yourself. 20 A. No, I didn't. 21 Q. In the course of your evidence, you have been paving the 22 way to making suggestions in case things turn badly for 23 you: that, "Oh, it's unfortunate the Commission has not 24 looked at this", or you disagree that the Commission has 25 not looked at that, paving the way for you to attack the</p>
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<p>1 lawyers, into thinking that the photographic evidence 2 would show pouring going on in area B4/B5, or maybe even 3 C, on the 14th, when in fact the 14 January pouring, or 4 the photograph, is in a completely irrelevant area of 5 A2. Do you accept that? 6 A. I said repeatedly, and I heard this repeatedly, areas 7 A/B/C, the last bay of concrete pouring is 12 January, 8 and that is not a fact. It's because of what was said, 9 you made a witness wonder himself whether he saw it, 10 because he said that when he went out there, he still 11 saw bar bending works, he saw steel bars, and you said 12 he should only have seen concrete but not steel bars. 13 Q. Thank you. I'll move on -- 14 CHAIRMAN: Mr Poon, thank you. We are not interested in 15 what he may have told you outside. 16 MR SHIEH: Mr Poon, I come to the final points -- a number 17 of suggestions to you by way of roundup. You can either 18 say you agree or disagree. 19 A. Yes. 20 Q. In relation to the allegations of cutting of threaded 21 ends of rebar, we suggest to you -- as I've suggested 22 before, but I'll do it again by way of roundup -- you 23 realised the flimsiness of the evidence that you could 24 marshal, even after any supposed confidentiality 25 restrictions are gone. You realised how flimsy your</p>	<p>1 Commission if things go against you. Do you accept 2 that? 3 A. No, not right. I'm paying for this as well. Why would 4 I want to attack it? 5 Q. I think on Day 1 you even suggested that Mr Pennicott 6 was targeting you when he said in his opening that he 7 wishes to put your evidence under the microscope. 8 MR PENNICOTT: "First". 9 MR SHIEH: "First". 10 A. Yes, I said so. I said that. And in fact Mr Pennicott 11 did say that, and you did quote what he said too. 12 Q. So you were trying to undermine the credibility and 13 authority of this Commission, to pave the way for you, 14 in case turn badly for you. 15 A. (In English) No. 16 (Via interpreter) I have to say something here. If 17 I had wanted to undermine the credibility of this 18 Commission, then definitely I would have questioned 19 fervently why you wouldn't look into the NAT, the North 20 Approach Tunnel. I would also question why, in the 21 opening address you would commend MTR and Leighton for 22 being very cooperative. I'm referring to the 23 investigation into the NAT. I see in a document it was 24 not like that. 25 I must reiterate, when I see it, for the North</p>

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<p>1 Approach Tunnel, it actually falls within the scope of 2 the terms of reference. 3 Q. And you were expressing discontent that the Commission 4 should decide that it isn't and not look at it; yes? 5 A. I expressed discontent; I expressed disagreement. 6 Q. Very well. I'll move on quickly. You know that people 7 in general, and Hong Kong people maybe in particular, 8 prefer a romanticised version of David against Goliath, 9 the small man against the giant, and you portrayed 10 yourself as David fighting against Goliath, skilfully, 11 before the media. 12 A. I won't want to comment what Hong Kong people's views 13 are. You are also one of Hong Kong people. 14 Q. I supported Croatia in the World Cup final. 15 A. (Chinese spoken). 16 CHAIRMAN: I'm happy so far, Mr Shieh, but I think more 17 putting like this becomes more an ingenious way of 18 making an address to the Commission. 19 MR SHIEH: Mr Chairman, I don't want this witness to 20 ultimately say I've been unfair when we make criticisms 21 of him in our submissions, because I can very well see 22 very often these things -- different views can be taken, 23 but as I said, the final few questions. 24 CHAIRMAN: Yes. Certainly then. 25 MR SHIEH: Mr Poon, continue.</p>	<p>1 re-examination. I don't know whether that's going to 2 take up the full day, it may well do, in which case no 3 problem. But I was going to suggest that whether it did 4 or whether it didn't, we just have Mr Poon tomorrow and 5 we don't think about lining up any other witnesses for 6 Friday. 7 I don't know if anybody else is ad idem with that. 8 CHAIRMAN: I would rather just get from counsel a very rough 9 estimate of how long they think they might be, because 10 I still remember an infamous occasion when counsel told 11 me they only needed one witness the following day, and 12 we started at 9.30 and by quarter to ten he was 13 finished. I'm not suggesting any ill-faith on the part 14 of any counsel, but sometimes things can turn. 15 MR PENNICOTT: I fear history won't repeat itself tomorrow, 16 sir, but that's a very sensible -- 17 CHAIRMAN: Just a brief indication. 18 MS CHONG: I think I will have half an hour. 19 CHAIRMAN: All right. 20 Mr Boulding? 21 MR BOULDING: Sir, obviously it always depends upon the 22 length of the answer and that sort of thing, but I'll do 23 my best to finish in, say, a couple of hours. 24 CHAIRMAN: All right. 25 Yes?</p>
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<p>1 CHAIRMAN: I think he's completed his answer there. 2 MR SHIEH: You don't agree, Mr Poon? 3 A. (In English) Yes. 4 Q. Lastly, the way you give evidence, I suggest, rather 5 than putting forward what you saw, you gave the 6 impression of trying to fight for a pre-set agenda, to 7 try your very best to find points that you could argue, 8 for example, the BOSA instructions, and you had to go 9 back and find out more, to justify your pre-set 10 conclusion. Do you accept that? Do you accept that's 11 your mindset, your approach? 12 A. This whole thing comes naturally. I'm an educated 13 person. In front of me, there are bundles. For 14 information that I know, I reflect it to the Commission, 15 it only makes sense. 16 And I've never told a single lie. All the 17 information is backed up by evidence. 18 MR SHIEH: Thank you very much, Mr Poon. 19 It's been a tiring day but I have completed my 20 questions, Mr Chairman. 21 WITNESS: (In English) Thank you. 22 CHAIRMAN: Good. Thank you very much. 23 MR PENNICOTT: Sir, I was just pondering tomorrow. 24 Obviously Ms Chong, Mr Boulding and Mr Khaw I understand 25 all have questions. No doubt there will be some</p>	<p>1 MR KHAW: I believe I'll be around one and a half hours. 2 CHAIRMAN: All right. 3 Yes? 4 MR TO: Re-examination is basically one hour. 5 CHAIRMAN: In which case, I think you are quite right. 6 I don't want to bother a potential witness having to 7 wait around outside the whole day -- 8 MR PENNICOTT: No. 9 CHAIRMAN: -- when it's quite clear we may even have to 10 extend a little bit tomorrow evening. 11 MR PENNICOTT: Yes, sir. 12 CHAIRMAN: Thank you very much. Tomorrow morning, 10 am 13 (5.30 pm) 14 (The hearing adjourned until 10.00 am the following day) 15 16 17 18 19 20 21 22 23 24 25</p>

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